clear and unambiguous: anyone under the age of 21 is forbidden to buy alcoholic beverages, with no exceptions. The court also noted that no exception has been created by statute.

ABC contended that even assuming the minor decoy programs are unconstitutional, it may still discipline licensees who sell alcohol to an underage decoy. The court disagreed, holding that the use of an unconstitutional enforcement procedure is analogous to police conduct which gives rise to an entrapment defense, and noted that the remedy in administrative disciplinary proceedings should be the same—that is, a defense to revocation or suspension of a license. The court concluded that if the use of underage decoy buyers in enforcement of ABC's licensing regulations is to be deterred, it must be by requiring ABC to abide by the constitutional restriction against the purchase of alcohol by minors.

On April 29, the California Supreme Court granted ABC's petition to review both cases.

BANKING DEPARTMENT

Superintendent:
James E. Gilleran
(415) 557-3232
Toll-Free Complaint Number:
1-800-622-0620

Pursuant to Financial Code section 99 *et seq.*, the State Banking Department (SBD) administers all laws applicable to corporations engaging in the commercial banking or trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation, and discontinuance of various types of offices of these entities; and the establishment, operation, relocation, and discontinuance of various types of offices of foreign banks. The Department is authorized to adopt regulations, which are codified in Chapter 1, Title 10 of the California Code of Regulations (CCR).

The superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor. The superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application, the superintendent must consider:

(1) the character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company;

(2) the need for banking or trust facilities in the proposed community;

(3) the ability of the community to support the proposed bank or trust company, considering the competition offered by existing banks or trust companies; the previous banking history of the community; opportunities for profitable use of bank funds as indicated by the average demand for credit; the number of potential depositors; the volume of bank transactions; and the stability, diversity, and size of the businesses and industries of the community. For trust companies, the opportunities for profitable employment of fiduciary services are also considered;

(4) the character, financial responsibility, banking or trust experience, and business qualifications of the proposed officers; and

(5) the character, financial responsibility, business experience and standing of the proposed stockholders and directors.

The superintendent may not approve any application unless he/she determines that the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company; conditions in the locality of the proposed bank or trust company afford reasonable promise of successful operation; the bank is being formed for legitimate purposes; the capital is adequate; the proposed name does not so closely resemble as to cause confusion with the name of any other bank or trust company transacting or which has previously transacted business in the state; and the applicant has complied with all applicable laws.

If the superintendent finds that the proposed bank or trust company has fulfilled all conditions precedent to commencing business, a certificate of authorization to transact business as a bank or trust company will be issued.

The superintendent must also approve all changes in the location of a head office; the establishment, relocation, or discontinuance of branch offices and ATM facilities; and the establishment, discontinuance, or relocation of other places of business. A foreign corporation must obtain a license from the superintendent to engage in the banking or trust business in this state. No one may receive money for transmission to foreign countries or issue money orders or travelers checks unless licensed.

The superintendent examines the condition of all licensees when necessary, but at least once every two years. The Department is coordinating its examinations with the Federal Deposit Insurance Corporation (FDIC) so that every year each agency examines certain licensees. New and problem banks and trust companies are examined each year by both agencies.

The superintendent licenses Business and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the superintendent oversees security pools that cover the deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

MAJOR PROJECTS

LAO Recommends Major Changes to SBD. In its *Analysis of the 1993–94 Budget Bill*, the Legislative Analyst's Office (LAO) noted that California's regulation of financial services programs (including investments, checking, savings, lending, accounting, and other similar financial operations) for individuals and institutions in the business of lending money and providing related financial services is scattered among SBD, the Department of Savings and Loan (DSL), the Department of Corporations (DOC), and the Department of Real Estate (DRE). LAO explained that prior to 1982, state-chartered lenders were restricted by law to providing specific lending activities and related financial services; thus, the state's regulatory framework reflected the segmented nature of the lenders and the services they provided. However, in 1982 and 1983, the federal and state governments deregulated the lending and related financial services industry *[10:4 CRLR 1]*, virtually eliminating the functional differences which previously existed among lenders. Despite the changes brought about by deregulation, the state's regulatory programs have not been reorganized, and remain scattered among the four departments.

