interest rates on bank credit cards, and ultimately charged California customers nearly 5% more interest than they should have; Bank of America was the only defendant who did not settle. In August, following a ten-week trial, the jury found for BofA, finding that plaintiffs failed to prove the bank conspired to fix prices on credit cards. *[13:4 CRLR 103]* On December 7, BofA filed a motion seeking more than $500,000 in sanctions and attorneys' fees from the plaintiffs; the bank claims that plaintiffs misrepresented the testimony of their expert witness to defeat a motion for nonsuit and that this alleged misrepresentation caused an unnecessary trial. Also on December 7, plaintiffs filed a notice of intention to seek a new trial on the grounds that jury instructions were "uneven." At this writing, a hearing on both motions is set for January 14.

In ***California Grocers Association, Inc. v. Bank of America***, Nos. A055112 and A056217 (December 9, 1993), plaintiffs alleged that a $3 fee imposed by BofA on depositors such as CGA for checks deposited by them which are returned due to insufficient funds in the checkwriter's account constitutes unfair competition and breaches the implied covenant of good faith and fair dealing. After a nonjury trial, the trial court found for CGA, concluding that the fee is unconscionably high and violates the covenant of good faith and fair dealing and thus constitutes an unfair business practice under state law; the court awarded nominal damages and issued an injunction requiring BofA to lower its deposited item returned (DIR) fee to not more than $1.73 for a ten-year period.

On appeal, the First District Court of Appeal reversed the trial court's decision; although the First District agreed that the contract between CGA and BofA containing the DIR provision is adhesive in nature, it found that the $3 fee is not unconscionable. In reading this conclusion, the court found that BofA's $3 DIR fee is actually at the low end of fees charged for DIRs by other financial institutions (many of which charge between $4 and $10), and that the $3 fee is not so exorbitant as to shock the conscience. According to the court, assuming that BofA's cost of processing a DIR is $1.50, as estimated by the trial court, "the markup is only 100 percent." According to the court, "[t]his may be a generous profit, but it is wholly within the range of commonly accepted notions of fair profitability. Cases of price unconscionability generally involve much greater price-value disparities." The court found that the huge volume of DIRs, and the consequent cumulative profit to BofA, is "inconsequential."

The court also held that the trial court erroneously found that the $3 fee violates the implied covenant of good faith and fair dealing, since an implied contractual term should not be read to vary an express term (such as the $3 fee in the deposit agreement).

Finally, the court found that the injunction issued by the trial court "is an improper use of the unconscionability doctrine and an inappropriate exercise of judicial authority." The court noted that the doctrine of unconscionability has historically provided only a defense to enforcement of a contract, and thus may not be used offensively to obtain mandatory injunctive relief.

In ***Youngberg v. Bank of America***, No. 953812, filed July 30, 1993, in San Francisco Superior Court, the plaintiff alleges that Security Pacific Bank, now owned by Bank of America after a 1992 merger, overcharged its trust account customers. Specifically, the case challenges the fee charged for a practice known as "sweeping"—a process in which banks channel otherwise idle trust funds into interest-bearing accounts. The suit seeks unspecified damages for an undetermined number of trust account holders and the beneficiaries of those trusts who may have been affected by excessive sweep fees. Bank of America contends that the fees in question were lawful and appropriate and that proper notification was made to customers. *[13:4 CRLR 103]* At this writing, no trial date has been set.

In ***People v. Mortgage Partners Group, et al.***, the Superintendent of Banks, as co-plaintiff with the California Attorney General, obtained an October 12 judgment against Robert Merritt and William Rising in Los Angeles County Superior Court; allegations in the lawsuit included fraud, misrepresentation, and violations of various provisions of banking, consumer protection, and corporate securities laws. The judgment calls for the defendants to pay civil penalties and costs amounting to $50,000 and restitution to investors in the approximate sum of $135,000, plus interest. In addition, the court issued a permanent injunction restraining the defendants from engaging in specified conduct and activities relating to the offer or sale of securities and representations made in the course of such offers or sales. The judgment follows a similar permanent injunction against other entities related to Robert Merritt in June 1993.

DEPARTMENT OF CORPORATIONS

Commissioner: Gary S. Mendoza
(916) 445-7205
(213) 736-2741

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 Chapter 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 in-

vestigative 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: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal Property Brokers Law, Health Care Service Plan Law, Escrow Law, Check Sellers and Cashers Law, California Commodity Law, Securities Depositor Law, California Finance Lenders Law, and Security Owners Protection Law.

