

(Department of Corporations Use Only)

Fee Paid \$ _____

Receipt No. _____

Initial Review _____

Deficiency Letters _____

Effective Date _____

Orders Issued _____

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APR - 1 2010

Department of Corporations
Los Angeles

DEPARTMENT OF CORPORATIONS
FILE NO. _____

(Insert file number of previous filings of
Applicant before the Department, if any)

FEE: \$2,500.00/50.00

Date of Application: February 8, March 30, 2010

DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

FACING PAGE

Application for qualification of the offer and sale of securities, under the Corporate Securities Law of 1968, by (check one)

____ Coordination, Section 25111
____ Notification, Section 25112
____ Permit, Section 25113(b)(1)
____ Permit, (Small Company), Section 25113(b)(2)
X Permit, Section 25121
____ Negotiating Permit, Section 25102(c)

____ X Post-Effective
____ Pre-Effective

Amendment
Number 1
To Application
Filed Under
Section 25121
Dated 2/8/2010

This application is for an _____ open or X limited offering qualification as defined in Section 260.001 of the rules (check as applicable).

1. Name of applicant: Accumetrics, Inc.				
2. (a) Is applicant a corporation, partnership, trust or other entity? <u>Corporation</u>				
(b) State of incorporation or jurisdiction under which organized? <u>Delaware</u>				
(c) If a corporation, is applicant in good standing in the State of its incorporation? (Indicate "yes" or "no") <u>Yes</u>				
(d) Is applicant a registered investment company? (Indicate "yes" or "no") <u>No</u>				
3. (a) Address of principal executive office of applicant.				
Number and Street		City	State	Zip Code
3985 Sorrento Valley Blvd.		San Diego	California	92121
(b) Is the principal location of applicant's books and records at the address of the principal executive office, above? (Indicate "yes" or "no"). If "no", provide address: <u>Yes</u>				
Number and Street		City	State	Zip Code
4. Name and address of person to whom correspondence regarding this application should be addressed.				
Kirk Tyree, Cooley Godward Kronish LLP, 4401 Eastgate Mall, San Diego, CA 92121				
5. (a) Description of Securities (See Instructions on reverse side)	(b) Total number of shares or units of each class of securities being qualified in California (e.g., "20,000")	(c) Proposed maximum offering price per unit (e.g., "\$10")	(d) Proposed maximum aggregate offering price for securities being qualified in California (e.g., "\$200,000") Note: Fee calculated on total of this column.	(e) Does a public market exist for this class of securities? (indicate "yes" or "no" If "yes" insert CUSIP number)
See Attached.				
6. Consideration to be paid for securities: if cash, state "cash", or if other than cash and the aggregate value is ascribed thereto by the board of directors of the issuer so state (e.g., "Real Property, \$100,000," "Assets of a going business, \$50,000"). Applicant's securities to be qualified hereunder are to be issued in connection with a merger in which Applicant, a Delaware corporation, will be the surviving entity.				
7. There is no adverse order, judgment or decree entered in connection with the offering by any State regulatory authority, any court or the Securities and Exchange Commission, except as follows: (if none, so state) None.				

ITEM 5. DESCRIPTION OF SECURITIES.