According to LAO, the fragmented regulation limits the effectiveness of the departments by hindering timely and effective coordination of regulatory activities; LAO believes that consolidation of the financial regulatory programs into one department would improve regulatory coordination and result in the more effective and efficient administration of the programs. For example, LAO states that consolidation would promote close coordination and sharing of regulatory information on a timely basis; result in a more uniform application and enforcement of regulatory laws; provide consistency in program management as well as policy development and interpretation; allow for effective and efficient use of staff as regulatory workload fluctuates among the programs under the department; reduce manage-

ment and administrative services staff; and provide businesses and consumers with a "one-stop" department to deal with.

Accordingly, LAO recommended that legislation be enacted to consolidate SBD, DSL, DOC's lending and fiduciary-related programs (except escrow agents), and DRE's mortgage broker-salesperson program into a new Department of Financial Services. LAO contended that this consolidation would result in combined annual administrative savings of about $500,000 to various special funds in the proposed 1993–94 budget, thus resulting in lower costs to licensees and consumers of financial services.

At this writing, LAO's recommendation has not been incorporated into legislation.

Fed Paints Gloomy Forecast for California. On March 10, San Francisco Fed President Robert T. Parry met with the Federal Reserve Board's eleven other regional bank presidents in Washington to testify about the state of the economy before the Senate Committee on Banking, Housing and Urban Development. Parry painted a bleak picture of California's economy, noting that California's employment problems reach into a wide range of industries, including the service sector, manufacturing, and finance; he stated that California's lagging economy is holding back the recovery of much of the Board's western region. Parry offered few encouraging words about how the state might be boosted out of the recession, although he did note that California's foreign trade increased in 1992 by 10.1% over 1991, rising to $192.5 billion.

California, which normally leads the West in economic strength, is in its worst recession since World War II, according to Parry. While noting that cuts in defense spending are part of the problem, Parry also explained that the construction and real estate industries have been hit hard by the recession; the Fed said that 31% of the construction jobs that existed in the state two years ago no longer exist.

FDIC Bank Insurance Fund Deficit is Improving. In May, the Federal Deposit Insurance Corporation (FDIC) announced that the nation's 11,800 banks improved dramatically in 1992. At the end of 1991, FDIC's Bank Insurance Fund (BIF) had a deficit of $7.03 billion *[12:2&3 CRLR 161–62]*; that deficit was reduced to $101 million by the end of 1992. FDIC attributed the vast improvement to favorable interest rate conditions for banks, as well as general economic improvement in most areas of the nation. Also, the wide gap between interest rates which consumers earn on deposits and those they pay for loans helped commercial banks earn a record $32.2 billion in 1992. According to FDIC, 127 banks with $63.2 billion in assets failed in 1991, but only 122 banks with a total of $25 billion will fail in 1993.

FDIC expects its BIF to be in the black by $1.1 billion by the end of 1993, and to reach the government-mandated level of $1.25 for every $100 of deposits by 2002, four years ahead of schedule. FDIC officials are still cautious, however, and have voted to leave the fees banks pay to cover the insurance fund unchanged for the second half of 1993; those fees average $0.248 for every $100 in deposits.

Clinton Administration Pushes to Ease Access to Small Business Loans. In March, President Clinton unveiled his initiative to end some of the credit problems facing many small businesses. Noting that small businesses often "face a ten-foot wall" when they try to borrow money, the President ordered federal examiners to ease up on lenders and encouraged bankers to be more generous in reviewing loan applications. Among other things, the Clinton administration program will allow banks to make loans to medium and small businesses with minimal documentation requirements, which are costly to lenders; allow banks to accept real estate as collateral without always requiring certified appraisals, which can be costly; prevent examiners from lumping some small business loans together with a pool of other more risky loans when reviewing a bank's loan portfolio; and encourage lenders to consider the reputation and good character of potential borrowers instead of relying only on strict financial judgments.

At this writing, detailed regulations implementing the plan are expected to be issued by the end of the summer. In the meantime, a general policy statement will be sent to all federally-examined banks and thrifts and to staff examiners at all four federal financial regulatory agencies—the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

Bankers who support the plan hope that President Clinton will be able to persuade rank-and-file bank examiners to be more tolerant in their loan reviews than they have been in the past several years. Skeptics of the plan caution that this so-called "relief" could open the door to abuses and bad banking practices that led to the recent crisis in the financial industry.

