without also acquiring the bank must be permitted by state law even if the transaction is to occur after June 1, 1997.

At this writing, OCC is scheduled to receive public comments on its rulemaking proposal until January 30.

SBD Reacts to Severe Flooding. On January 12, Acting Superintendent Cardenas issued a proclamation pursuant to Financial Code section 3602 authorizing banks located in 34 California counties affected by severe flooding to close their offices; banks that closed offices under the authority of the proclamation could reopen them at the discretion of their officers. The Acting Superintendent also announced that banks needing to relocate offices or set up temporary offices in order to keep operating in the affected areas may do so without observing the normal application procedures; SBD requested that a bank taking these steps notify the Department promptly of its action either by telephone or by facsimile. The Acting Superintendent also urged banks to review their lending policies in order to grant appropriate latitude to existing customers and to expedite the extension of new credit to finance rebuilding. Finally, SBD announced that banks in the affected areas should contact the appropriate Assistant Deputy Superintendent for an extension of time should such an extension be needed to meet any state regulatory reporting requirement.

Mergers. On September 8, SBD approved an application to merge Mineral King National Bank of Visalia with and into ValliWide Bank of Fresno. On September 16, SBD effected an application to merge the Bank of Anaheim with and into California State Bank in Covina, and to operate the head office of Bank of Anaheim as a branch office of California State Bank. On September 26 and October 31, respectively, SBD approved and effected the application to merge Sacramento Savings Bank with and into First Interstate Bank of California. On October 3, SBD approved an application to merge United American Bank of Westminster with and into Guaranty Bank of California; the Department effected the application on October 14. On October 7, SBD effected the application to merge WestCal National Bank of San Mateo with and into Mid-Peninsula Bank of Palo Alto. On November 4, SBD effected the merger of Codding Bank in Rohnert Park, with and into National Bank of the Redwoods in Santa Rosa. On November 23, SBD approved an application to merge Bank One, Fresno with and into ValliWide Bank of Fresno; the Department effected the merger on December 2. On December 9, SBD approved an application to merge Sacramento First National Bank with and into Business and Professional Bank.

New Banks. On September 29, SBD approved the application of Citizens Bank of Nevada County to open a new bank in Nevada City. On December 9, the Department approved an application by Karen Masterson of Morrison & Foerster to establish B&P Interim State Bank in Woodland.

Cease and Desist Order. In December, SBD announced that the Superintendent issued an order to cease and desist from doing business in California without a license to Richard Stockstad, The Wellington Bank of Commerce, and the Wellington Bank of Commerce, U.S. Representative Office in Los Angeles. All persons who have communicated with any of the above are asked to contact SBD.

DEPARTMENT OF CORPORATIONS

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The Department of Corporations (DOC) is a part of the cabinet-level Business, Transportation and Housing Agency and is empowered under section 25600 of the California Code of Corporations. 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. The most important is the Corporate Securities Act of 1968, which requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the 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 must issue a "permit" for their sale in California.

The commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable."

The commissioner may refuse to grant a permit unless the securities are properly and publicly offered under the federal securities statutes. A suspension or stop order gives rise to Administrative Procedure Act notice and hearing rights. The commissioner may require that records be kept by all securities issuers, may inspect those records, and may require that a prospectus or proxy statement be given to each potential buyer unless the seller is proceeding under federal law.

The commissioner also licenses agents, broker-dealers, and investment advisors. Those brokers and advisors without a place of business in the state and operating under federal law are exempt. Deception, fraud, or violation of any regulation of the commissioner is cause for license suspension of up to one year or revocation.

The commissioner also has the authority to suspend trading in any securities by summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The commissioner has particularly broad civil investigative discovery powers; he/she can compel the deposition of witnesses and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The commissioner can also issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony, as is securities fraud. These criminal violations are referred by the Department to local district attorneys for prosecution.

