Department of Corporations

Acting Commissioner: William Kenefick ♦ (916) 445-7205 ♦ (213) 576-7500 • Internet: www.corp.ca.gov/

The Department of Corporations (DOC) is part of the cabinet-level Business, Transportation and Housing Agency, and is empowered under Corporations Code section 25600. The Commissioner of Corporations, appointed by the Governor, oversees and administers the duties and responsibilities of the Department. The rules promulgated by the Department are set forth in Division 3, Title 10 of the California Code of Regulations (CCR).

The Department administers several major statutes, including the Corporate Securities Law of 1968, Corporations Code section 25000 *et seq.*, which requires the qualification of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to more traditional stocks and bonds. Many securities may be "qualified" through compliance with the federal securities acts of 1933, 1934, and 1940. If the securities are not under federal qualification, the Commissioner may issue a permit for their sale in California.

Through DOC's Securities Regulation Division, the Commissioner licenses securities agents, broker-dealers, and investment advisers, and may issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. Deception, fraud, or violation of any DOC regulation is cause for license revocation or suspension of up to one year. Also, any willful violation of the securities law is a felony, and DOC refers these criminal violations to local district attorneys for prosecution.

The Commissioner also enforces a group of more specific statutes involving other business transactions: the California Finance Lenders Law (Financial Code section 22000 *et seq.*); the California Residential Mortgage Lending Act (Financial Code section 50000 *et seq.*); the Franchise Investment Law (Corporations Code section 31000 *et seq.*); the Security Owners Protection Law (Corporations Code section 27000 *et seq.*); the California Commodity Law of 1990 (Corporations Code section 29500 *et seq.*); the Escrow Law (Financial Code section 17000 *et seq.*); the Check Sellers, Bill Payers and Proraters Law (Financial Code section 12000 *et seq.*); the Securities Depository Law (Financial Code section 30000 *et seq.*); and—effective July 1, 1999—the Capital Access Company Law (Corporations Code section 28000 *et seq.*) (see below).

Until July 1, 2000, the Corporations Commissioner also administers the Knox-Keene Health Care Service Plan Act of 1975, Health and Safety Code section 1340 *et seq.*, which is intended to promote the delivery of health and medical care to Californians who enroll in or subscribe to services provided by health care service plans, more commonly known as "health maintenance organizations" or "HMOs." Coverage of these DOC activities is found above, under "Health Care Regulatory Agencies."

MAJOR PROJECTS

DOC Rulemaking Under the Capital Access Company Law

On June 24, the Office of Administrative Law (OAL) approved DOC's adoption of section 280.100 *et seq.*, Title 10 of the CCR, to implement SB 2189 (Vasconcellos) (Chapter 668, Statutes of 1998). SB 2189 enacted the Capital Access Company Law (CACL) at Corporations Code section 28000 *et seq.* The new law, which became effective on July 1, establishes the framework for a new licensing and regulatory scheme for capital access companies organized to provide financing assistance to small business firms in California. *[16:2 CRLR 122–23; 16:1 CRLR 146]*

SB 2189 enacted the Capital Access Company Law at Corporations Code section 28000 et seq. The new law, which became effective on July 1, establishes the framework for a new licensing and regulatory scheme for capital access companies organized to provide financing assistance to small business firms in California.

Under the CACL, an applicant for licensure as a capital access company must: (1) have a tangible net worth of at least $250,000 and funds of at least $5 million to invest; (2) have additional financial resources to pay expenses for at least three years; (3) have directors, officers, and controlling persons who are of good character and sound financial standing and are collectively competent; (4) have reasonable promise of successful operation; and (5) agree to comply with all the provisions of the statute. A capital access company's securities may be sold only to accredited investors, and a capital access company may not issue redeemable securities.

