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Escrows--Burden or Boon

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Escrows—Burden or Boon?

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PROBABLY no feature of securities regulation is so often criticized, condemned, unfairly treated by attorneys, unsatisfactorily interpreted to clients, insufficiently analyzed by counsel or neglected in discussions by attorneys with the staff of the Division of Corporations as is the provision concerning stock escrows.[1]

What Is a Stock Escrow?

Essentially the escrow is a conditional restriction upon the owner of escrowed stock providing that he shall not sell or pledge the escrowed stock unless and until an application has been filed with the Commissioner of Corporations requesting an order approving the transfer or pledge in escrow and such order is issued.

The concept of the term "escrow" in the minds of most laymen is the typical real estate escrow where the escrow is looked upon as a frozen state of affairs wherein the proposed seller of real estate places a deed in escrow for a period of time and the proposed buyer puts his certified cashier's check in escrow until certain conditions are, or are not, met, viz.: issuance of title insurance, clearance of liens, clarification of rights of way, etc. Therefore, the parties to the escrow remain in a state of limbo, so to speak, until the escrow terms are satisfied, or until the termination of the escrow period. If the terms of the escrow are not satisfied the proposed deal is dissolved.

An escrow of stock, on the other hand, is quite different. In the first place, it is not set up with a fixed termination date, but rests upon the discretion of the Commissioner as to when, and upon what circumstances, the escrow will be terminated. The reasons for the escrow must have been cleared before it is proper to terminate it and there must not exist any new reasons for continuing it.

The effect of the escrow, however, is not to deprive the owner of the stock of legal title to his stock but merely to withhold from him the possession of the stock certificate so that he is not able to assign and deliver it to any purchaser or pledgee unless and until the Commissioner's order approving the same is first obtained. The escrow in itself

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[1] See Sobieski, *Impounds, Escrows and Promotion Stock*, 35 L. A. BAR BULL. 111 (1960).

does not interfere with other rights of the owner of the stock. He keeps the right to vote his stock, receive dividends, convey the stock, and otherwise exercise any of his rights beyond the limitation placed on transferring and pledging it.

The Authority for an Escrow Condition

Express authority is granted by the Legislature to the Commissioner of Corporations to impose an escrow condition in a permit. This is set forth in the Corporate Securities Law of the State of California, as follows: "The commissioner may impose conditions requiring the deposit in escrow of securities . . . and such other conditions as he deems reasonable and necessary or advisable for the protection of the public and the purchasers of securities."[2]

Why Is Stock Required to Be Escrowed?

The three most common reasons for escrows are: first, weak economic condition of the corporation; second, legal weaknesses in the stock structure of the corporation; and third, lack of confidence by the Commissioner in the reputation or integrity of the persons whose stock is required to be escrowed.[3] Many laymen jump to the conclusion that the third reason is most often the basis for the imposition of an escrow condition; whereas in approximately 99 per cent of the cases the reason for imposing the escrow is the weak economic condition of the corporation, or some legal weakness in the stock structure of the corporation.

Economic Reasons for Escrow

If we start with the assumption that a share of stock of par value of $100 should be issued for cash or tangible value equal to par value, and that the corporate business should have a demonstrated or demonstrable earnings record of 5 per cent on the par value and invested capital, then the obvious conclusion is that if either or both of these economic factors is not established the stock should be escrowed until these standards are met. The earnings record should normally be proven for a period of from two to three years. In a new corporation the situation might be that it is an entirely new business, or perhaps the new corporation may be acquiring a going concern operated as an

[2] CAL. CORP. CODE § 25508. Power of the Commissioner of Corporations to impose an escrow condition was sustained in the case of Basalt Rock Co. Inc. v. MacMillan, 80 Cal. App. 147, 251 Pac. 322 (1926) and in Agnew v. Daugherty, 189 Cal. 446, 209 Pac. 34 (1922). See 15 CAL. OPS. ATT'Y GEN. 317 (1950).