The commissioner also enforces a group of more specific statutes involving similar kinds of powers: the Personal Property Brokers Law (Financial Code section 22000 *et seq.*), Franchise Investment Law (Corporations Code section 31000 *et seq.*), Security Owners Protection Law (Corporations Code section 27000 *et seq.*), California Commodity Law of 1990 (Corporations Code section 29500 *et seq.*), California Credit Union Law (Financial Code section 14000 *et seq.*), Industrial Loan Law (Financial Code section 18000 *et seq.*), Escrow Law (Financial Code section 17000 *et seq.*), Check Sellers, Bill Payers and Proraters Law (Financial Code section 12000 *et seq.*), Securities Depository Law (Financial Code section 30000 *et seq.*), Consumer Finance Lenders Law (Financial Code section 24000 *et seq.*), Commercial Finance Lenders Law (Financial Code section 26000 *et seq.*), Knox-Keene Health Care Service Plan Act of 1975 (Health and Safety Code section 1340 *et seq.*), and the Workers' Compensation Health Care Provider Organization Act of 1993 (Labor Code section 5150 *et seq.*).

MAJOR PROJECTS

Department Deliberates Sufficiency of Blue Cross' Proposed Public Benefit Plan. Following a contentious legislative hearing and a public comment period which yielded over 180 comments, the Department is currently deliberating the legal sufficiency of the public benefit plan belatedly proposed by Blue Cross of California after its conversion from nonprofit to for-profit status. *[14:4 CRLR 116–17]*

Under California law, nonprofit organizations whose activities provide a benefit to the public are exempt from requirements to pay certain state taxes; the activities of these organizations are expected to be for tax-exempt purposes which promote the social welfare. In exchange for this public financial support, tax-exempt organizations must promise to give back their wealth—which may be significantly enhanced due to the tax breaks—if they choose to become for-profit corporations. To accomplish this, nonprofits are required to include in their articles of incorporation a promise that, if and when they choose to convert to for-profit status, they will transfer an amount equal to the total value of their assets to the sort of charitable purposes for which they were formed.

Under the Knox-Keene Health Care Service Plan Act of 1975, DOC is responsible for adopting procedures which nonprofit entities must follow when they convert to for-profit entities, and for reviewing and approving conversion proposals. When a nonprofit decides to convert, it files an application with DOC; the Department reviews the proposed conversion and makes a valuation of the company's assets—this value is used as the basis for the company's charitable obligation. The organization is then required by law and by its articles of incorporation to turn this amount over to an independent entity which is required to apply those resources to purposes that are consistent with the purposes for which the original nonprofit was incorporated.

In 1991, Blue Cross of California (BCC) presented DOC with a plan to "restructure," rather than convert, from nonprofit to for-profit status, by placing 90% of its assets into a for-profit entity. Under this plan, BCC would remain in existence as a nonprofit entity, but its for-profit subsidiary called WellPoint Health Networks would conduct its HMO business. After more than a year of negotiations and some modifications to the proposed plan, then-DOC Commissioner Tom Sayles approved Blue Cross' new status. Under this agreement, Blue Cross retained 10% of its assets in its nonprofit shell, while WellPoint received 90% of the assets, making it the largest for-profit HMO in California. Under the plan and as part of the deal, nonprofit Blue Cross retained the remainder of the stock in WellPoint, and in January 1993 sold nearly 20% in a public offering, netting $517 million; the remainder of the WellPoint stock still held by Blue Cross was recently valued by DOC at $2.5 billion. BCC claimed immunity from the California law requiring a nonprofit HMO converting to a for-profit HMO to transfer an amount equal to its full value to charitable purposes, by referring to its action as a "restructuring" rather than a conversion.