DOC's new regulations include the application form for licensure as a capital access company which must be filed with the Commissioner. Along with the application form, applicants are required to submit several exhibits, including a statement of financial solvency, a copy of the applicant's fidelity bond, a statement of identity and questionnaire, fingerprint card, a notice identifying the "controlling persons" of the company, a detailed business plan including numerous specified items, an authorization which will enable the Commissioner to have access to the applicant's financial information that is under the control of third parties (such as banks), a copy of the applicant's certificate of filing and proof of publication, a copy of the applicant's organizational documents and any amendments thereto, a statement disclosing the name of the applicant's

parent corporation if the applicant is a subsidiary, a copy of the applicant's conflict of interest policies and procedures, a copy of any contracts into which the applicant has entered with any investment adviser, a consent to service of process form, and a list of attestations made by the applicant.

Section 280.300 prohibits a capital access company licensee from advertising that any of its officers, employees, or agents are bonded, supervised, regulated, audited, or examined by an agency of the State of California, and requires licensees—when referring to its licensure under SB 2189 in any type of advertising—to state "licensed by the Department of Corporations under the Capital Access Company Law." Section 280.301 prohibits a licensee from "blind" advertising—that which gives only a telephone number, post office or newspaper box number, or a name other than that of the licensee.

The regulations also specify the filing fees for applications for licensure, and require that each licensed capital access company provide and maintain a fidelity bond which covers each officer, director, partner, member, trustee, or employee who has access to or responsibility for the funds or securities of the company. The bond may be either a primary commercial blanket bond or a blanket position bond written by an insurer licensed by the California Insurance Commissioner. The regulations set forth a list of activities that the DOC Commissioner considers unsafe and unsound acts; establish guidelines for financial statements and reports that are required to be submitted pursuant to SB 2189; set deadlines for the filing of specified reports with the Commissioner; and require licensees to maintain, keep, and preserve specified records, books, accounts, and other documents.

DOC Rulemaking Under the California Finance Lenders Law

On July 27, OAL approved DOC's amendment to section 1556, Title 10 of the CCR, which specifies requirements for guaranteed loan offers under the Finance Lenders Law and, among other things, requires finance companies to submit complete guaranteed loan offer packages (and any related advertising copy) to the Commissioner for examination. The Commissioner added new subsection (f) to section 1556, which authorizes the Commissioner, by order, to exempt any finance company from being required to submit guaranteed loan offer packages for examination if the Commissioner finds the company has been "in substantial compliance with the [Finance Lenders Law] or any regulation or order regarding advertising for a period of not less than 12 months immediately prior to the effective date of the order. Any order issued pursuant to this subsection shall continue in effect until it expires by its terms or until the order is revoked by the Commissioner."

The amendment became effective on August 26.

DOC Rulemaking Under the Corporate Securities Act

On October 22, DOC published notice of its intent to amend section 260.105.11, Title 10 of the CCR, which provides a non-issuer exemption from the qualifications requirements of the Corporate Securities Law of 1968 (CSL) for securities of foreign-country issuers where certain requirements are met. This non-issuer or "trading" exemption from the requirements of Corporations Code section 25130 applies to: (1) those issuers currently filing with the Securities and Exchange Commission (SEC) information and reports pursuant to section 15(d) of the Exchange Act of 1934; (2) those securities appearing in the most recent Federal Reserve Board List of Foreign Margin Stocks (the List); and (3) those issuers not subject to the reporting requirements of section 13 or 15(d) of the Securities Act of 1934 where the issuer meets certain "worldwide" issuer requirements.

Currently, section 260.105.11(a) exempts any foreign equity security on the List published by the Board from the qualification for secondary trading in this state because it does not fall within the purposes of the CSL and its qualification is not necessary or appropriate in the public interest or for the protection of investors. The Commissioner proposes amendments to subsection 260.105.11(a)(2) to take into account the method used by the Board of Governors of the Federal Reserve System to identify foreign margin stocks.

