



subsidiary, to acquire directly or indirectly the assets of any California bank or California bank holding company, or to merge or consolidate with any California bank or California bank holding company. With respect to the acquisition of assets mentioned above, this bill would, among other things, instead authorize the acquisition of direct or indirect ownership of, or power to vote more than 5% of the voting shares of any California bank or California bank holding company. It would additionally authorize the acquisition, directly or indirectly, of all or substantially all of the assets of any California bank or the assumption, directly or indirectly, of any of the deposits of a California office of a California bank. This bill, last amended April 24, is pending in the Assembly Finance and Insurance Committee.

**AB 3813 (Lewis)**, as amended May 16, would revise various definitions applicable to the California Interstate (National) Banking Act of 1986; set forth provisions setting forth the home state of foreign (other nation) banks and bank holding companies, and foreign (other state) banks; exempt certain forms of ownership from the definition of control of a company; permit the acquisition or ownership of more than 5% of the voting shares of a California bank or California bank holding company, with approval of the Superintendent of Banking; prohibit the acquisition of all or substantially all of the assets of any California bank and prohibit the assumption of deposits of a California office of a California bank; repeal the exemption for acquisitions of certain transactions involving a bank or bank holding company that has, or is controlled by a company that has, its head office located, or its operations principally conducted, outside the United States, and would instead exempt certain acquisitions in a fiduciary capacity, or in the regular banking business, or certain mergers or consolidations of a California bank with another California bank, and certain mergers of a foreign bank holding company with a California bank or California bank holding company in which the California bank or California bank holding company is the surviving corporation; require the Superintendent's approval for certain acquisitions of shares, and impose a fee that would be deposited in the State Banking Fund; and authorize the Superintendent to provide additional information to regulatory authorities or other jurisdictions. This bill is pending in the Senate Banking and Commerce Committee.

The following is a status update of

ills reported in CRLR Vol. 10, No. 1 (Winter 1990) at page 102:

**SB 476 (Robbins)**, which would specify that time deposits include a time certificate of deposit, was amended on May 21 and is pending in the Assembly Finance and Insurance Committee.

**AB 244 (Calderon)**, as amended June 13 would enact provisions with respect to the safe use of automated teller machines, including certain location, installation, and lighting standards, as specified. The bill, which would also state legislative intent, is pending in the Senate Banking and Commerce Committee.

## DEPARTMENT OF CORPORATIONS

*Commissioner: Christine W. Bender*  
(916) 445-7205  
(213) 736-2741

The Department of Corporations is a part of the cabinet-level Business and Transportation 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 Cashiers Law, Securities Depositor Law, California Finance Lenders Law, and Security Owners Protection Law.

A Consumer Lenders Advising Committee advises the commissioner on policy matters affecting regulation of consumer lending companies licensed by the Department of Corporations. The committee is composed of leading executives, attorneys, and accountants in consumer finance.

## MAJOR PROJECTS:

**Enforcement Action Against Charles Keating.** As a result of the estimated \$250 million in investor losses in the Lincoln Savings and Loan collapse, the Department of Corporations has filed a civil action charging Charles Keating, American Continental Corporation (ACC), and two of its top officers and directors, Judy Wischer and Andrew Liggett, with securities fraud, fraud in application for qualification, offer/sale of unauthorized securities, and unauthorized advertising. The Department's



## REGULATORY AGENCY ACTION

charges in *People of the State of California v. ACC*, No. C753864 (Los Angeles County Superior Court), which are the result of a lengthy investigation in which more than 100 ACC investors and Lincoln salespersons were interviewed, are the first to be levied against the defendants by any state or federal regulatory agency. The Department is seeking preliminary and permanent injunctive relief, restitution, and civil penalties.

Initially, Keating and the officers successfully challenged service of process, which was accepted on their behalf in an unauthorized manner by ACC's counsel. The defendants then removed the case to federal district court. The Department transferred the case to Arizona (where ACC's bankruptcy petition and other cases related to the collapse of Lincoln Savings are pending), and has filed a motion for relief from the automatic bankruptcy stay and for remand back to California state court. The hearing date for the motion was set for July 12. On May 11, Charles Keating, Jr. was successfully served by the Department. (See *infra* LITIGATION; see also CRLR Vol. 10, No. 1 (Winter 1990) pp. 103 and 113-14; and Vol. 9, No. 4 (Fall 1989) p. 100 for background information on the Lincoln scandal.)

**Other Enforcement Action.** On February 7, Commissioner Bender ordered that Unico Services Corporation and its president, Sara Mauri, desist and refrain from selling promissory notes allegedly secured by trust deeds in violation of California securities law. Mauri had promised many Hispanic friends and strangers that she would make them 18-20% interest on their money. Both Mauri and Unico disappeared without repaying principal or interest.

As a result of a complaint filed by the Commissioner, on February 13 an Orange County Superior Court judge issued a preliminary injunction and confirmed the appointment of a receiver for Liberty National Corporation, National Securities Corporation, John Rockett, LNC Partnerships Trust, and 45 partnerships controlled by Liberty and Rockett. The complaint alleges that from 1986 to 1989, defendants solicited the public through cold calls to invest in securities in oil and gas wells and pipelines. The Commissioner determined that these securities were sold in violation of California law. She further alleged that the securities were sold to the public by means of a fraud, in that investor funds were used to pay off other investors, investor funds were used by personal insiders, and the like. Over 1,500 per-

sons were induced to invest about \$35 million in these ventures.

Following several months of state investigation, and following the virtual collapse of the magazine, the Department filed suit in March against *U.S. Realty Report*, a slick international real estate magazine targeted at foreign investors. The Department charges that several magazine executives (Prine, White, and Shelton) were selling stock without state permission and "by means of a high pressure telephone sales campaign" that made false promises of lucrative returns. The magazine sold some \$750,000 of stock to at least 40 investors statewide. The suit seeks a temporary restraining order, a permanent injunction to stop the sales, and restitution to the defrauded investors.