During 1994, however, current Commissioner Gary Mendoza, a group of public interest organizations, and Assemblymember Phil Isenberg—all dissatisfied with BCC's maneuvering—have taken action to force Blue Cross to return its assets to charity as required by law. In September, a coalition of public interest organizations led by Consumers Union (CU) filed an administrative petition with DOC requesting that it adopt and implement regulations governing the conversion or restructuring of a nonprofit entity to a for-profit entity, and challenging DOC's failure to require BCC to dedicate 100% of its $2.5 billion in assets to the same charitable purposes for which Blue Cross of California was originally incorporated. Through the petition filed with DOC, petitioners asked the Department to order Blue Cross to immediately divest itself of assets in this amount; transfer the funds to an independent nonprofit foundation dedicated to the health care needs of Californians; and ensure that the governing board of the foundation is completely independent of Blue Cross and all corporate interests, and is comprised of and reflective of the diversity of the state with regard to race, gender, and other relevant factors. The petition also requested DOC to formally adopt regulations, in full compliance with the Administrative Procedure Act, which govern the conversion or restructuring process and establish a mechanism for public scrutiny of the valuation and conversion process, including public notice, disinterested evaluators, public records, meaningful public hearings and input into the process, objection rights by the service beneficiaries, procedures for creating new or funding existing foundations, and criteria for board composition including conflict of interest rules, diversity, and a majority of consumer representatives.

Following months of pressure, Blue Cross finally submitted a public benefit plan to DOC on September 15, in which it promised to turn over $2.1 billion in assets to a charitable foundation called the California HealthCare Foundation, which in turn would make grants to qualified health care programs and projects. The same day, CU issued a press release stating that it remains skeptical of the plan, and cautioning the public and state regulators to scrutinize the plan to ensure that the Foundation receives the entire value of Blue Cross' assets that have been transferred to WellPoint and to ensure the Foundation's independence from Blue Cross and WellPoint.

On September 23, DOC established an initial public comment period concerning Blue Cross' proposed public benefit plan; DOC asked that any comments concerning the plan be provided in writing to DOC by October 31. The Department also announced that it had engaged the services of Professor Nancy Morgan Kane of the Harvard School of Public Health to assist it in its evaluation of Blue Cross' plan; additionally, DOC noted its intent to interview investment banking firms to provide it with the necessary advice concerning the financial aspects of Blue Cross' proposal.

On September 26, Assemblymember Isenberg, who chairs the Judiciary Committee's Subcommittee on Public Trust and Corporate Charitable Activity, conducted a hearing on Blue Cross' proposed plan. At the hearing, at which representatives of Blue Cross, CU, and other interested parties participated, Isenberg was highly critical of Blue Cross' proposed plan, and noted that some of the proposed recipients of grants from the California HealthCare Foundation have ties to Blue Cross, WellPoint, or Leonard Schaeffer, the chief executive officer of both companies. For example, $15 million would go to CaliforniaKids, which provides subsidized insurance to poor children; currently, WellPoint is the only carrier which provides this insurance. Also, $2.5 million would go to the National Health Foundation, on whose the board of trustees Schaeffer sits, and $2.5 million would endow a professorship in managed care at the University of Southern California, where Schaeffer sits on an advisory board.

One element of the proposed plan which greatly concerned hearing participants is Blue Cross' plan to structure the Foundation as a tax-exempt "social welfare" organization under Internal Revenue Code section 501(c)4. Because it permits unlimited lobbying and advocacy, the 501(c)4 classification is commonly used by lobbying groups like the Sierra Club and National Rifle Association; traditional charitable foundations typically gain tax-exempt status under section 501(c)3, a more restrictive section of the Code which requires charities to pay out a certain fraction of their assets in philanthropic donations each year, prohibits lobbying for political candidates, restricts other types of lobbying, and requires an assessment of penalty taxes against charities which own large concentrations of a single business. The two major foundations created in previous conversions of nonprofit HMOs—the California Wellness Foundation and the Sierra Health Foundation—were incorporated under the 501(c)3 classification.

According to Blue Cross, it needs the 501(c)4 designation to get the best price for its stake in WellPoint; if the California HealthCare Foundation were structured as a 501(c)3 charity, it would have to sell the WellPoint stock for cash, preventing WellPoint from doing a leverage buyout, management buyout, or other deal involving debt or securities other than common stock.

On November 22, DOC announced that it had received over 180 written submissions during the formal public comment period that ended on October 31, and that each of those submissions has been or will be reviewed and considered by DOC during its deliberations. DOC also announced that it would hold two public hearings as part of its review of Blue Cross' plan; those hearings were held on December 8 in San Francisco and December 9 in Los Angeles. Finally, the Department announced that it had retained the investment banking firm of Bear, Stearns & Co., Inc., to assist it in its evaluation of the financial aspects of Blue Cross' proposal.