(a)	(b)	(c)	(d)	(e)
Description of Securities	Total number of shares or units of each class of securities being qualified in California	Proposed maximum offering price per unit ⁽¹⁾⁽²⁾	Proposed maximum aggregate offering price for securities being qualified in California ⁽¹⁾⁽²⁾	Does a public market exist for this class of securities?
Common Stock	20,443,515 <u>20,443,515</u> <u>80,858</u>	\$0.04	\$817,740.60 <u>817,740.60</u> <u>234.32</u>	No
Series A-1 Convertible Preferred Stock and Common Stock issuable upon conversion thereof	156,991	\$1.00	\$156,990.00 <u>156,990.00</u> <u>991.00</u>	No
Secured Convertible Promissory Notes ⁽³⁾	N/A	N/A	\$17,082,191.41 <u>17,082,191.41</u> <u>0,249,314.86⁽⁴⁾</u>	No
Series C-1 Convertible Preferred Stock and Common Stock issuable upon conversion thereof	2,285,715	\$1.75	\$4,000,001.25	No
Series D-1 Convertible Preferred Stock and Common Stock issuable upon conversion thereof	11,986,272	\$1.80	\$21,575,289.60	No
Series D-2 Convertible Preferred Stock and Common Stock issuable upon conversion thereof	3,999,820	\$0.90	\$3,599,838.00	No
Options outstanding to purchase Common Stock and Common Stock issuable upon exercise thereof	8,509,148 <u>8,509,148</u> <u>249,992</u>	\$0.05 <u>0.05</u> <u>0.04</u>	\$125,457.40 <u>125,457.40</u> <u>369,999.68</u>	No
Outstanding Common Stock Warrants and Common Stock issuable upon exercise thereof	135,715	\$1.32	\$178,751.25 <u>178,751.25</u> <u>143.80</u>	No
<u>Outstanding Preferred Stock Warrants and Preferred Stock issuable upon exercise thereof⁽⁵⁾</u>	<u>N/A</u>	<u>N/A</u>	<u>\$2,562,328.72</u>	<u>No</u>
Total:	47,517,176 <u>47,517,176</u> <u>48,295,363</u>		\$47,836,259.51 <u>47,836,259.51</u> <u>3,512,141.23</u>	No

- (1) Estimated solely for calculation of filing fee.
- (2) For Common Stock and Preferred Stock, based on the higher of Accumetrics California's Board of Directors' most recent good faith determination of the fair market value of such Common Stock and Preferred Stock, or most recent issuance price of such Common Stock and Preferred Stock. For options and warrants, based on the weighted average exercise price for all outstanding options and warrants, respectively.
- (3) The Company issued Secured Convertible Promissory Notes (the "Notes") to certain Investors pursuant to that certain Note and Warrant Purchase and Stock Exchange Agreement dated September 30, 2009 by and among Accumetrics California, the Investors (as defined therein) and the Shareholders (as defined therein) (the "Note and Warrant Purchase and Stock Exchange Agreement"). Each Secured Convertible Promissory Note is convertible into: (a) new shares of Accumetrics California's Preferred Stock upon Accumetrics California's sale of Preferred Stock in a private placement transaction or (b) into Series B-1 Convertible Preferred Stock and warrants to purchase shares of Accumetrics California's Common Stock upon a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended. The type of equity into which the Secured Convertible Promissory Notes may convert cannot be determined at this time.
- (4) Total aggregate principal amount of Secured Convertible Promissory Notes purchased to date pursuant to that certain Note and Warrant Purchase and Stock Exchange Agreement.
- (5) In connection with the issuance of the Notes to certain Investors pursuant to the Note and Warrant Purchase and Stock Exchange Agreement, the Company also issued warrants (the "Warrants") to each Investor. The total Warrant Amount (as defined in the Warrants) is equal to 25% of the principal amount of the corresponding Note issued to an Investor. The aggregate total Warrant Amount issued to all Investors is equal to \$2,562,328.72. The Warrants are convertible into (a) new shares of Accumetrics California's Preferred Stock upon Accumetrics California's sale of Preferred Stock in a private placement transaction or (b) prior to any conversion of the Note, or in the event the Note is repaid or converted pursuant to a Corporate Transaction (as defined in the Note) or Qualified IPO (as defined in the Note), Series D-1 Convertible Preferred Stock. The type of equity into which the Warrants may convert cannot be determined at this time. The Exercise Price of the Warrants is \$0.01 per share.

This Post-Effective Amendment No. 1 to the Application for Qualification of Securities Pursuant to Section 25121 of the California Corporate Securities Law of 1968, as amended, filed February 8, 2010, is being filed by Accumetrics, Inc., a Delaware corporation (the "Applicant") in order to amend Item 5 and the items identified below as the result of clerical error.