MAJOR PROJECTS

Small Corporate Offering Registration Application Process. On October 13, Commissioner Mendoza issued Release No. 93-C, providing an overview of the Small Corporate Offering Registration (SCOR) application process. These new procedures are designed to facilitate the raising of capital by small businesses; under the SCOR process, a small business may raise up to $1 million in a twelve-month period.

AB 3763 (Mays) (Chapter 884, Statutes of 1992) amended Corporations Code section 25113(b) to allow eligible small companies to use a small company application for qualification of securities by permit; a small company application may be filed by a California corporation or a foreign corporation subject to Corporations Code section 2115, provided the corporation is a small business concern as defined in 15 U.S.C. section 632(a) and 13 C.F.R. Part 121. Under section 25113(b), the applicant may not be a blind pool company as defined by rule of the Commissioner; engaged in oil and gas exploration or production, or mining or other extractive industries; an investment company subject to the Investment Company Act of 1940; or subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934. Not only must the securities involved in the offering be limited to one class of voting common stock, but there must be only one class of voting common stock immediately after the proposed sale and issuance; a minimum offering price of $5 per share is required. Also, the net proceeds from the offering must be expended in the operations of the business, as defined.

The total offering of voting common stock by the applicant to be sold in a twelve-month period, within or outside of this state, must be limited to not more than $1 million, less the aggregate offering price for all securities, as specified. The securities offering must be made pursuant to a disclosure document, Form U-7, as adopted by the North American Securities Administrators Association (NASAA). A small company application must be accompanied by the requisite fee specified in Corporations Code section 25608(e); the current filing fee is $2,500.

Offerings of Securities Under SEC Regulation A. Also in Release 93-C, the Commissioner announced that, effective July 26, 1993, SB 115 (Beverly) (Chapter 193, Statutes of 1993) amended the Corporate Securities Act of 1968 to provide an exemption from qualification for offers of securities under SEC Regulation A. *[13:4 CRLR 107–08]* The new exemption applies to issuer and nonissuer transactions under Corporations Code sections 25110 and 25130, respectively. Specifically, sections 25102(b) and 25104(g) now provide an exemption for any offer (but not a sale) of a security for which a registration statement has been filed under the Securities Act of 1933 but has not yet become effective, or for which an offering statement under Regulation A has been filed but has not yet been qualified (if no stop order or refusal order is in effect, no public proceeding or examination looking toward such an order is pending under section 8 of the Act, and no order under Corporations Code sections 25140 or 25143(a) is in effect).

According to DOC, this new exemption enables a small business issuer to solicit offers (but not consummate sales) with a preliminary offering circular in accordance with the requirements of SEC Regulation A. That preliminary offering circular may be utilized only after filing an application for qualification by permit with the Commissioner pursuant to Corporations Code section 25113(b)(1).

Proposed Regulatory Action Under the Corporate Securities Act of 1968. On November 19, the Commissioner published notice of his intent to amend the Department's regulations under the Corporate Securities Act of 1968 relating to the offer and sale of contractual plans, 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.

Currently, California is the only state that directly prohibits the sale of contractual plans. Section 260.140.80, Title 10 of the CCR, provides that a qualification will not be approved for the sale of open-end investment company shares pursuant to a contractual plan where more than a pro rata share of the load or commission is deducted from an installment payment or where there is a charge, penalty, or forfeiture for the failure to make installment payments. According to DOC, this position was maintained because these plans deprive investors of earning income on a major portion of their initial investments, encourage abusive sales practices, and are intended to compel investors to make contracted payments through forfeiture of the portion of their payments allocated to sales charges.