SBD Asked to Assist in Disaster Recovery. In a February letter to Superintendent James Gilleran, Charles Wynne, the Deputy State Coordinating Officer of the state Office of Emergency Services, requested the assistance of the banking industry in helping many California communities recover from severe winter storms, noting that President Clinton declared twenty California counties as disaster areas. Wynne noted that a number of disaster assistance programs were implemented to help the affected communities recover; however, based on an anticipated long-term recovery process, Wynne asked that the banking industry recognize the severity of the situation and work with victims of the severe winter storms in their effort to repay loans. Gilleran forwarded copies of the request to all banks via SBD's weekly bulletin, commending those banks already participating in disaster assistance programs and encouraging all California banks to join in the effort.

Cease and Desist Warnings Issued. On February 25, SBD issued warnings to cease and desist doing business in California without a license to Savings and Credit Bank of Kuwait and Valentine Hyacinth, both of Los Angeles. Savings and Credit Bank of Kuwait is not authorized to transact banking or trust business in California, and is not authorized to transact business under a name which contains the word "bank" and indicates that the business is that of a bank pursuant to Chapter 18 of Division 1 of the California Financial Code.

SBD also issued a warning to cease and desist from doing business in California without a license to Canadian Trade Bank in Bakersfield. Similar warnings were also issued to the following individuals doing business on behalf of Canadian Trade Bank: Stan Bajdazian of Bakersfield, Glen Harmon of Springsville, and Jerome Schneider of Beverly Hills. Canadian Trade Bank is not authorized to transact banking or trust business in California, and is not authorized to transact business under a name which contains the word "bank" and indicates that the business is that of a bank pursuant to Chapter 18 of Division 1 of the California Financial Code.

SBD Releases Fourth Quarter Report. In March, SBD released its quarterly report covering the fourth quarter of 1992. According to SBD, at the close of business on December 31, the 260 state-chartered banks with 1,820 branch offices had total assets of $110.8 billion, a decrease of $0.5 billion, or 0.5%, from December 31, 1991. During 1992, there was a net decrease of eleven banks and a net increase of 22 branch offices.

LEGISLATION

SB 1145 (Boatwright). Existing law requires banks and other financial institu-

tions to maintain certain information concerning charges and interest on accounts, and to make that information available to the public. Existing law also requires banks and other financial institutions to furnish depositors with statements concerning charges and interest on accounts. As amended April 20, this bill would authorize a supervised financial organization, defined to include banks, savings associations, savings banks, and credit unions, to charge and collect fees pursuant to a consumer credit agreement, as specified.

Civil Code section 1671 sets forth the standard for determining the validity of a liquidated damages provision in a contract; section 1671(d) provides that a contract liquidated damages provision is void except that the parties may agree upon an amount contractually presumed to be the measure of damages for a contract breach when, from the nature of the case, it would be impractical or extremely difficult to fix the actual damage. *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1383 (1991), applied section 1671 to limit credit card fees which may be assessed by a bank for a late payment or over-the-limit use of the credit card. *[12:1 CRLR 111]* SB 1145 would nullify *Beasley* and make section 1671 inapplicable to determine the validity of fees charged under a credit card agreement; instead, the bill would permit supervised financial institutions to charge and collect fees for late payment, over-the-limit usage, and bounced checks at the rates and amounts set forth in the credit card agreement. Those fees would be presumed valid, notwithstanding any other state law or regulation, if the fee is "commercially reasonable," defined by the bill as "less than or equal to a comparable fee used by at least one of the ten largest lenders headquartered outside of California providing a similar type of open-end credit."

The stated purpose of this bill is to allow banks to charge fees similar to those charged by out-of-state deregulated banks and to avoid litigation challenging the validity of such fees. However, opponents such as Consumers Union contend that SB 1145 is a back-door attempt to exempt credit card fees from the Civil Code requirement that penalty fees be reasonably related to the costs they are supposed to cover. Opponents point out that Civil Code section 1671(d) and caselaw interpreting it require that credit card penalty fees such as late and overlimit fees must be reasonably related to the actual damages expected to be caused by the event triggering the fee, and note that SB 1145 would exempt banks, savings associations, savings banks, credit unions, and their subsidiaries from these consumer protections. *[S. Jud]*