On November 30, CU released a list of its concerns regarding Blue Cross' proposal. Among other things, CU stated the following:

- A full assessment of the value of Blue Cross' nonprofit assets must be conducted; the fair value for the use by WellPoint of the Blue Cross trademark must be included; an investigation of any dilution of value as a result of WellPoint's sale of 20% of its stock must be conducted; fair value must be given for Blue Cross' real estate and other assets that are not transferred to the California HealthCare Foundation; the public must have access to the work prepared by DOC's independent experts, and the information used by them in their analysis; and the public must have all information about other possible buyers for WellPoint, or other Blue Cross assets.
- All employees, officers, or directors of both Blue Cross and WellPoint (or their subsidiaries) must be prohibited from serving on the board of the Foundation; the board must be selected by a process which ensures that it fully represents and is accountable to the people of California.
- The Foundation must be classified as a 501(c)3 private foundation, and must adhere to all the requirements of a private foundation including a minimum annual donation to charities, prohibitions against self-dealing and self-inurement, and limitations on lobbying activities; the articles of incorporation and the bylaws of the new foundation must include strict protective measures for dealing with any actual, apparent, or potential conflicts of interest; the agreement with DOC must include a requirement for DOC or Attorney General approval of any action by the Foundation that gives rise to an actual conflict of interest; the public must be given access to all pertinent information about all grant applications received by the Foundation, including the applicant organization's name, address, phone number, amount requested, purpose of the proposed grant, and the Foundation's response to the application; and the Foundation must be absolutely prohibited from making grants that directly or indirectly benefit WellPoint or its subsidiaries to any extent different from other health care providers.

At this writing, Commissioner Mendoza is still reviewing Blue Cross' proposed plan. Among other things, Mendoza has stated that he is considering the implications of the incorporation of the Foundation as a 501(c)4 organization as opposed to a 501(c)3 organization.

Rulemaking Under the Corporate Securities Act. On December 16, the Commissioner published notice of his intent to amend sections 260.102.14 and 260.165, Title 10 of the CCR, relating to the limited offering exemption notice. Corporations Code section 25110 provides that it is unlawful for any person to offer or sell any security in an issuer transaction in this state unless such sale has been qualified with the Commissioner of Corporations, or unless the sale is exempt from qualification. One exemption from qualification is provided by Corporations Code section 25102(f), which exempts the offer or sale of any security in a transaction that meets specified criteria; among other things, the issuer is required to file a notice of transaction with the Commissioner of Corporations. Regulatory section 260.102.14 contains the notice form for the exemption provided under Corporations Code section 25102(f); the Commissioner proposes to amend the form in section 260.102.14 to require disclosure of information on previous or concurrent 25102(f) filings made by the issuer, an affiliate, control person, parent, or principal security holder of an issuer. Section 260.165 contains the Consent to Service of Process form; the Commissioner proposes to amend this form to include limited liability corporations. At this writing, DOC is scheduled to receive public comments on the proposed amendments through February 3; no public hearing is scheduled.

The following is a status update on other DOC rulemaking proceedings under the Corporate Securities Act which were discussed in detail in previous issues of the *Reporter*:

- On November 2, the Office of Administrative Law (OAL) approved DOC's amendments to section 260.105.6, Title 10 of the CCR, which provides an exemption for professional corporations organized under the Professional Corporation Act from the qualifications requirements of sections 25110 and 25120 of the Corporations Code. SB 687 (Boatwright) (Chapter 910, Statutes of 1993) amended the Professional Corporation Act to allow a "foreign professional corporation," as defined in Corporations Code section 13401(c), to qualify as a foreign corporation in order to render professional services in California. *[14:4 CRLR 117; 13:4 CRLR 108]* According to DOC, the amendments to section 260.105.6 are necessary to conform the section with the statutory changes made by SB 687, so as to explicitly include foreign professional corporations within the provisions of the exemption provided for professional organizations.
- On September 20, OAL approved most of new section 260.140.80.5, Title 10 of the CCR, which allows the offer and sale of contractual plans in California under certain conditions. A contractual plan is a type of long-term mutual fund investment where the investor makes monthly installment payments for a ten- to fifteen-year period; one-half of the sales commissions over the term of the contract are typically paid from the first year's installments. Among other things, section 260.140.80.5 requires a broker-dealer to determine whether a contractual plan is suitable for the purchasing investor and retain the documentation used in determining investor suitability for five years; allows an investor to withdraw from the plan within 28 months of his/her initial payment; and sets forth the disclosure form which must be executed by a broker-dealer and an investor; requires issuers to file quarterly and annual persistency reports. *[14:4 CRLR 116; 14:2&3 CRLR 124; 14:1 CRLR 97]*