However, the Commissioner now proposes to adopt new section 260.140.80.5, Title 10 of the CCR. Based on guidelines adopted by NASAA, the proposed rule would allow the offer and sale of contractual plans in California, under certain conditions; if approved, the rule would be in effect for 36 months. Among other things, section 260.140.80.5 would provide the following:

- The section would require 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. Suitability requirements include, but are not limited to, an investor's age, marital status, number of dependents, major investment goals and the timeframe for achieving these goals, current and anticipated future financial status, anticipated short- and long-term liabilities or other obligations, likelihood of the investor's continued income, ability to address burdensome financial situations, and the investor's understanding of the risks involved in investing in securities and the usefulness of short-term savings instruments or accounts.
- The section would also allow an investor to withdraw from the plan within 28 months of his/her initial payment. An investor who chooses to withdraw from the plan shall receive the value of his/her account and a refund of all sales charges, commissions, or other selling or redemption charges which exceed 15% of the total payments made.
- The regulation would also set forth the disclosure form which must be executed by a broker-dealer and an investor; require issuers to file quarterly and annual persistency reports; state the investment objective for contractual plans; and provide that the rule shall expire 36 months after it becomes effective. This sunset provision is necessary to allow DOC to eval-

uate the performance of contractual plans in California. At this writing, DOC is accepting public comment on the proposed rule through January 21; no public hearing is scheduled.

On December 24, DOC published notice of its intent to amend 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. At this writing, DOC is accepting public comments on this proposal through February 11; no public hearing is scheduled.

DOC Rulemaking Under the Franchise Investment Law. On December 24, DOC published notice of its intent to amend sections 310.111, 310.114.1, 310.122, 310.125, 310.156.1, and 310.210, Title 10 of the CCR, to redefine the term "Uniform Franchise Registration Application" for the purpose of incorporating recent changes to the Uniform Franchise Offering Circular Guidelines as amended by NASAA on April 25, 1993; additionally, DOC proposes to make other technical language revisions to those sections. At this writing, the Department is scheduled to accept public comments on the proposed changes through February 11; no public hearing is scheduled.

At this writing, DOC's proposed amendments to section 310.100.2, Title 10 of the CCR, regarding the exemption from the registration requirements of Corporations Code section 31110 for the offer and sale of a franchise if certain conditions are met, and amendments to section 310.114.1, Title 10 of the CCR, which would include guidance on how to describe the franchisee and the franchisor(s) in an offering circular, await review and approval by the Office of Administrative Law (OAL). *[13:4 CRLR 105]*

Conflict of Interest Code Update. At this writing, DOC's proposed amendments to its conflict of interest code, which designates DOC employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests, await review and approval by OAL. *[13:4 CRLR 106]*

Regulatory Action Under the Credit Union Law. On December 1, OAL approved DOC's amendment to section 976(b)(3)(C), Title 10 of the CCR, which extends from sixty to ninety days the period during which a borrower may repay a loan in full or arrange for new financing, if the load has been called due by a credit union. *[13:4 CRLR 105]*

DOC Denies Petition Regarding Health Care. In late September, DOC denied a petition for rulemaking submitted by Protection and Advocacy, Inc. (PAI); the petition requested that DOC adopt regulations requiring that enrollees of a health care service plan (HCSP) receive at least the same quality of care they would receive if they were receiving case management through the California Children's Services (CCS) program or receiving Medi-Cal services through a Medi-Cal managed care plan. DOC denied the petition, stating that the Knox-Keene Health Care Service Plan Act of 1975 already imposes broad standards for HCSPs regarding the delivery of health care services to plan enrollees; according to DOC, it is not feasible to prescribe standards of treatment under the Act for every medical condition. DOC also noted that the issue raised by PAI's petition would be more appropriately addressed through the complaint process provided for under the Act, noting that every HCSP is required to establish and maintain a grievance system under which enrollees may submit complaints to the plan. Also, DOC noted that complaints may be filed with DOC, and that the complainant is kept informed of the progress of the complaint until it is favorably resolved, or the complainant is provided with an explanation of the HCSP's denial of the complainant's request and direction regarding the plan's appeal procedure.

Economic Growth Initiatives. On November 5, Commissioner Mendoza outlined the steps DOC is taking to help legitimate businesses raise money in order to expand and create jobs. In remarks made to the Corporations Section of the State Bar of California, Commissioner Mendoza highlighted three DOC initiatives intended to "carry out Governor Wilson's agenda of jobs creation and economic growth." First, DOC has formed an advisory committee of securities law experts who will examine the Corporate Securities Act of 1968 and consider potential changes to that law. Second, DOC is working with an ad hoc committee of the securities bar to develop a new exemption from qualification that would allow companies to use general solicitations to identify potential investors, provided the securities are ultimately sold to sophisticated investors and the offering satisfies other criteria. According to the Commissioner, "this exemption should allow legitimate companies to more easily access the capital needed to fuel their growth. Small companies that provide the lion's share of job growth within the state should be the primary beneficiaries of this new exemption." Finally, DOC is reviewing the manner in which it administers the Small Corporate Offering Review statute which became effective in 1993 (*see above*).