AB 320 (Burton). Existing law does not prescribe interest rates for bank credit card accounts, but prohibits defined usurious interest rates for any loan or forbearance made by a nonexempt lender. As introduced February 4, this bill would prescribe a maximum interest rate or finance charge which could be charged on credit card accounts issued by a bank, savings association, or credit union. Except as otherwise provided, the interest rate or finance charge assessed with respect to any account for which charges may be added by the use of a bank credit card shall not exceed an annual rate equal to 10% plus the savings account interest rate paid by the financial institution issuing the card. *[A. F&I]*

AB 687 (Johnson). Existing law requires banks to notify depositors of specified information prior to maturity of a time deposit, maintain information about charges and interest on accounts, and furnish statements to depositors concerning charges and interest on accounts. As amended May 6, this bill would repeal those provisions; the bill would also state legislative intent. *[A. Floor]*

AB 1496 (Peace). Existing law contains various provisions for economic aid to businesses, including provisions for a small business loan program administered by the Superintendent of Banking. As amended May 10, this bill would repeal the existing small business loan program and establish a new Capital Access Loan Program, to be administered by the California Economic Development and Infrastructure Bank. The bank would be authorized to contract with financial institutions to participate in the program. A participant would contract for the creation of a loss reserve account. The account would consist of fees and of money in the continuously appropriated Capital Access Fund, which would be created by the bill. The financial institution would be authorized to submit claims against the account in the event of a default. *[A. Floor]*

AB 1756 (Tucker). Existing law does not prohibit governmental agencies from contracting with financial institutions that do not report on specified topics relating generally to community reinvestment. As amended May 17, this bill would prohibit state, city, and county governments from contracting for services with financial institutions with $100 million dollars or more in assets unless those companies file reports annually with the Treasurer. The Treasurer would be required to annually submit a report to the legislature and to make summaries available to the public. These reports would include specified information regarding the nature of the governance of the companies and their lending and investment practices with regard to race, ethnicity, gender, and income of the governing boards and of the recipients of loans and contracts from the institutions. *[A. CPGE&ED]*

AB 1785 (Tucker). Existing law imposes various requirements for loans made by banks and savings associations, including in some instances collateral requirements. As amended April 29, this bill would require the Treasurer, in consultation with SBD and the Department of Savings and Loan, on or before January 15, 1994, to develop alternatives to current collateral requirements for financial institutions in order to promote the economic recovery and growth for those areas affected by the civil disturbances in Los Angeles on April 29, 1992, and following days. *[A. W&M]*

AJR 17 (Costa), as introduced March 5, would request the federal government and the state to conduct a thorough review of banking regulations, and to revise those that are unnecessarily burdensome and barriers to effective community lending. *[A. Rls]*

AJR 19 (Polanco), as introduced March 5, would resolve that the executive branch of the federal government and the Congress of the United States, together with the legislature, actively pursue measures to improve the frequency of bank lending to women and people of color. *[A. Rls]*

AB 1640 (Bates). Existing law authorizes the Treasurer to deposit funds belonging to the state or in the custody of the state in various financial institutions. As introduced March 4, this bill would require the Treasurer to annually report to the Governor and the legislature on the amounts deposited in each financial institution and to include the institution's rating under the federal Community Reinvestment Act. *[A. F&I]*

SB 179 (Hughes), as introduced February 3, would prohibit the Treasurer from depositing or investing state moneys with financial institutions that receive specified ratings from federal authorities pursuant to the federal Community Reinvestment Act. *[S. GO]*

AB 1995 (Archie-Hudson), as introduced March 5, would authorize state-chartered banks, savings associations, and credit unions to restructure a loan or extend credit terms and obligations to minority or women business enterprises in accordance with safe and sound financial operations. Any loan so restructured or

extended shall not be classified as delinquent, and the financial institution shall not be required to increase its reserves or be subject to adverse regulatory action because of that loan. *[A. F&I]*

AB 2165 (Areias). Existing law requires the Secretary of Trade and Commerce to coordinate state policy on economic development and trade. As introduced March 5, this bill would require the Secretary, in conjunction with SBD, to develop a program to assist and encourage the banking industry to form a privately owned consortium to assist business relocation in California. *[A. F&I]*

AB 2232 (McDonald), as introduced March 5, would direct SBD to conduct a study and make recommendations to the legislature on or before July 1, 1994 on the regulatory process and procedures for banks engaged in making small business loans. *[A. F&I]*