OAL rejected subsection 260.140.80.5(f), which—as originally published—would have sunsetted the entire program in three years to enable DOC to evaluate the performance of contractual plans in California. During the rulemaking process, DOC modified subsection (f) to provide that, three years after the rule becomes effective, the Commissioner may periodically review the history of sales practices and persistency rates of plans to determine whether sales should be continued in this state. OAL rejected subsection (f) on grounds it lacked clarity and was inconsistent with other subsections of the rule. The regulation has taken effect without subsection (f).

• In December 1993, the Commissioner published for public comment proposed amendments to section 260.141.11, Title 10 of the CCR, to allow the transfer of one-class voting common stock issued pursuant to Corporations code section 25102(h) without the consent of the Commissioner, if the stock could have been originally issued pursuant to the exemption from qualification afforded by section 25102(f); as amended, section 260.141.11 would require that a notice, statement of transferee, and opinion of counsel be filed with the Commissioner. *[14:4 CRLR 117; 14:2&3 CRLR 124; 14:1 CRLR 98]* Because more than one year has passed since DOC published notice of its intended amendments, the notice has expired and the Administrative Procedure Act requires the Department to initiate a new rulemaking proceeding if it intends to pursue this proposal.

DOC Explains the Amended Uniform Franchise Offering Circular (UFOC). On October 19, DOC issued Release No. 12-F, which explains the application of plain English instructions set forth in section 310.114.1(b), Title 10 of the CCR. According to the Release, section 310.114.1(b) contains instructions on how to describe a franchisee, a franchisor, and other contracting persons; these instructions are intended to conform with the UFOC Guidelines as amended by the North American Securities Administrators Association, Inc. (NASAA) in April 1993.

Sections 310.114.1(a) and 310.111(b) require each offering circular to contain information required from the applicant in accordance with either the UFOC Guidelines, as amended by NASAA in November 1986 or as amended by NASAA in April 1993; however, on or after January 1, 1995, the offering circular must comply with the April 1993 NASAA Guidelines. Sections 310.114.1(a) and 310.111(b) are intended to allow an applicant the flexibility of utilizing either the former or revised versions of the UFOC until another application for registration is filed on or after January 1, 1995. Accordingly, an applicant is not required to comply with the new instructions in section 310.114.1(b) until an application for initial registration or an application for renewal of an existing registration is filed on or after January 1, 1995.

Release No. 12-F also offers guidance on presenting certain information in the amended UFOC; according to DOC, in addition to the special instructions contained in section 310.114.1, the franchise offering circular must comply with the UFOC Guidelines. Among other things, the April 1993 version of the UFOC Guidelines provides sample answers for negative responses to certain items of the offering circular, which are contained in Sample Answer No. 1 of the UFOC Guidelines.

DOC cautions applicants to ensure compliance with the amended UFOC Guidelines when filing an application for registration; a franchise offering circular that does not comply with the April 1993 version of the UFOC Guidelines will be declared deficient and could result in the termination of DOC's review of the registration application.

New Exemption Under the Corporate Securities Act. On September 27, DOC issued Release No. 94-C, commenting on the "qualified purchaser" limited public offering exemption under Corporations Code section 25102(n). SB 1951 (Killea) (Chapter 828, Statutes of 1994), which added section 25102(n), provides that an offer and sale of a security in a limited public offering to certain "qualified purchasers" may be exempted from the Commissioner's review and approval process where specified requirements are met; section 25102(n) became effective on September 26, 1994, as an urgency statute. *[14:4 CRLR 119]*

In brief, this new exemption is available to issuers which meet the following criteria:

• The issuer of securities must be either a California or foreign corporation subject to Corporations Code section 2115, or any other business entity organized under California law, so long as the entity is not organized for the sole purpose of raising capital to invest in future unknown businesses (*i.e.*, a "blind pool" company).