[3] See 10 CAL. ADM. CODE § 407 for a listing of a number of reasons for escrowing securities, which are not the exclusive reasons, but the more common ones.

individual proprietorship, a joint venture, a general or limited partnership or some other corporation.

In the case of acquisition of a going concern, it might not be possible for the acquiring corporation to obtain the asset and liability statement and three year's operating statement from the seller even though the earnings have been satisfactory. Of course, it is also possible that the earnings record has been unsatisfactory. Under either of these circumstances the applicant corporation is unable to establish these two economic bases and thus avoid an escrow. Therefore, counsel for applicant should foresee that an escrow condition will be imposed on the issue of stock. To save delay in choosing an escrow holder after the permit is received, and to enlighten the applicant in advance, the applicant should send the resolution selecting an escrow holder and the latter's consent to act as holder with the application for the permit. Then, the Commissioner's order approving the escrow holder may be issued concurrently with the issuance of the permit, thereby saving several days to a week or more which would otherwise be consumed if the applicant waited until after receipt of the permit to choose the escrow holder.

In many close corporations where only a few persons are interested in the ownership of the stock of the corporation, and they have no present intent to sell their stock, there is a needless waste of time and money in obtaining a certified audit, appraisal, title search and policy of title insurance, engineer's report, survey, maps, etc. If the proposed stockholders are willing to place their stock in escrow, even though it would be likely that the stock would not be escrowed were such audits, appraisals, reports, etc., obtained, it would be prudent and time-saving merely to request an escrow of stock. Even where it may be the desire of the stockholders to remove their stock from the escrow in the near future it would be wise to accept the escrow and then take steps to remove the escrow condition by furnishing the required certified audit, appraisal, engineer's report or other necessary information.

Legal Reasons for Escrow

So-called legal reasons for imposing an escrow condition, as contrasted with the economic reasons, are matters such as the existence of a non-voting or inequitable voting class of stock and weak preferences in a two-class stock structure, such as non-cumulative dividends, non-participation in dividends beyond a fixed percentage, weak preferences on dissolution, redeemable but non-convertible stock, inequitable restrictions on transferability of stock such as too long a restriction (beyond

30 days), and inequitable valuation of stock by fixing the price for resale to the corporation at original cost or at book value without considering good will.

So long as these deficiencies exist, stock escrowed for such reasons would be required to remain in escrow. If it is desired to terminate the escrow condition, the applicant corporation must amend the articles of incorporation to cure these legal deficiencies. This involves, of course, an exchange permit to call in the weak stock and issue the corrected stock in exchange therefor.

Escrow of Stock Where Issuee Is of Doubtful or Bad Business Reputation

If there is a close corporation where one or more of the issuees of stock does not have the confidence of the Commissioner of Corporations as to his honesty and integrity, then the Commissioner may either deny the application and refuse to issue the permit or authorize the escrow of the stock. These cases of distrust run all the way from cases where the proposed issuee is an ex-convict, or a known confidence man, to cases involving minor violators of the law or persons with shady business reputations. In the more severe cases, perhaps the answer should be the denial of an application. On the other hand, there are cases of individuals who have transgressed the law but who appear to be rehabilitated. Should they and those who wish to associate with them as stockholders in a corporate venture be denied this privilege? In many instances it might be unjust to deny the permit; but on the other hand, such a person can hardly complain about being required to accept his stock subject to the escrow condition. At some future date, complete rehabilitation may convince the Commissioner that the escrow condition can then be removed. In the meantime, the fellow stockholders must be informed as to the reasons why the escrow condition has been imposed and must give their written consent to be associated with the questioned person to the Commissioner.

With public sales of stock the responsibility rests upon the Commissioner to deny a permit to issue stock to persons of questionable character and business reputation who might be controlling stockholders, managers, officers or directors of the corporation. It would not be proper to issue, even on a closed permit basis, an escrow of stock to a corporate entity which plans to carry on a "licensed" business as securities broker, investment counsel, finance corporation, escrow company, check seller, etc., if persons of doubtful trustworthiness are controlling stockholders, managers, officers, or directors.