Since 1990, the Board has published a List of foreign equity securities eligible for margin. According to Regulation T, foreign equity securities are initially eligible for inclusion on the List if the issuer meets certain threshold criteria relating to trading volume, trading history, and market capitalization. The issuer must maintain a minimum level of trading volume and market value in order for the securities to continue to be eligible. In 1996, the Board included all foreign equity securities on the Financial Times/Standard & Poor's World Actuaries Indices (FTS&P Indices) on the List in reliance upon a "no-action" letter issued by the SEC. This inclusion effectively treats all foreign equity securities on the FTS&P Indices as having a "ready market" for the purposes of Rule 15c3-1 of the Securities Exchange Act of 1934, and exempt from the qualification requirements by section 260.105.11. The Board recently amended its approach for determining which foreign stocks are eligible for extension of margin credit. Effective April 1, 1998, the definition of foreign margin stock in section 220.2 of Regulation T (12 C.F.R. Part 220.2) was revised to include (in addition to foreign equity securities appearing on the List), foreign equity securities deemed have a "ready market" under Rule 15c3-1 or a "no-action" letter issued by the SEC regarding its "ready market" criteria. The Board's change allows a stock appearing on the FTS&P Indices to qualify as a margin security without the need to be included on the List. The Board's action allows the inclusion of hundreds of additional foreign stocks on the List, based on a "no action" position from SEC that effectively treats all stocks on the FTS&P Indices as having a "ready market" for capital purposes. In the Board's view, the process of increasing the coverage of its definition of margin security is an incremental one. The Board also believes that it is appropriate to limit the margin status of for-

eign stocks to those that either meet the Board's original criteria for foreign margin stock which appears on the Board's List or are determined by SEC to have a "ready market" for purposes of their net capital rule. Since the Board's definition of foreign margin stock has changed, the FTS&P Indices and any foreign equity securities with a "ready market" are no longer included on the List. Existing section 260.105.11 may be interpreted to mean that FTS&P Indices and other foreign equity securities formerly on the List are no longer exempt from qualification pursuant to this rule. Therefore, the proposed changes are necessary to conform section 260.105.11 to the Board's current position with respect to foreign margin stock; and to restore the exemption from qualification for foreign equity securities listed on FTS&P Indices and other foreign equity securities under section 260.105.11.

At this writing, the Commissioner does not plan to hold a public hearing on the proposed amendments to section 260.105.11; however, written comments are accepted until December 17.

AB 583 makes the provisions of the Escrow Law applicable to Internet escrow agents.The bill defines an "Internet escrow agent" as any person engaged in the business of receiving escrows for deposit or delivery over the Internet.

LEGISLATION

AB 583 (Papan). The Escrow Law provides that it is unlawful for any person to engage in business as an escrow agent "within this state" unless by means of a corporation licensed as an escrow agent by the DOC Commissioner. As amended July 14, AB 583 makes the provisions of the Escrow Law applicable to Internet escrow agents. The bill defines an "Internet escrow agent" as any person engaged in the business of receiving escrows for deposit or delivery over the Internet. "Within this state" means "any activity of a person relating to receiving escrows for deposit or delivery that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state, or that leads to the formation of a contract and the offer or acceptance thereof is directed to a person in this state, whether from inside or outside this state and whether the offer was made inside or outside this state."

AB 583 states that when the DOC Commissioner issues a license or order pertaining to escrow agents, the Commissioner "may impose conditions that are necessary and appropriate to carry out the provisions and purposes" of the Escrow Law "and, with respect to Internet escrow agents, are also consistent with the intent of the Legislature." In addition, AB 583 permits the Commissioner to waive any requirement of any rule in situations where, in his/her opinion, the requirement is not necessary in the public's interest or protection. Finally, Internet escrow agents are subject to Escrow Law provisions pertaining to escrow instructions (especially blank sections, deletions and amendments, and supplemental instructions), and copies of executed escrow instructions to various interested persons. Copies could be delivered over the Internet or through the mail.