• Sales of the securities are to be made only to "qualified purchasers," as defined.

• Each investor must represent that the purchase of the securities is for the investor's own account and not with a view to sell or distribute the securities.

• A disclosure statement must be provided to all natural person purchasers at least five business days before any securities may be sold or a commitment to purchase is accepted, unless such natural person has been qualified under section 260.102.13, Title 10 of the CCR.

• A limited, general announcement of the proposed offering may be published by written document only, provided that the general announcement is limited to specified facts about the proposed offering. A prospective investor may contact the issuer pursuant to the general announcement by mail or telephone. However, telephone solicitation of prospective investors is not permitted until the issuer has determined that the prospective investor meets the requirements of a "qualified purchaser."

• A notice of transaction must be filed with the Commissioner concurrent with the publication of the general announcement of the proposed offering or at the time of the initial offer of securities, whichever occurs first, and must be accompanied by a $600 filing fee. This exemption is not available for transactions where the issuer has failed to file the first notice or pay the required filing fee. An additional, second notice must be filed within ten business days following the close or abandonment of the offering, but in any case no more than 210 days from the date of the filing of the initial notice.

DOC has prepared a pamphlet on the new section 25102(n) exemption; it is available from all of DOC's offices.

Prudential Securities Settlement Fund Update. In November, DOC announced that over 15,000 California investors have received more than $36 million in restitution and damages from a claims fund set up as part of the settlement between the Securities and Exchange Commission and Prudential-Bache Securities of a lawsuit alleging fraud in connection with the sale of limited partnership interests by Prudential in the 1980s. *[14:2&3 CRLR 125; 14:1 CRLR 98]*

Despite the availability of an open-ended restitution pool, however, nearly 65% of the 42,000 potentially eligible claimants in California have not yet filed claims. The Commissioner warned that the deadline for most of the investors to file is January 10, 1995; to participate in the claims process, claimants need only complete and return the Prudential settlement claims forms by that date. Prudential is then required to make an offer based on the information in the completed form. A participating investor can then either accept or reject the Prudential offer; those rejecting the offer can then take advantage of a special court-supervised arbitration process to get a final ruling or pursue whatever other legal rights they may have. The Commissioner urged all eligible California investors to consider participating in the claims process, as there is no downside to filing a claim and many investors have received full compensation for their losses through this process.

DOC Enforcement Activity. On November 14, DOC announced its intent to fine TakeCare Health Plan $500,000 for multiple violations of the Knox-Keene Health Care Service Plan Act of 1975, including failure to provide appropriate access to quality medical care which jeopardized the life of a young patient. In its accusation and petition, the Department alleged, among other things, that TakeCare failed to provide Carley Christie, a young girl diagnosed with a rare and life-threatening childhood cancer called Wilms' tumor, with appropriate access to a qualified pediatric surgeon to remove her malignant tumor, in accordance with professionally recognized standards of practice; retaliated against Carley's parents for independently seeking to obtain the services of a qualified pediatric surgeon to treat their daughter; and failed to demonstrate that its refusal to provide these medical services was unhindered by fiscal considerations. The Department also announced that, in addition to assessing the $500,000 fine, it also directed TakeCare to take a number of steps to assure that the problems identified in the Christie case are not repeated. TakeCare intends to appeal the fine by requesting an administrative hearing.

On December 6, the Commissioner announced a major enforcement action against high-tech scams targeting Individual Retirement Accounts (IRAs). After a year-long, multi-state investigation, DOC filed ten civil actions, issued fifty desist and refrain orders, issued 41 subpoenas, and referred seven cases for criminal prosecution. According to DOC, this is by far the largest enforcement DOC has ever undertaken, including 426 target entities and individuals and involving offerings amounting to over $850 million.