Other Reasons for Escrow

In addition to the above reasons for imposition of an escrow condition in a permit, it sometimes is necessary to impose an escrow for some other reason. For example, a corporation may intend to sell stock to raise working capital. But if some of the larger shareholders were to sell their outstanding, personally-owned stock in competition with the corporation's stock selling campaign, such practice might defeat the ability of the corporation to raise the needed working capital. Therefore, an escrow of such personally-owned shares of stock might be advisable until the applicant corporation has completed its sale of stock. Competitive sale by insiders at lower prices than the permit allows could completely defeat the corporation's efforts to sell its issue of stock.[4]

When a corporation has been financially unsuccessful since the initial issue of stock, and the book value of its stock has declined to a price lower than par value or the original selling price, it might be advisable not only to recapture the stock into escrow, but also to impose waiver conditions on all, or a substantial portion, of the outstanding stock. This may be necessary to make a current sale of company issue of stock at par value fair, just and equitable. Otherwise, the stock to be currently sold would be inequitably diluted by the outstanding stock if there were no waiver of dividends, dissolution rights and voting shift imposed on a portion or all of the outstanding stock.

Whenever special circumstances exist which would indicate that it is doubtful whether new stock could be fairly sold by the company unless an escrow, or an escrow and waiver condition, were to be imposed upon all, or a portion, of the outstanding stock, there is a practical problem which should be carefully analyzed for presentation to the Division of Corporations. It is sometimes possible to recapture into escrow substantially all of the outstanding stock, but there may be instances where one or two stockholders may be traveling in a distant area, or stock is tied up in litigation, probate, bankruptcy, divorce proceedings, etc., or where the present address of a stockholder is unknown. A slight variance from the principle that all of the outstanding shares must be recaptured into escrow may be necessary under such unusual circumstances, and those circumstances should be made known to the Commissioner.

[4] 10 CAL. ADM. CODE § 407(g).

Failure to Place Stock in Escrow

Having gone over many of the ground rules as to why escrows are imposed, it might be well to observe what happens when it is discovered that someone, whose duty it was to place stock in escrow, through oversight, has neglected or failed to do so.

On a number of occasions a corporation's officers and/or its attorney have overlooked the requirement of applying for and obtaining an order from the Commissioner approving the appointment of the escrow holder. Where the stock certificates have actually been dated and issued within the time before which the issuance authority expressly expires, and where the certificates have in fact been held in the possession of the attorney selected as escrow holder, but whose selection has not been approved by formal order of the Commissioner through oversight, the applicant corporation should disclose such facts to the Commissioner and seek the formal order as of the current date. The Commissioner does not have the *nunc pro tunc* power to issue an order which is effective retroactively, but if the stock has been properly issued to the proper persons and for the proper consideration, so that all that is being sought is an order to enable the escrow holder to continue to act under a formal order in a manner in which he has been previously acting without an order, then it is deemed proper to follow this procedure.

So far as it is known, no one has challenged this practice, for no one is injured by the failure of completion of the physical escrowing of the shares, the legal escrow of which is later formally completed by issuance of the Commissioner's order. Of course, no legal transfers or pledges of these shares, required to have been escrowed, could have been legally effected prior to obtaining and complying with this required order. How any stockholder of either escrowed shares, or shares outstanding free of escrow requirement, could be injured by this procedure is hard to imagine. However, good faith calls for prompt steps to be taken to cure the defect of lack of formal order if the shares are held either by the applicant or by the intended escrow holder. Unfortunately, if there was no actual issuance of certificates and delivery to the intended escrow holder prior to the expiration of the issuance paragraph of the permit, it is necessary to apply for, and obtain, a new permit from the Commissioner, make payment of a new filing fee, and, thereafter, issue shares in conformity with the new permit.