The purpose of AB 583 is to "allow the DOC to keep pace with the new ways of conducting escrow business that have evolved as a result of electronic commerce and electronic technological advances. This bill allows the modernizing of the escrow law and gives the DOC the flexibility to address any new ways of doing escrow business that have arisen and may arise in the future."

DOC sponsored this bill. According to the Department, the purpose of AB 583 is to "allow the DOC to keep pace with the new ways of conducting escrow business that have evolved as a result of electronic commerce and electronic technological advances. This bill allows the modernizing of the escrow law and gives the DOC the flexibility to address any new ways of doing escrow business that have arisen and may arise in the future." Governor Davis signed AB 583 on September 21 (Chapter 441, Statutes of 1999).

AB 517 (Maldonado). Existing law requires all escrow agents to be members of the Escrow Agents' Fidelity Corporation (EAFC), a private entity which indemnifies its members against the loss of trust obligations when the loss results from fraud, misappropriation, or embezzlement by an escrow officer, director, or employee. Financial Code section 17345.1 provides for a process where members (or their successors) that are aggrieved by any action or decision of EAFC may appeal to the Corporations Commissioner within 30 days from the action or decision by filing a written request for a hearing. As amended August 25, AB 517 amends section 17345.1 to revise various procedures and requirements for appeals to the DOC Commissioner when a member or successor in interest is aggrieved by any action or decision of the EAFC. This bill was signed by the Governor on September 27 (Chapter 486, Statutes of 1999).

AB 410 (Lempert and Papan). As noted above, the Escrow Law requires every person licensed as an escrow agent to participate as a member of EAFC. As amended June 14, this bill limits that membership requirement to those persons engaged in the business of receiving escrows in certain types of traditional escrow transactions defined in Financial Code section 17312(c). It limits EAFC coverage to loss of trust obligations with respect to those transactions, and requires escrow agents to provide separate indemnity coverage with respect to non-traditional kinds of escrow transactions. The bill requires that if an escrow agent engages in both

traditional escrow transactions of the type specified in section 17312(c) and in non-traditional escrows, the escrow agent must maintain separate escrow trust accounts.

This bill is sponsored by the EAFC, and its purpose is to clarify that EAFC coverage and assessment applies to traditional escrow activities, while separate bonding requirements will apply to non-traditional, personal property escrows (such as Internet escrows). Traditional escrow agents are uncomfortable with the potential risks and liabilities that Internet escrow agents pose, thus threatening their own protection by the EAFC. This bill attempts to protect these differences by specifying that EAFC coverage is limited to traditional escrows, requiring non-traditional escrows secure their own "insurance" and bonding, and clarifying that if escrow agents decide to do both traditional and non-traditional escrows, they must maintain separate trust accounts. Governor Davis signed AB 410 on August 30 (Chapter 253, Statutes of 1999).

AB 653 (Hertzberg), as amended August 16, repeals Financial Code section 50704, which currently limits the number of loans that a DOC-licensed residential mortgage lender may broker to an amount up to 5% of its mortgage lending business. This limitation was enacted in 1996 as part of a new law known as the California Residential Mortgage Lending Act (RMLA), administered by DOC. Prior to that time, mortgage bankers were licensed by the Department of Real Estate (DRE). Mortgage bankers are now licensed by DOC under the RMLA, and the statute permits them to make or broker residential mortgage loans (one to four units), or service residential mortgage loans. A mortgage banker who wants to operate as a residential mortgage lender (RML) is permitted to loan its own money to borrowers, or broker and obtain loans for borrowers. When a mortgage banker brokers loans, the maximum allowed under section 50704 is not more than 5% of the total loans made during the first year of operation under the RMLA. Thereafter, the percentage level may not exceed the greater of 5%, or 10% less the percentage level of brokerage services done in the prior year. Individuals working as mortgage bankers, or for mortgage banking companies, also may be licensed by DRE as real estate brokers. When operating with a DRE license, a mortgage banker is not subject to the above RML brokered loan percentage limitations. AB 653, sponsored by the California Mortgage Bankers Association, repeals section 50704 and its 5% limitation on brokered loans and effectively repeals the "requirement" that mortgage bankers be dually licensed by DOC and DRE.