The Applicant incorporates by reference Items 9 through 17 of the Application for Qualification of Securities Pursuant to Section 25121, filed by the Applicant on February 8, 2010.

ITEM 8: DESCRIPTION OF PLAN

(a) **Material Features of the Plan.** Accumetrics, Inc., a California corporation ("*Accumetrics California*"), and Accumetrics, Inc., a Delaware corporation ("*Accumetrics Delaware*"), which is a wholly-owned subsidiary of Accumetrics California, shall enter into an Agreement and Plan of Merger (the "*Merger Agreement*") pursuant to which Accumetrics California shall be merged with and into Accumetrics Delaware (the "*Merger*") with Accumetrics

Delaware being the surviving corporation. The Merger Agreement is attached as Exhibit B to this Application.

(b) **Conversion of the Accumetrics California Shares.** On the date the Merger becomes effective, as defined in Section I.A. of the Merger Agreement (the "*Effective Time*"), (i) each outstanding share of the Common Stock of Accumetrics California shall be converted into one fully paid and nonassessable share of the Common Stock of Accumetrics Delaware, \$0.001 par value, (ii) each outstanding share of the Series A-1 Convertible Preferred Stock of Accumetrics California shall be converted into one fully paid and nonassessable share of the Series A-1 Convertible Preferred Stock of Accumetrics Delaware, \$0.001 par value, (iii) each outstanding share of the Series C-1 Convertible Preferred Stock of Accumetrics California shall be converted into one fully paid and nonassessable share of the Series C-1 Convertible Preferred Stock of Accumetrics Delaware, \$0.001 par value, (iv) each outstanding share of the Series D-1 Convertible Preferred Stock of Accumetrics California shall be converted into one fully paid and nonassessable share of the Series D-1 Convertible Preferred Stock of Accumetrics Delaware, \$0.001 par value, and (v) each outstanding share of the Series D-2 Convertible Preferred Stock of Accumetrics California shall be converted into one fully paid and nonassessable share of the Series D-2 Convertible Preferred Stock of Accumetrics Delaware, \$0.001 par value.

Accumetrics Delaware will assume and continue all of Accumetrics California's employee benefit plans in existence at the Effective Time. All outstanding and unexercised warrants to acquire Accumetrics California's Common Stock or Preferred Stock shall become warrants to acquire the same number of shares of Accumetrics Delaware's Common Stock or Preferred Stock, as applicable. All outstanding and unexercised options to acquire Accumetrics California's Common Stock shall become options to acquire the same number of shares of Accumetrics Delaware's Common Stock. All outstanding Secured Convertible Promissory Notes which may convert into Accumetrics California's Preferred Stock and/or Common Stock Warrants to acquire Accumetrics California's Common Stock shall become Secured Convertible Promissory Notes which may convert into the same number of shares of Accumetrics Delaware's Preferred Stock and/or the same number of Common Stock Warrants to acquire Accumetrics Delaware's Common Stock.

Upon consummation of the Merger, Accumetrics California shall be merged into Accumetrics Delaware and the separate corporate existence of Accumetrics California shall thereupon cease. Accumetrics Delaware shall be the surviving corporation in the Merger and the separate corporate identity, existence, purposes, powers, rights and immunities of Accumetrics Delaware as the surviving corporation shall continue unaffected and unimpaired by the Merger. Accumetrics Delaware shall succeed to all of the properties and obligations of Accumetrics California.

(c) **Reasons for the Merger.** The sole reason for the Merger is to enable Accumetrics California to change its domicile to the State of Delaware. The Information Statement substantially in the form attached as Exhibit F-1 (the "*Information Statement*") describes in detail the reasons for the change in domicile.