Thirty days before expiration of the authority to issue stock, the Commissioner's office, as a matter of voluntary practice, notifies the

applicant's attorney that such expiration is imminent. Such notice at this point of warning will often disclose that there was a failure to obtain the formal order approving an escrow holder. Prompt attention to this problem, within the thirty day period, is necessary in order to avoid the necessity of filing a new application or reissuing the shares in lieu of those which were void for failure to have complied with the permit.

Transfers and Pledges of Escrowed Stock

It is expressly provided in the escrow condition that no transfer or pledge of escrowed shares or of any interest therein may be made, or any consideration pass for such purpose, unless and until the Commissioner's formal order consenting to transfer in escrow or pledge in escrow is applied for and issued.

There may be exceptional cases where no transfer will be approved by the Commissioner even though the proposed transferor and proposed transferee are willing to accomplish such transfer. One example might be that where it is necessary to keep the promoter interested in the operation of the enterprise until a competent successor can be found to manage the business.

But assuming that there is no special reason why a transfer in escrow could not be approved by the Commissioner, the simple questions may be asked: who asks for the transfer, who pays the fee on filing the application for the order, and what showing should or need be made to obtain the order?

The application might be made by the applicant corporation, and/or the proposed transferor(s) and/or the proposed transferee(s). The application may be informally worded so long as the request is clear. The filing fee is $10.00 per transferor regardless of the number of shares, the value, the consideration therefor, or the number of proposed transferees or pledgees.[5] Whatever the reasons for the original escrow, such reasons should be discussed and an explanation given to satisfy the Commissioner that the original reason for the escrow no longer exists. Of course, it may be that new reasons have arisen during the escrow period which merit continuance of the escrow condition; if so, this will be called to the attention of the petitioners by the Division of Corporations.

[5] See 10 CAL. ADM. CODE § 419 (application for permission to transfer securities in escrow); 10 CAL. ADM. CODE § 419.2 (consents to transfer in escrow); 10 CAL. ADM. CODE § 420 (filing fee for application for authority to transfer securities in escrow).

Applications for permits consenting to transfer in escrow of royalty interests require additional showing as outlined in the California Administrative Code,[6] particular attention to which should be given in order not to delay handling of the application.

Escrowed Stock to Promoters

A distinction should clearly be recognized between stock escrowed for economic weakness or legal deficiencies, even though the stock may have been paid for in cash at full par value, and stock escrowed because it is promotional stock or issued for intangible value or assets of doubtful worth. In the latter situation, not only may the stock be escrowed but there are often three additional conditions imposed upon the owners of such escrowed stock: a waiver of dividends until a 5% per annum cumulative dividend is paid on all other stock, a waiver of the right to participate in the distribution of capital assets on dissolution until the owners of all other stock have received back the purchase price of their stock and the 5% per annum cumulative dividends thereon, and a waiver of voting power when there is a failure to pay dividends in the aggregate at 5% per annum in an aggregate of two years on the selling price of all other stock.[7]

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[6] 10 CAL. ADM. CODE § 421.