Settlement May Provide Compensation to 52,000 California Investors. On October 21, Commissioner Mendoza announced that 52,000 Californians who invested in limited partnerships sold by Prudential Securities may be eligible for full or partial restitution for any losses incurred in the investments under the terms of a settlement agreed to in principle by DOC. According to DOC, California is joining with the U.S. Securities and Exchange Commission and 48 other states in a major settlement of allegations made against Prudential for sales practices involved in the sales of more than 700 limited partnerships from 1980 to 1990.

The initial amount of the settlement is approximately $330 million; however, Prudential has open-ended liability in this matter, according to Mendoza. All investors will be receiving information regarding their eligibility to participate in this settlement; they may also call a toll-free hotline for information regarding the settlement.

Other DOC Enforcement Activity. On October 27, Commissioner Mendoza announced DOC's filing of administrative and civil actions against Congress Mortgage, a San Jose-based consumer finance lender, and its president, Robert S. Gaddis. DOC's administrative action seeks to revoke Congress Mortgage's consumer finance lender's license; the civil action, filed in Santa Clara County Superior Court, seeks an injunction to prevent further violations of law, restitution, and civil penalties.

The complaint alleges that since at least January 1, 1991, Gaddis and Congress Mortgage have committed numerous violations of the California Financial Code in connection with the making of consumer loans. According to DOC, the defendants routinely engaged in unconscionable lending practices, such as charging up-front loan origination fees ranging up to 17% of the gross loan amount; charging a "$10 per check" fee, and then failing to disclose that fee to consumer borrowers as part of the estimated fees and charges in defendants' Mortgage Loan Disclosure Statements; charging a "no insurance info" fee of $150 to any consumer borrower who

cannot produce evidence of a home insurance policy listing the defendants as an additional named insured; and, when making or negotiating loans, repeatedly failing to take into consideration their size and duration in determining the financial ability of the consumer borrower to repay the loan in the time and manner provided in the loan contract or to refinance the loan at maturity.

DOC also contends that Gaddis and Congress Mortgage consistently charged the consumer borrowers appraisal fees in excess of the actual cost of the appraisals; misled and deceived consumer borrowers by failing to disclose on closing statements that defendants charged excessive and illegal appraisal fees to consumer borrowers; failed to keep and preserve their business records in such a manner as to enable DOC to determine if they were complying with the requirements of the Financial Code; and denied DOC free access to their business records, provided DOC with false information about their appraisal records, and gave fabricated appraisal invoices to DOC in an attempt to prevent the Department's discovery of their violations of the Financial Code.

On November 11, Commissioner Mendoza issued a desist and refrain order against Dechtar Direct, Inc., a San Francisco-based marketer of adult entertainment items, and its president, William Hess. Dechtar began soliciting investment capital in Bay Area newspapers, promising a 20% annual rate of return on investments of $50,000 or more in unsecured promissory notes. According to Mendoza, the offering was not qualified with DOC, nor was it exempt from DOC's qualification requirement.

On November 23, Commissioner Mendoza filed a civil action in Los Angeles County Superior Court against Salud y Familia Association, Inc. of Los Angeles, and the Unicard Corporation of Fresno; according to Mendoza, the two California companies sold unlicensed health care plans and used false and misleading advertising targeted towards predominantly low-income Latinos in the Los Angeles area. Salud y Familia Association, incorporated in 1992, is a successor to Salud y Familia, Inc., which DOC shut down in May 1991.

According to DOC, the two companies worked together to market and provide a credit card with discount and referral services for medical care in exchange for an annual fee of $299, which was raised to $399 after January 1, 1993. The companies advertised their health care services on Spanish-language television and radio stations and distributed fliers and brochures to prospective enrollees in the Latino community. According to DOC, the defendants' solicitations falsely advertised their plan as "new medical insurance for the whole family," and falsely claimed to have contracted with over 13,000 doctors and 54,000 pharmacies in the United States and Mexico.

DOC charged the two companies with offering an unlicensed health care plan to the public; making false and misleading representations to the public through advertising and oral communications; failing to provide promised insurance and showing no prospect of paying for medical insurance and health care service for an estimated 1,200 enrollees; and failing to pay or show prospect of paying fees to contracting providers.