(d) **General Effect upon the Rights of Existing Security Holders.** As described in the Information Statement, the Merger will affect the rights, preferences and privileges of existing

shareholders of Accumetrics California. Specifically, in connection with the Merger, advance notice provisions will be applicable for stockholder nominations and bringing business before an annual meeting. In addition, by means of the Merger, and subject to the requirements of Section 2115 of the California Corporations Code, the rights of the existing shareholders of Accumetrics California will become subject to the Delaware General Corporation Law. The effects of each of these changes on the rights of existing security holders are described more fully in the Information Statement.

(e) Security Holders.

Accumetrics California. As of the date of this Application, there were approximately 74 Accumetrics California shareholders of record.

Accumetrics Delaware. Accumetrics California is the only stockholder of Accumetrics Delaware; Accumetrics Delaware is a wholly-owned subsidiary of Accumetrics California.

Vote Needed for Approval. The Merger requires the approval of the Boards of Directors of Accumetrics California and Accumetrics Delaware. The Merger must be approved by the holders of (i) a majority of the outstanding shares of Accumetrics California's Common Stock, voting as a single class, (ii) a majority of the outstanding shares of Accumetrics California's Preferred Stock, voting as a single class, (iii) at least 50% of the outstanding shares of Accumetrics California's Series B-1 Convertible Preferred Stock, Series C-1 Convertible Preferred Stock and Series D-1 Convertible Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, and (iv) at least 66 2/3% of the outstanding shares of Accumetrics California's Series D-1 Convertible Preferred Stock, voting as a single class. Accumetrics California intends to request approval of the Merger by written consent of shareholders solicited pursuant to the Information Statement. Accumetrics California, as the sole stockholder of Accumetrics Delaware, will vote all of the outstanding shares of Common Stock of Accumetrics Delaware in favor of the adoption and approval of the Merger.

Proposed Date for the Mailing of Shareholder Consents and Information Statement. Accumetrics California expects to mail the Action by Written Consent of Shareholders and the Information Statement, substantially in the forms attached hereto as Exhibit F-2 and Exhibit F-1, respectively, to its shareholders immediately after receiving approval from the California Department of Corporations.

(Department of Corporations Use Only)

Fee Paid \$ _____

Receipt No. _____

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Department of Corporations
Los Angeles

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Applicant before the Department, if any)

FEE: \$50.00

Date of Application: March 30, 2010

DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

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Application for qualification of the offer and sale of securities, under the Corporate Securities Law of 1968, by (check one)

_____ Coordination, Section 25111	<u>X</u> Post-Effective	Amendment
_____ Notification, Section 25112		Number <u>1</u>
_____ Permit, Section 25113(b)(1)		To Application
_____ Permit, (Small Company), Section 25113(b)(2)		Filed Under
<u>X</u> Permit, Section 25121		Section <u>25121</u>
_____ Negotiating Permit, Section 25102(c)	_____ Pre-Effective	Dated <u>2/8/2010</u>

This application is for an _____ open or X limited offering qualification as defined in Section 260.001 of the rules (check as applicable).

1. Name of applicant: Accumetrics, Inc.				
2. (a) Is applicant a corporation, partnership, trust or other entity? <u>Corporation</u>				
(b) State of incorporation or jurisdiction under which organized? <u>Delaware</u>				
(c) If a corporation, is applicant in good standing in the State of its incorporation? (Indicate "yes" or "no") <u>Yes</u>				
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3. (a) Address of principal executive office of applicant.				
Number and Street		City	State	Zip Code
3985 Sorrento Valley Blvd.		San Diego	California	92121
(b) Is the principal location of applicant's books and records at the address of the principal executive office, above? (Indicate "yes" or "no"). If "no", provide address: <u>Yes</u>				
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4. Name and address of person to whom correspondence regarding this application should be addressed.				
Kirk Tyree, Cooley Godward Kronish LLP, 4401 Eastgate Mall, San Diego, CA 92121				
5. (a) Description of Securities (See Instructions on reverse side)	(b) Total number of shares or units of each class of securities being qualified in California (e.g., "20,000")	(c) Proposed maximum offering price per unit (e.g., "\$10")	(d) Proposed maximum aggregate offering price for securities being qualified in California (e.g., "\$200,000") Note: Fee calculated on total of this column.	(e) Does a public market exist for this class of securities? (indicate "yes" or "no" If "yes" insert CUSIP number)
See Attached.				
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Common Stock	20,480,858	\$0.04	\$819,234.32	No
Series A-1 Convertible Preferred Stock and Common Stock issuable upon conversion thereof	156,991	\$1.00	\$156,991.00	No
Secured Convertible Promissory Notes ⁽³⁾	N/A	N/A	\$10,249,314.86 ⁽⁴⁾	No
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Outstanding Preferred Stock Warrants and Preferred Stock issuable upon exercise thereof ⁽⁵⁾	N/A	N/A	\$2,562,328.72	No
Total:	48,295,363		\$43,512,141.23	No