[7] Samples of Waiver Conditions: (a) *Dividend Waiver.* That none of the shares authorized by paragraph .. hereof shall be sold or issued unless and until ... (names) . . shall have executed an agreement in writing with applicant and filed a copy thereof with the Commissioner of Corporations, whereby (they) (he) shall waive for (themselves) (himself), (their) (his) successors, assigns, heirs, administrators and executors, as owner(s) of said shares, all right to receive any dividends thereon, (from whatever the sources), until all other shareholders shall have received cumulative dividends equal to five (5) per cent per share per annum; thereafter all outstanding shares of the applicant shall participate share and share alike in any additional dividends (provided any such dividends payable on shares issued under said issuance paragraph .... shall be payable only from earned surplus) paid in any year. The provisions of this condition shall apply until the Commissioner by order has released the shares issued under paragraph .... from escrow. (b) *Dissolution Waiver.* That none of the (securities) (shares) authorized by paragraph .... hereof shall be sold or issued unless and until .....(names) ..... shall have executed an agreement in writing with applicant and filed a copy thereof with the Commissioner of Corporations whereby (they) (he) shall waive for (themselves) (himself), (his) (their) successors, assigns, heirs, administrators and executors as owner(s) of said (securities) (shares) all right to participate in any distribution of assets of applicant, until the holders of all other (securities) (shares) shall have received the return of the full amount of the purchase price thereof, and any unpaid accumulated dividends thereon, after which all outstanding (securities) (shares) of the applicant shall participate share and share alike in any further distribution of assets. The provisions of this condition shall apply until the Commissioner by order has released the (securities) (shares) issued under paragraph .... from escrow. (c) *Voting Switch Waiver.* That none of the shares authorized by paragraph .... hereof shall be sold or issued unless and until .....(names)..... shall have

These waiver conditions are usually imposed when there is a single class stock structure and it is deemed necessary to protect those stockholders who have paid cash or tangible assets for their stock against the dilution that would occur if such waiver conditions were not imposed on the promotion stock. These waiver conditions virtually make the promotion stock a subordinate stock and make that stock which was issued for cash and tangible assets a preferred stock. A big difference, however, exists in regard to preferred stock created in the articles of incorporation, in that the waiver conditions imposed on escrowed stock are usually extinguished automatically when the escrow on the stock is terminated; whereas, the preferences created in the articles of incorporation are permanently frozen in the stock structure unless the preferred stockholders can be persuaded to modify or eliminate the preferences.

Transfer of a Promoter's Stock

Much misunderstanding seems to exist over the transfer of promoter stock. In a great many small corporations the continuing interest of the promoter is fundamentally necessary. Otherwise there is no one to carry on the corporate business and the venture may stagnate and fail. The Commissioner may, therefore, question the motive of a promoter who attempts to dispose of a substantial portion of his stock. The incentive to build a value into the promotion stock, both as to book value and earnings, is an important factor, and when that motive disappears the corporation may well be on the road to failure. Thus, it can be expected that the Commissioner may not terminate an escrow if it would free the promoter to sell out his interest in the corporation. It can also be anticipated that the Commissioner would refuse to grant an order consenting to the transfer in escrow of a substantial portion of the promoter's stock, if this would result in the promoter no longer devoting his interest to making the corporation a success.

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executed an agreement with applicant in writing and filed a copy thereof with the Commissioner of Corporations whereby they (he) shall agree for themselvs (himself) their (his) successors, assigns, heirs, administrators and executors as owners of said shares as a group that the holders of the other outstanding stock shall have irrevocable power of attorney to vote for and elect the Board of Directors upon a default in payment of dividends (cash, property or stock dividends) at the rate of five (5) per cent per annum on the selling price of such outstanding stock in an amount of two years' dividends other than from paid-in surplus arising through the sale of stock at a price in excess of par value, (or in case of no par stock because of allocation of any portion of the consideration from the sale of no par stock to paid-in surplus at said rate), so long as said shares authorized by the aforesaid paragraph are required to remain in escrow.

Family Escrow

In a closed corporation where the principal shareholders are members of one or two families, it is often the intent of senior members of the family to give their stock to junior members of the family periodically, as birthday and anniversary gifts, and thus, gradually, to diminish their estates prior to death. In those cases where such stock remains in escrow it is time consuming, costly, and embarrassing to have to file an application for a Commissioner's order approving these transfers. It takes away the pleasurable surprise of the gift, costs $10.00 per transferor each time a gift is made, and appears to be a useless requirement to have to obtain the written consent of the donee as a prerequisite to issuance of an order allowing the transfer in escrow. Therefore, the Commissioner, at request of counsel for the applicant, can insert a special family escrow condition in the permit which enables the escrow holder to accept transfers in escrow from one member of the family to another merely upon the escrow holder's satisfaction that the transfer is within the family. It is expected that counsel will not abuse this privilege but will confine requests for this special type of escrow to bona fide family corporations.