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AB 653 also amends a provision in Financial Code section 50707 which sunsets the provisions permitting mortgage bankers to operate under DOC jurisdiction (Financial Code section 50700 *et seq.*) on June 30, 2001; AB 653 extends the sunset date to June 30, 2005, and requires the Secretary of the Business, Transportation and Housing Agency to report to the legislature on the extension of this program by December 31, 2002.

Finally, AB 653 amends Business and Professions Code section 10133.1 to exclude from the definition of "real estate broker" persons who are employed by a real estate broker who, on behalf of the broker, assist the broker in meeting the broker's obligations to its customers in residential mortgage loan transactions, where the lender is an institutional lender, provided the employee does not participate in any negotiations between the principals. The bill requires a broker to exercise reasonable supervision and control over the activities of these unlicensed employees. The Governor signed AB 653 on September 16 (Chapter 407, Statutes of 1999).

SB 579 (Dunn). The California Finance Lenders Law (CFLL) provides for licensing and regulation by the Commissioner of Corporations of persons engaged in the business of making consumer or commercial loans. The CFLL sets forth protections for borrowers of small loans against unfair lending practices of licensed lenders and brokers; these protections vary depending on the amount of the loan. For consumer loans with a "bona fide principal amount" under $2,500, lenders must adhere to provisions that limit the maximum amount of loan charges (Financial Code sections 22303, 22304 and 22305). Lenders that make consumer loans with a "bona fide principal amount" under $5,000 are subject to provisions prohibiting compounded charges (section 22309), limiting the amount of delinquency fees (section 22320.5), requiring a schedule of charges (section 22325), prohibiting loan splitting (section 22327), prohibiting real property collateral (section 22330), and limiting the maximum loan term (section 22334). For consumer loans with a "bona fide principal amount" below $10,000, lenders must comply with provisions that limit other business activity (section 22154), require equal periodic installments (section 22307), and require standards for the sale of insurance (sections 22313 and 22314). However, existing law does not define the term "bona fide principal amount," and unscrupulous lenders have taken advantage of this loophole in the law by adding multiple charges and other fees to increase the size of a loan and thereby avoid the small loan regulations. As amended July 8, SB 579 defines the term "bona fide principal amount" of a loan for the purpose of determining whether a consumer or commercial loan amount exceeds a regulatory ceiling, and specifically excludes certain charges and fees from that definition. SB 579, which was sponsored by DOC, was signed by the Governor on September 7 (Chapter 347, Statutes of 1999).

AB 969 (Papan), as amended July 15, amends the Fair Debt Collection Practices Act, Civil Code section 1788 *et seq.*, to require debt collectors to comply with specified provisions of the Federal Debt Collection Act in connection with

the collection of consumer debts. Specifically, California debt collectors are now subject to provisions of the federal act governing: (a) acquisition of location information; (b) communication in connection with debt collection; (c) harassment or abuse; (d) false or misleading representations; (e) unfair practices; (f) validation of debts; (g) multiple debts; (h) legal actions by debt collectors; and (i) furnishing certain deceptive forms. Application of the federal law also subjects debt collectors to the remedies of actual damages and a $1,000 penalty for an individual; for a violation affecting a class composed of numerous debtors, the remedies include actual damages and penalties up $500,000 or 1% of net worth, together with the costs of suit and attorneys' fees to the prevailing plaintiff(s).

According to the Assembly analysis of the bill, AB 969 is necessary because "California law has few reasonable remedies for aggrieved persons. Under California law, debt collectors can avoid liability for egregious conduct" simply by curing violations within a 15-day period or showing that a violation was not "intentional." In addition, California law does not allow for class actions to remedy mass abuses. Governor Davis signed AB 969 on September 3 (Chapter 319, Statutes of 1999).