AB 2349 (Polanco). Existing law prohibits any person from engaging in the business of receiving money for the purpose of transmitting the money or its equivalent to foreign countries, unless the person has first obtained a license from the Superintendent of Banks or is exempt. Under existing law, specified fees are charged for services performed by the Superintendent, including a $400 dollar per day fee for the services of an examiner, which a licensee must pay within ten days after receipt of a statement from the Superintendent for those services. As introduced March 5, this bill would change the time period for payment for those services from ten days to twelve days. *[A. F&I]*

SB 161 (Deddeh). Existing law requires banks to furnish depositors, if not physically present at the time of the initial deposit into an account, with a statement concerning charges and interest not later than ten days after the date of the initial deposit. As introduced February 1, this bill would instead require the statement to be furnished not later than seven business days after the date of the initial deposit. With respect to an increase in the rate of account charges or a variance in the interest rate, the bill would reduce the notice time from fifteen days prior to date of change or variance to seven business days.

Existing law, with specified exceptions, prohibits a commercial bank from lending in the aggregate an amount in excess of 70% of the amount of its savings and other time deposits upon the security of real property. This bill would specify that the percentage limitation applies with respect to the aggregate amount of accounts subject to a negotiable order of withdrawal, savings deposits, money market accounts, super now accounts, and other time deposits of a commercial bank, including certificates of deposit. *[S. BC&IT]*

SB 203 (Deddeh). Existing law provides that the failure of a bank or trust company to open a branch office within one year after the Superintendent of Banks approves the application terminates the right to open the office, except that prior to the expiration of the one-year period a one-year extension may be granted by the Superintendent in which to open and operate a branch office upon filing an application with the Superintendent and the payment of a $100 fee. As introduced February 4, this bill would increase that fee to $350. *[S. BC&IT]*

AB 2324 (Caldera). Existing law, known as the Holden Act, generally requires the Secretary of Business, Transportation and Housing to monitor and investigate the building patterns and lending practices of financial institutions relating to housing. More specifically, the Holden Act prohibits a financial institution from discriminating in the availability of, or in the provision of, financial assistance for the purpose of rehabilitating, improving, or refinancing housing accommodations due, in whole or in part, to the consideration of conditions, characteristics, or trends in the neighborhood surrounding the housing accommodation unless the financial institution can demonstrate that the consideration in the particular case is required to avoid an unsafe or unsound business practice. As amended May 3, this bill would provide that nothing in that provision shall be construed to prohibit any financial institution from establishing a special loan program designed to engender equality in housing in accordance with the federal Fair Housing Act or similar state and federal laws, so long as the program promotes housing opportunities in ethnic minority or low-income neighborhoods. *[A. W&M]*

SB 632 (Deddeh). Under existing law, if a draft, such as a check, is unaccepted by the bank and is dishonored, the drawer is obliged to pay the draft according to its terms. As introduced March 2, this bill would, in addition, provide that the drawer is obligated to pay any service charges resulting from dishonor of the draft. *[S. Jud]*

HR 20 (Burton), as amended May 4, states that the Bank of America (BofA) is known as the leading bank in the West; BofA is one of the most profitable financial institutions in America, making a profit of $1.5 billion in 1992; BofA has achieved this success in part through federal subsidies of FDIC guaranteed borrowing and mergers approved by the federal government; BofA's Chief Executive Officer earned a salary of $1.6 million in 1992 and approximately $12 million in stock options between 1987 and 1991; BofA is opening overseas offices in Vietnam while at the same time closing neighborhood banks in California communities; BofA has asked all employees to sign "at will" statements acknowledging that the bank may fire them without cause at the employer's pleasure, work hours may be cut and health care and other benefits taken away, and employees may be transferred anywhere in the bank's system; this personnel action compromises the principle of employer responsibility by implying that the cutting of employee hours, salaries, and benefits is acceptable behavior while the bank continues to earn large profits; the elimination of employee benefits by BofA may place an additional burden on the state budget by increasing the costs of the Medi-Cal system and of state hospitals for uncompensated care; BofA is moving its credit card operations to Arizona and transferring 1,600 jobs out of San Francisco and Glendale in order to escape California consumer protection laws that do not apply if the credit card business is headquartered in a state with weaker regulations; BofA is the dominant bank in the State of California and is the depository bank for the State of California; in the 1991–92 fiscal year, the State of California's total dollar investment in BofA was $3.9 billion; 91% of all deposits from California state agencies are deposited with BofA; and the State of California has $131 million in debt issuance corporate notes from the Pooled Money Account with the BofA.