On November 24, Commissioner Mendoza issued a desist and refrain order against Spring Creek Resorts, Inc., and its president, Peter Zoltan. According to DOC, Spring Creek Resorts offers lifetime memberships to the resort, targeting its sales towards Filipino-Americans in southern California by offering members sales commissions to solicit fellow community members; Spring Creek then uses the membership fees to finance development of the resort. According to the promotional materials, the resort was to provide extensive recreational and Filipino cultural activities, including a Filipino cultural museum and gardens, rice terraces, an amphitheater, a petting zoo, an 18-hole golf course, and horse stables. Membership privileges were to include two to three weeks at the resort each year, in exchange for a down payment of 20% on membership fees of $8,900 and annual dues of $240. Commissioner Mendoza charged Spring Creek Resorts and Zoltan with the offer and sale of unqualified securities, a violation of the Corporate Securities Act of 1968. According to the Commissioner, "members may never see the benefits they were promised when they paid Spring Creek Resorts. Undeveloped projects like this one should be carefully considered—they present a high risk to investors."

LEGISLATION

SB 930 (Killea), as introduced March 4, and **SB 469 (Beverly)**, as amended September 10, would—among other things—enact the California Limited Liability Company Act, authorizing a limited liability company to engage in any lawful business activity; set forth the duties and obligations of the managers of a limited liability company; and establish requirements and procedures for membership interests in limited liability companies, including voting, meeting, and inspection rights. *[S. Jud; S. Jud]*

AB 1057 (Conroy). Existing law requires applicants for an escrow agent's license to file, and escrow agents to maintain, a bond. Under existing law, an applicant or licensee may obtain an irrevocable letter of credit approved by the Commissioner of Corporations in lieu of the bond. As introduced March 2, this bill would instead permit an applicant or licensee to obtain an irrevocable letter of credit in a form which shall be approved by the Commissioner in lieu of the bond. The bill would also provide that the Commissioner shall be entitled to recover the administrative costs that are specific to processing claims against irrevocable letters of credit. *[S. BC&IT]*

AB 1031 (Aguiar). Existing escrow law provides that any advertising referring to the Fidelity Corporation shall state in type not smaller than the largest size of type used in the body of the advertisement: "Escrow Agents' Fidelity Corporation is a private corporation and is not an agency or other instrumentality of the State of California." As amended April 26, this bill would instead provide for a more comprehensive disclosure statement. It would also require escrow companies to provide certain condensed financial statements, as prescribed by rule or order of the DOC Commissioner. *[S. BC&IT]*

AB 1125 (Johnson), as amended April 12, would require the Commissioner to conduct an inspection and examination of a new escrow agent licensee within six months of licensure. The costs of the inspection and examination would be paid by the licensee to the Commissioner. *[S. BC&IT]*

AB 1923 (Peace). Existing law provides that credit unions must obtain or have insurance pursuant to Title II of the Federal Credit Union Act, or a guaranty of shares provided by the California Credit Union Share Guaranty Corporation, or a form of comparable insurance or guaranty of share acceptable to the Corporations Commissioner for the purpose of insuring or guaranteeing its members' share accounts. As introduced March 5, this bill would provide that credit unions shall obtain insurance as provided for by Title II of the Federal Credit Union Act. This bill would provide that, on or after January 1, 1994, every credit union applying for a certificate to act as a credit union must demonstrate that it has applied for and obtained Title II insurance. By January 1, 1995, every credit union must obtain Title II insurance. Credit unions which have not obtained that insurance by July 1, 1995, or have ceased to maintain it after that date,

shall proceed to liquidate or merge with another credit union. *[A. F&I]*

AB 1533 (Tucker). Existing law limits check cashers' charges for cashing a payroll check with identification to 3% and without identification to 3.5%, or $3, whichever is greater. As introduced March 4, this bill would reduce these maximum charges to 1% for cashing a payroll check with identification and 1.5% for cashing a payroll check without identification, or $3, whichever is greater. *[A. F&I]*

AB 2306 (Margolin), as amended May 19, would add to the acts that constitute grounds for health care service plan (HCSP) disciplinary action the failure of a plan to correct prescribed deficiencies identified by the Commissioner. *[S. InsCl&Corps]*