The Commissioner warned investors to be wary of investment offerings claiming huge returns and little risk. In many instances, investors were falsely told that they were investing in "IRA-approved" offerings endorsed by the Internal Revenue Service (IRS) when, in fact, the IRS does not "qualify," "review," or "approve" individual investments. These offerings were targeted through television infomercials and written sales materials. According to the civil complaints, the illicit investments were created to take advantage of Federal Communications Commission lotteries and auctions in recent years which offered exclusive licenses in wireless cable, specialized mobile radio, interactive video data services, personalized communications services, and other high-tech communications services.

The Department worked with the National White Collar Crime Center (NWCCC) in Richmond, Virginia, a federally-funded law enforcement project, to create a database of investigative and enforcement information on the scams, and sent questionnaires to 7,000 investors in 141 high-tech offerings nationwide. The research showed that these high-risk investments were directed at a group deemed least suitable for such, as these investors were looking for safe investments to provide income in their retirement years. Instead, company officials paid themselves huge fees, leaving little for project development and investors with little if any chance to earn a return on their investment. Commissioner Mendoza warned that high-tech deals can be inherently risky because of the rapid changes in technology and that promises of high returns with little risk should be looked upon with great skepticism.

■ LEGISLATION

AB 46 (Hauser), as introduced December 12, would reorganize and expand the scope of the law relating to homeowners' association board of directors' meetings by creating the "Common Interest Development Open Meeting Act." This bill would set forth the rights and responsibilities of board members and association members with respect to meetings; the bill would also designate certain activities in which a board may engage that do not fall within the definition of a meeting. *[A.H&CD]*

AB 73 (Friedman), as introduced December 21, would prohibit health care service plans and disability insurers from awarding bonus compensation to any employee on the basis of that employee's performance in denying authorization or payment for costly services. This bill would require the Commissioner of Corporations to establish and maintain a toll-free telephone number for the purpose of receiving complaints and inquiries regarding health care services plans. *[A. Health]*

■ LITIGATION

In ***Murray, et al. v. Belka, et al.***, No. 740706 (Orange County Superior Court), filed on December 30, a group of investors in failed First Pension Corporation alleges that, as a lawyer in the mid-1980s, DOC Commissioner Gary Mendoza misled DOC. The complaint alleges that while he was a lawyer at Latham & Watkins in Newport Beach, Mendoza prepared securities offerings for a First Pension entity and then provided misleading information on the offering to DOC; the suit also names Latham & Watkins, an employee of a company related to First Pension, and First Pension's three operators, all of whom admitted to fraud in the case in August. The SEC has accused First Pension of losing $121.5 million of investors' money by misleading them to make investments in mortgages that did not exist. All defendants named in the civil complaint are alleged to have violated California securities laws and to have committed breaches of fiduciary duty and fraud. Specifically, the suit alleges that Mendoza provided legal services to the operators of First Pension from 1992 until shortly before his appointment as DOC Commissioner in July 1993. The suit claims that Mendoza and the other defendants failed to disclose facts concerning the true nature of the limited partnership units sold by the defendants in documents provided to investors on a limited partnership offering sold in the mid-1980s. Commissioner Mendoza called the lawsuit "absurd and contemptible."

At this writing, the California Supreme Court has not yet scheduled oral argument in its review of the Second District Court of Appeal's decision in ***People v. Charles Keating***, 16 Cal. App. 4th 280 (1993). In its ruling, the Second District affirmed a jury verdict in which the former savings and loan boss was found guilty of defrauding 25,000 investors out of $268 million by persuading them to buy worthless junk bonds instead of government-insured certificates. *[12:4 CRLR 120–21; 12:2&3 CRLR 169]* In his appeal (No. S033855), Keating primarily challenges the trial court's jury instructions stating that he could be convicted under theories that he was either the direct seller of false securities in violation of Corporations Code sections 25401 and 25540, or a principal who aided and abetted the violations. The issue is whether aiding and abetting of a section 25401 crime statutorily exists; Keating claims that criminal liability is restricted to direct offerors and sellers, and that the evidence failed to prove he personally interacted with any of the investors.

DEPARTMENT OF INSURANCE

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