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## [An American Icon Amends Stock Plan To Make It Section 25102\(o\) Eligible – Why?](#)

By [Keith Paul Bishop](#) on April 14, 2014 in [California Securities Laws](#)

Section 102 of the National Securities Markets Improvement Act (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. These exchanges are listed in SEC Rule 146. In earlier posts, I’ve observed that the NSMIA does not preempt qualification requirements under state blue sky laws with respect to the offer and sale of warrants, options and other rights to acquire a covered security.

As far as California is concerned, this has been largely an academic point. Corporations Code Section 25100(o) exempts from all three California qualification requirements (Sections 25110, 25120 & 25130) any warrant or right to purchase or subscribe to a security listed or approved for listing on a national securities exchange certified by rule or order by the Commissioner of Corporations. Thus, I was surprised to see this [Form 8-K](#) filed last week by Levi Strauss & Co. reporting various amendments to its equity incentive plan to, among other things, “makes changes intended to make the plan eligible for exemption under Section 25102(o) of the California Corporations Code (in summary, these include limits on transferability of awards, proportionate adjustments to awards in connection with certain events affecting Company common stock, and minimum limits on the post-termination exercise periods of stock options and SARs) . . .”.

Although Levi Strauss & Co. is an internationally known corporation, its shares are not listed on either the NYSE, NASDAQ or any other exchange. According to the company’s [Form 10-K](#), its shares of common stock are primarily owned by descendants of the family of Levi Strauss and their relatives.

Mr. Strauss did not invent the company’s eponymous denim pants, but he played a big role in their birth. Riveted denim pants were the brainchild of one of the first Jewish residents of Reno, Nevada, Jakov Youphes (Jacob Davis). Mr. Davis was an immigrant tailor from Riga who was trying to feed his family of five by fabricating tents, wagon covers and the like from a tough cloth that his wife’s relative purchased from the dry-goods store of Levi Strauss in San Francisco. To solve the problem of a beefy laborer who was splitting his seams, Mr. Davis decided to use some of the rivets that he had on hand for making snaps in blankets. The pants were a hit but Mr. Davis lacked the capital to pay for cloth and a patent application. He decided to send a couple of samples to his supplier, Mr. Strauss, and ask him to pay for the patent application. According to historian John P. Marshall,

A less scrupulous creditor might have taken Davis’s sample and applied for a patent independent of the inventor. To their great honor, Levi Strauss officers acted with integrity and speed.

Jews in Nevada: A History 41 (2008). A century and half later, Levi Strauss & Co. continues to recognize Mr. Davis. The following is an excerpt from the company’s most recent Form 10-K:

In 1853, during the California Gold Rush, Mr. Strauss opened a wholesale dry goods business in San Francisco that became known as “Levi Strauss & Co.” Seeing a need for work pants that could hold up under rough conditions, he and Jacob Davis, a tailor, created the first jean. In 1873, they received a U.S. patent for “waist overalls” with metal rivets at points of strain. The first product line designated by the lot number “501” was created in 1890.

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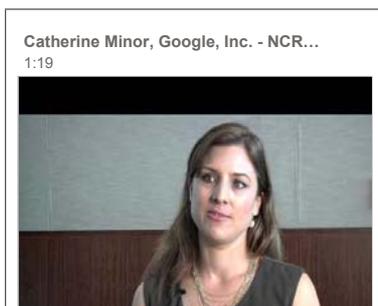
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