AB 2002 (Woodruff), as amended June 28, would be known as the "Filante Health Care Act," authorizing HCSPs, nonprofit hospital service plans, and disability insurers to provide rate incentives for covered individuals or enrollees, as the case may be, to adopt healthful lifestyles, as prescribed, the rate incentives to be based on actuarial considerations related to the differences in lifestyle. The bill would require the Commissioner of Corporations to adopt guidelines by June 30, 1994, and would permit the Commissioner to adopt regulations defining a "healthful lifestyle" for HCSPs. It would also require the Insurance Commissioner to adopt guidelines and would permit the Commissioner to adopt regulations defining a "healthful lifestyle" for disability insurers and nonprofit hospital service plans. The bill would also authorize HCSPs and nonprofit hospital service plans that are certified as meeting those guidelines to indicate that they are certified plans. *[S. InsCl&Corps]*

SB 719 (Craven). Existing law provides that no HCSP, including a specialized HCSP, shall request reimbursement for overpayment or reduce the level of payment to a provider based solely on the allegation that the provider has entered into a contract with any other licensed HCSP for participation in a benefit plan that has been approved by the Commissioner. As amended May 17, this bill would provide instead that no specialized HCSP that provides or arranges for dental services shall request reimbursement for overpayment or reduce the level of payment to a provider based on the that the provider has entered into a contract with any other HCSP for participation in a supplemental dental benefit plan that has been approved by the Commissioner. *[S. InsCl &Corps]*

SB 1118 (Rogers) would exempt any offer of a security for which an offering statement under Regulation A of the Securities Act of 1933 has been filed but has not yet been qualified. *[S. BC&IT]*

SB 666 (Beverly). Existing law permits certain securities to be qualified by permit if the application is a small company application and meets certain requirements (*see above*). As introduced March 3, this bill would revise those requirements by specifically requiring the Commissioner to adopt rules containing specified requirements. Among other things, the bill would set the minimum stock price at $2 instead of $5, and incorporate by reference Form U-7 of the North American Securities Administrators Association, and associated instructions. *[S. BC&IT]*

LITIGATION

On September 30, the California Supreme Court granted review of the Second District Court of Appeal's decision in ***People v. Charles H. 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. *[12:2&3 CRLR 169]*

Keating primarily challenges the trial court's jury instructions stating that Keating 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. Keating was convicted on 17 counts, all violations of sections 25401 and 25540. The major issue raised by Keating 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. The Supreme Court unanimously voted to hear Keating's appeal of his state conviction, for which he received a ten-year prison term and a $250,000 fine. However, even if his state conviction is set aside by the court, Keating must serve a twelve-year term in federal prison based on his January conviction by a federal jury for racketeering, conspiracy, and fraud. *[13:4 CRLR 110]*

DEPARTMENT OF INSURANCE

Commissioner: John Garamendi
(415) 904-5410
Toll-Free Complaint Number:
1-800-927-4357

Insurance is the only interstate business wholly regulated by the several states, rather than by the federal government. In California, this responsibility rests with the Department of Insurance (DOI), organized in 1868 and headed by the Insurance Commissioner. Insurance Code sections 12919 through 12931 set forth the Commissioner's powers and duties. Authorization for DOI is found in section 12906 of the 800-page Insurance Code; the Department's regulations are codified in Chapter 5, Title 10 of the California Code of Regulations (CCR).

The Department's designated purpose is to regulate the insurance industry in order to protect policyholders. Such regulation includes the licensing of agents and brokers, and the admission of insurers to sell in the state.

In California, the Insurance Commissioner licenses approximately 1,300 insurance companies which carry premiums of approximately $63 billion annually. Of these, 600 specialize in writing life and/or accident and health policies.

In addition to its licensing function, DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects more than 170 different fees levied against insurance producers and companies.

The Department also performs the following functions:

(1) regulates insurance companies for solvency by tri-annually auditing all domestic insurance companies and by selectively participating in the auditing of other companies licensed in California but organized in another state or foreign country;

(2) grants or denies security permits and other types of formal authorizations to applying insurance and title companies;

(3) reviews formally and approves or disapproves tens of thousands of insurance policies and related forms annually as required by statute, principally related to accident and health, workers' compensation, and group life insurance;

(4) establishes rates and rules for workers' compensation insurance;

(5) preapproves rates in certain lines of insurance under Proposition 103, and regulates compliance with the general rating law in others; and