Accordingly, the measure would state the Assembly's request that the State Treasurer consider withdrawing all deposits from BofA and investing them in other banks within California in accordance with the care, skill, prudence, and diligence that a prudent person would use in conducting or making state financial investments; that the Treasurer discontinue any investment in BofA's corporate notes and invest in other banks within the state of California in accordance with the care, skill, prudence, and diligence that a prudent person would use in conducting or making state financial investments; and that all state agencies consider withdrawing their deposits from BofA and investing them in other banks within California in accordance with the care, skill, prudence, and diligence that a prudent person would use in conducting or making state financial investments. *[A. Floor]*

LITIGATION

Badie v. Bank of America, No. 944916, filed in San Francisco Superior

Court on August 4, 1992, challenges BofA's new policy which requires that customer disputes over deposit and credit card accounts be sent to binding arbitration. *[12:4 CRLR 140]* The plaintiffs in the suit consist of four BofA customers, Consumer Action of San Francisco, and the California Trial Lawyers Association; they seek a preliminary injunction blocking enforcement of the policy, which they claim violates the California Constitution, the Consumer Legal Remedies Act, and the Unfair Business Practices Act. Plaintiffs, who are also seeking declaratory relief, are represented by the law firm of Sturdevant & Sturdevant. Both sides have filed motions for summary judgment; at this writing, a hearing is set for June 3. If necessary, trial is set for the first week of July.

In a related note, a few months after BofA instituted its binding arbitration requirement, Wells Fargo introduced its own version of the plan. Wells Fargo's version is essentially the same as BofA's, except that current customers are being given a thirty-day period in which to "opt out" of the arbitration agreement, whereas BofA customers were notified of the change by letter which stated that continued use of their BofA account would imply consent to the arbitration terms. Wells Fargo's plan does not really offer an "escape clause," though, as the customers' only real option is to terminate their account before being forced to join the arbitration program. First Interstate Bank is also planning to unveil an arbitration program, and other California banks could follow suit. The outcome of *Badie v. BofA* will likely have a significant impact on the future of arbitration agreements in the banking industry.

DEPARTMENT OF CORPORATIONS

Acting Commissioner:
Brian A. Thompson
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(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 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: 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.

In January, Governor Wilson appointed then-DOC Commissioner Thomas Sayles to serve as Secretary of the Business, Transportation and Housing Agency. Wilson appointed DOC chief deputy Brian Thompson to serve as Acting Commissioner while a permanent replacement is being selected.

MAJOR PROJECTS

DOC Issues Investor Alert. On April 13, DOC issued a news release warning investors that pitchmen and con artists are targeting investors seeking to receive a higher return on their investments than certificates of deposit (CDs) now provide. In cooperation with the North American Securities Administrators Association and the Council of Better Business Bureaus, DOC issued an "Investor Alert" fact sheet entitled *CD Alternatives—Making the Right Choice* to inform investors of advantages and disadvantages of investing in CD alternatives. According to Acting Commissioner Brian Thompson, because interest rates on bank accounts and CDs are at historic lows, many individuals are vulnerable to banks, brokers, and others offering them investments with potentially higher returns; however, Thompson noted that consumers are often not told about the risks that may be involved or about their ability to bear losses of principal as well as interest.

According to the Investor Alert, investors are being offered a wide array of CD alternatives, such as stocks, mutual funds, corporate bonds, collateralized mortgage obligations, foreign CDs, and savings bonds; because many of these instruments are offered in banks and in subsidiaries of banks, consumers may mistakenly believe that they are insured in the same way that bank deposits are insured.

DOC Cracks Down on Illegal Futures Contracts. On January 11, then-DOC Commissioner Thomas Sayles announced a series of administrative, civil, and criminal actions against 21 companies and 24 individuals selling illegal futures contracts in gold, silver, and foreign currencies, primarily to members of the Chinese, Vietnamese, and Korean communities in Los Angeles and San Francisco. According to Sayles, the illegal activity constitutes "affinity group fraud," in which members of a certain racial or ethnic group lure others of that group into scams.