SB 459 (Johnson), as amended June 23, exempts from the registration and disclosure requirement provisions of the Franchise Investment Law any offer, sale, or other transfer of a franchise if the franchise involves the adding of a new product(s) or service(s) line to the existing business of a prospective franchisee, provided all of the following conditions are met: (1) the prospective franchise has at least two years of experience in the type of business to be franchised; (2) the new products or services are similar or related to the products or services being offered by the prospective franchisee's existing business; (3) the franchise business is to be operated from the same business locations as the prospective franchisee's existing business; (4) the parties anticipate at the time the agreement establishing the franchise relationship is met, the sales resulting from the franchised business will not represent more than 20% of the total sales of the franchisee on an annual basis; (5) the prospective franchisee is not controlled by the franchisor; and (6) the franchisor files with DOC Commissioner a notice of exemption and pays the fee prescribed in Corporations Code section 31500(f) prior to an offer or sale of such a franchise in the state during any calendar year in which one or more such franchises are sold. SB 459 was signed by the Governor on September 3 (Chapter 325, Statutes of 1999).

SB 820 (Sher and Bowen), as amended September 3, enacts the Uniform Electronic Transactions Act, which generally applies to all electronic transactions (including online investing transactions) except to the creation and execution of wills and testamentary trusts and certain other transactions. This bill establishes uniform standards for conducting electronic transactions in California. Specifically, SB 820 provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form; and a contract may not be denied legal effect or enforceability solely because an electronic record is used in its formation. If a law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies the law. If a law requires a signature, or provides consequences in the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature. The bill authorizes the provision of written information by electronic record, and sets forth provisions governing changes and errors, the effect of electronic signatures, and admissibility into evidence. Governor Davis signed SB 820 on September 16 (Chapter 428, Statutes of 1999).

SB 1124 (Vasconcellos), as amended June 30, is an urgency bill providing that an application by a prospective customer to enter into a brokerage agreement with a broker-dealer, which application is transmitted electronically and is accompanied by the prospective customer's electronic signature or digital signature is deemed, upon acceptance by the broker-dealer, to be a fully executed, valid, enforceable, and irrevocable written contract, unless grounds exist which would render any other contract invalid, unenforceable, or revocable. The bill defines "digital signature" to mean an electronic identifier, created by a computer, and intended by the party using it to have the same force and effect as the use of a manual signature, and requires the following attributes of such signature: (1) the digital signature is unique to the person using it; (2) it is capable of verification; (3) it is under the sole control of the person using it; and (4) it is linked to data in a manner that if the data are changed, the digital signature is invalidated. SB 1124 also requires an application that is transmitted electronically to comply with all applicable federal and state securities laws and regulations relating to disclosures to prospective customers. Governor Davis signed SB 1124 on July 27 (Chapter 213, Statutes of 1999), and it became effective that day.

On May 19, Attorney General Bill Lockyer—on behalf of State Controller Kathleen Connell and Department of Insurance Commissioner Chuck Quackenbush—filed a class action lawsuit against most DOC-licensed escrow companies and DOI-licensed title insurance companies doing business in California.

LITIGATION

On May 19, Attorney General Bill Lockyer—on behalf of State Controller Kathleen Connell and Department of Insurance (DOI) Commissioner Chuck Quackenbush—filed a class action lawsuit against most DOC-licensed escrow companies and DOI-licensed title insurance companies doing business in California. In ***People v. Fidelity National Title Insurance Company, et al.***, No. 99AS02793 (Sacramento

County Superior Court), the Attorney General alleged that the defendant escrow and title insurance companies, from 1970 to the present, (1) "intentionally took millions of dollars of escrow funds, which remained unclaimed in escrow accounts, that should have escheated to the State of California," (2) "charged home buyers and other customers improper fees for services that defendants did not and never intended to provide" (including fees for reconveyances that never occurred, delivery services that were not performed, and illegal administration fees); and (3) "collected millions of dollars in interest payments, or payments in lieu of interest, from banks. None of this interest was paid to escrow depositors, as required by Insurance Code section 12413.5 and Financial Code section 17409."