Transfers in Escrow Pursuant to Judicial Decree, Etc.

Where escrowed stock is sold pursuant to any judicial order such as a sale by an executor, administrator or guardian, or at a sale by a receiver or trustee in insolvency or bankruptcy, such transaction is exempted from the Corporate Securities Law.[8] However, when requested, the Commissioner will issue an order consenting to the transfer in escrow pursuant to such judicial decree, executor's sale, etc., and no fee is charged for such order.

Release of Stock From Escrow for Cancellation[9]

There are a number of situations wherein escrowed stock is to be reacquired by the issuing corporation. For example, escrowed shares may be donated by the owner to the corporation; the stock may be cancelled in payment of a debt owed by the owner to the corporation;

[8] CAL. CORP. CODE § 25150.

[9] 10 CAL. ADM. CODE § 419.1: "Release of Securities from Escrow for Cancellation. An order releasing securities from escrow for cancellation may be issued: (a) Upon the written request of the person or persons in whose name the securities are issued. (b) Upon satisfactory proof that the issuer has been dissolved. (c) Upon the written request of the issuer of the securities, setting forth circumstances deemed by the commissioner to be sufficient. (d) Upon motion of the commissioner."

the stock may be reacquired for non-payment of assessment, or reacquired by conversion or exchange in reorganization of stock structure, by stock split, or by repurchase to create a reduction in surplus; or as part of a merger or consolidation plan, or partial liquidation. In all these cases where there is to be a cancellation of the stock there should be filed an application for an order consenting to release of shares for cancellation. There is no fee for such order.

Termination of Escrow

The ultimate goal of the majority of owners of escrowed stock is to obtain a release of their shares from escrow.[10] This is quite important as to promotion shares in escrow because, not only is it desirable to lift the restriction against the transferring of the stock, but it is also desirable to lift the three waiver conditions imposed on escrowed promotion shares.[11] The lifting of the escrow by express wording of the conditions of the permit will lift the waiver conditions. Therefore, pursuant to the amendment to the permit eliminating the escrow condition, the Commissioner will concurrently issue an order to the escrow holder instructing him to deliver the escrowed stock certificates to the owners of such stock. There is a fee for amendment to the permit to eliminate the escrow condition, but no fee for the order releasing shares from escrow. The escrow holder may, or may not, keep pos-

[10] 10 CAL. ADM. CODE § 412: "Release of Securities Held in Escrow. To obtain the release of securities held in escrow, an application shall be filed with the commissioner requesting an amendment to the permit to eliminate the escrow condition therefrom and thereby authorize said release." 10 CAL. ADM. CODE § 414: "Application for Release of Securities From Escrow. The application shall set forth: (a) The name and address of the issuer; (b) The name of the owner or owners of the securities in escrow; (c) The name of the escrow holder of the securities; (d) The reasons justifying termination of the escrow; (e) Financial information as set forth in Article 10 of these rules." 10 CAL. ADM. CODE § 415: "Statements to Be Filed With Application. Financial and profit and loss statements, prepared as outlined in these rules, shall be filed with the application for release." 10 CAL. ADM. CODE § 416: "Appraisal, When. An appraisal made by a duly approved appraiser (in accordance with these rules) is required to be filed when the securities have been escrowed by reason of unsupported values, except where the showing is otherwise deemed adequate by the commissioner." 10 CAL. ADM. CODE § 417: "Release of Securities From Escrow. Based upon the application and exhibits, the examination of the commissioner shall be for the purpose of determining whether or not a release of the securities from escrow would be fair, just and equitable, a disposal thereof might work a fraud on any purchaser or other party concerned, and whether the reason for the escrow condition no longer exists."