- (1) Estimated solely for calculation of filing fee.
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Upon consummation of the Merger, Accumetrics California shall be merged into Accumetrics Delaware and the separate corporate existence of Accumetrics California shall thereupon cease. Accumetrics Delaware shall be the surviving corporation in the Merger and the separate corporate identity, existence, purposes, powers, rights and immunities of Accumetrics Delaware as the surviving corporation shall continue unaffected and unimpaired by the Merger. Accumetrics Delaware shall succeed to all of the properties and obligations of Accumetrics California.

(c) **Reasons for the Merger.** The sole reason for the Merger is to enable Accumetrics California to change its domicile to the State of Delaware. The Information Statement substantially in the form attached as Exhibit F-1 (the "*Information Statement*") describes in detail the reasons for the change in domicile.

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of Section 2115 of the California Corporations Code, the rights of the existing shareholders of Accumetrics California will become subject to the Delaware General Corporation Law. The effects of each of these changes on the rights of existing security holders are described more fully in the Information Statement.

(e) Security Holders.

Accumetrics California. As of the date of this Application, there were approximately 74 Accumetrics California shareholders of record.

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Vote Needed for Approval. The Merger requires the approval of the Boards of Directors of Accumetrics California and Accumetrics Delaware. The Merger must be approved by the holders of (i) a majority of the outstanding shares of Accumetrics California's Common Stock, voting as a single class, (ii) a majority of the outstanding shares of Accumetrics California's Preferred Stock, voting as a single class, (iii) at least 50% of the outstanding shares of Accumetrics California's Series B-1 Convertible Preferred Stock, Series C-1 Convertible Preferred Stock and Series D-1 Convertible Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, and (iv) at least 66 2/3% of the outstanding shares of Accumetrics California's Series D-1 Convertible Preferred Stock, voting as a single class. Accumetrics California intends to request approval of the Merger by written consent of shareholders solicited pursuant to the Information Statement. Accumetrics California, as the sole stockholder of Accumetrics Delaware, will vote all of the outstanding shares of Common Stock of Accumetrics Delaware in favor of the adoption and approval of the Merger.

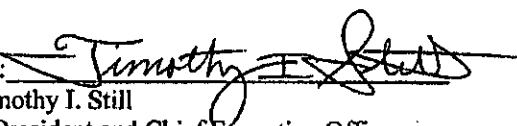
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Department of Corporations
Los Angeles

The applicant has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized.

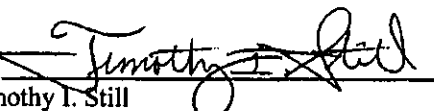
Executed at San Diego, California, on March 30, 2010.

ACCUMETRICS, INC.,
a Delaware corporation

By: 
Timothy I. Still
President and Chief Executive Officer

I certify (or declare) under penalty of perjury under the laws of the State of California that I have read this application and the exhibits thereto and know the contents thereof, and that the statements therein are true and correct.

Executed at San Diego, California, on March 30, 2010.

By: 
Timothy I. Still
President and Chief Executive Officer