According to a press release issued by State Controller Kathleen Connell, "as much as $500 million is owed to Californians for the mishandling and diverting of escrow funds to industry profit....An escrow account should be at zero when the account is closed, with all charges and costs accounted for. Any remaining funds should be immediately returned to the buyers and sellers, and not commandeered as corporate income."

According to DOC's May 1999 *Escrow Monthly Bulletin*, "the Department of Corporations was not informed of the lawsuit against its licensees before the action was filed. After the suit was filed, the Department of Corporations was asked to assist in the investigation of its licensed escrow agents." At this writing, the Controller's Office is still auditing 114 title and 477 escrow companies in the state; most of the companies are reportedly cooperating and claim the lawsuit is based on a "misunderstanding" of the law.

On July 2, the U.S. Ninth Circuit Court of Appeals issued its ruling in the closely-watched ***In Re Silicon Graphics Inc. Securities Litigation***, 183 F.3d 970 (9th Cir. 1999) (as amended Aug. 4, 1999) (rehearing denied Oct. 27, 1999). In this matter, the Ninth Circuit interpreted the Private Securities Litigation Reform Act of 1995 (PSLRA), which—according to the court—"Congress enacted...to deter opportunistic private plaintiffs from filing abusive securities fraud claims, in part, by raising the pleading standards for private securities fraud plaintiffs." Among other changes, the PSLRA amended 15 U.S.C. § 78u-4(b)(2) to require that a securities fraud complaint "state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." In changing the pleading burden, said the Ninth Circuit, "Congress generated a flood of litigation and commentary regarding the proper interpretation of these standards. Much of this litigation deals specifically with the pleading issue now before us, *i.e.*, what must a plaintiff allege in order to satisfy the requirement that he state facts giving rise to a 'strong inference' of the required state of mind?" Departing from Second and Third Circuit interpretations that require less in the way of factual pleading, the Ninth Circuit held that "it is not sufficient for a plaintiff's pleadings to set forth a belief that certain unspecified sources will reveal, after appropriate discovery, facts that will validate her claim." Instead, "a private securities plaintiff proceeding under the PSLRA must plead, in great detail, facts that constitute strong circumstantial evidence of deliberately reckless or conscious misconduct. Our holding rests, in part, on our conclusion that Congress intended to elevate the pleading requirement above the Second Circuit standard requiring plaintiffs merely to provide facts showing simple recklessness or a motive to commit fraud and opportunity to do so. We hold that although facts showing mere recklessness or a motive to commit fraud and opportunity to do so may provide some reasonable inference of intent, they are not sufficient to establish a strong inference of deliberate recklessness. In order to show a strong inference of deliberate recklessness, plaintiffs must state facts that come closer to demonstrating intent, as opposed to mere motive and opportunity. Accordingly, we hold that particular facts giving rise to a strong inference of deliberate recklessness, at a minimum, is required to satisfy the heightened pleading standard under the PSLRA."

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On June 14, the U.S. Supreme Court declined to review the California Supreme Court's decision in ***Diamond Multimedia Systems Inc. v. Superior Court***, 19 Cal. 4th 1036 (Jan. 4, 1999). In that case of first impression, the California Supreme Court affirmed a ruling of the Sixth District Court of Appeal permitting out-of-state investors to file securities class actions against California companies in California state courts. In a case alleging market manipulation against a California computer hardware company and its officers, the court held that "out-of-state purchasers and sellers of securities whose price has been affected by the unlawful market manipulation proscribed by [Corporations Code] section 25400 may avail themselves of the [civil] remedy afforded by section 25500. The remedy is not limited to transactions made in California." *[16:2 CRLR 126–27]*