[11] 10 CAL. ADM. CODE § 418: "Release of Promotional Securities From Escrow. Ordinarily, securities issued as promotion may be considered for release from escrow when conditions, if any, contained in the permit authorizing the issue with respect to the payment of dividends have been complied with and an earning record satisfactory to the commissioner has been shown for the three-year period immediately preceding the filing of the application."

session of the stock certificate records of the corporation; but he must keep possession of escrowed stock certificates and return cancelled certificates to the corporate stock sale record book when transfers, pledges and releases from escrow, for cancellation, are made. The escrow holder sends receipts to the owner of the stock, advising that the recipient is not to sell or pledge the escrowed stock, or any interest therein, without having first obtained a formal order from the Commissioner authorizing such sale or pledge of escrowed stock. The prohibition against selling any interest in escrowed stock means that the owner cannot sell an option on his escrowed stock unless an order of the Commissioner is first obtained.

The Commissioner's rules and regulations[12] provide that an order releasing shares from escrow, for cancellation, may be issued upon a written request by the person(s) in whose name the securities are issued which sets forth such circumstances as are deemed by the Commissioner to be sufficient. The many and varied reasons why shares may have been escrowed in the first place are the basis for the rule in the California Administrative Code[13] which states that, ordinarily, escrowed securities may be considered for release from escrow when: (a) the reason for the escrow condition is no longer applicable, and (b) no other circumstances have arisen which would, in the opinion of the Commissioner, warrant a continuance of the escrow. Counsel should inquire of the Division of Corporations whether their file indicates just what the reasons were for imposition of the escrow. Normally, the deputy will have advised counsel for the applicant by the transmittal letter accompanying the permit, as to what the reasons for imposition of the escrow were, or counsel may have orally discussed the matter of escrow with the deputy who handled the permit application. However, change of counsel or lack of records have sometimes left doubt as to why the escrow was imposed in the first instance. Whatever the reason may have been for the escrow, it is important to show that the particular reason no longer applies. If counsel suspects that some other reason for escrow may still be deemed to exist, that issue should also be covered in the petition for termination of the escrow. Still, there may be reasons, which are unknown to counsel, which are brought up upon processing of the application for termination of escrow.

[12] 10 CAL. ADM. CODE § 419.1.
[13] 10 CAL. ADM. CODE § 418.1.

Conclusion

This article was written primarily for the purpose of seeking a better understanding by practicing attorneys as to the purposes of an escrow, how an attorney should go about securing the appointment and approval of an escrow holder, what he should do when he finds out that a formal order of the Commissioner approving an escrow holder has not been obtained, when and how transfers or pledges in escrow may be obtained, how and when escrowed shares may be released from escrow for cancellation or remain outstanding, and when the escrow of stock may be terminated and the waiver conditions, if any, be removed.

The most important single suggestion, from the attorney's point of view, that the writer has to suggest is that the escrow of stock and other securities can be a "boon" rather than a "burden." For, perhaps the greatest advantage of an escrow condition is that in many cases the Commissioner of Corporations is able to issue a closed permit or even a public sale permit with escrow of certain securities because of the escrow condition; whereas, without it, it would be necessary for the Commissioner to deny the application and refuse the issuance of a permit. For instance, often a closed permit may be issued where there are variances from the rules of the Commissioner of Corporations which may be desired by the applicant but which could not be granted in an open permit or even in a closed permit unless an escrow is imposed.

It is the sincere desire of the staff of the Division of Corporations to have attorneys cooperate in constructive administration of the Corporate Securities Law, and to dissipate the bugbear of obsolete, outmoded argument that an escrow is a dictatorial, arbitrary interference by government in the internal affairs of private business.

Let us all take a fair, intelligent, cooperative, analytical and constructive approach to the problem of escrows as befits the attorney who should take pride in this best of all securities laws to make the best possible administration of it for the good of all concerned.