**Regulatory Action Under the Corporate Securities Act.** In February, the Commissioner published notice of her intent to amend section 260.105.15 of the Department's regulations. This section sets forth an exception from the qualification requirements of the Corporate Securities Law of 1968 for the offer and sale of shares in exchange for shares issued by another corporation if certain conditions are met. The Commissioner amended section 260.105.15 to clarify that the offer and sale must be in exchange for "all" shares of the acquired corporation, "except for directors' qualifying shares." The alternative requirement that the exchange be subject to approval of the affirmative vote of not less than 75% of the outstanding shares of a class to be exchanged was amended to require only majority approval of the outstanding shares of the acquired corporation (unless otherwise stated in the articles of incorporation, bylaws, or applicable state law). Following a public comment period, the Commissioner adopted the amendments; the Office of Administrative Law (OAL) approved them on May 3.

The Department's proposed amendments to regulatory sections regarding qualifications of broker-dealers and investment advisors were renoticed on March 23. A new public comment period commenced on April 23 and remained open for thirty days. This proposal involves amendments to section 260.217, 260.217(a), 260.217(b), 260.608.2(a), and 260.617. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 80 for background information.)

**Regulatory Action Under the Health Care Service Plan Act.** The public comment period on numerous proposed amendments and additions to the Department's regulations implementing

the Knox-Keene Health Care Service Plan Act (HCSPA) regarding the Medicare program ended on January 19. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 104-05 for detailed background information on these changes.) The proposed changes are currently being reviewed by the federal government to ensure consistency with the changes in federal Medicare laws.

The Commissioner's proposed amendments to section 1300.70, which would establish mandatory requirements governing the structure, elements, and implementation of internal quality of care review systems for health care service plans, were considered in a public hearing on February 5. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 105 for detailed background information on these amendments.) The Department is currently reviewing the public comment concerning the proposal.

The Commissioner also proposed to amend the Department's regulations under the HCSPA relating to tangible net equity (TNE). Section 1300.76 will be amended to set new minimum levels of TNE for full service plans and new levels for specialized service plans. The amendment will also set a schedule for implementing the new TNE requirements over a three-year period. Section 1300.76.1 would be added to the regulations, to require plans to make a deposit of specified amounts to the Commissioner or to an insured bank or savings and loan in California. Section 1300.76.1 would also set up a two-year schedule of implementation for specialized service plans, and will include provisions to govern the deposits' usage. The Commissioner also proposes technical amendments to sections 1300.84, 1300.84.06, and 1300.84.3. The Department was scheduled to hold a public hearing on the proposed changes on June 19 in Sacramento.

**Regulatory Action Under the Escrow Law.** In late April, the Commissioner published notice of her intent to adopt new section 1718 to the Department's regulations under the Escrow Law, relating to the deposit of a cash bond with the Commissioner in lieu of a surety bond. The Commissioner proposes to adopt a regulation setting forth the procedures to be followed and the form to be used when making the assignment of the deposit, certificate, or account pursuant to Financial Code section 17202.1. The proposed regulation will also add a provision to govern adjudication of claims filed against the deposit and return of the deposit to the escrow agent. The comment period on this proposed change closed on June 22.



## LEGISLATION:

*SB 2431 (McCorquodale)* would have transferred the licensing and regulatory functions of the Banking Department, the Department of Savings and Loan, and the Department of Financial Institutions, headed by a Commissioner of Financial Institutions appointed by the Governor and confirmed by the Senate. This bill was dropped by its author.

*SB 2163 (Hart)*, as amended June 7, would require the Insurance Commissioner, the Superintendent of Banks, the Savings and Loan Commissioner, and the Commissioner of Corporations to adopt regulations governing ex parte communications with respect to their departments. In general, these regulations would require a copy of written ex parte presentations and a memorandum of ex parte oral presentations to decisionmakers to be placed in the public file or record of the affected proceeding. The bill would additionally require the adoption of procedures to ensure compliance with these provisions, and to provide public notice listing written ex parte presentations and memoranda of oral presentations received during the previous week relating to affected proceedings. The bill would also permit the issuance of a public notice adopting more stringent regulations governing ex parte communications when it is in the public interest with respect to particular proceedings to do so. Unless exempted, the bill would prohibit any ex parte communication to decisionmakers during the period of time that this provision has been made applicable to the matter. The bill would make a violation of any regulation adopted pursuant to these provisions a misdemeanor subject to a specified fine. This bill is pending in the Assembly Finance and Insurance Committee.

*AB 2292 (Chandler)*, as signed by the Governor on May 22 (Chapter 107, Statutes of 1990), modifies existing law which provides certain protections for volunteer directors and officers of various nonprofit corporations. Specifically, it enacts a uniform definition of "compensation" in order to create a standard rule for determining who qualifies as a volunteer; specifies that certain qualified immunity provisions also apply to volunteer officials of nonprofit corporations organized to provide religious or literary services; and clarifies the insurance requirement in the qualified immunity provisions of Corporations Code section 5047.5. It provides that the immunity applies only if the claim against the director or officer may be

made directly against the corporation and the general liability policy is in force both at the time of injury and the time the claim against the corporation is made, so that the policy is applicable to the claim. The volunteer director or officer is personally immune from liability if the general liability policy is found to cover the damages caused by the volunteer official.

*SB 977 (Beverly)*. Existing law authorizes the Commissioner of Corporations to certify national securities exchanges and interdealer quotation systems as meeting Department of Corporations standards. Securities eligible for sale on such a certified exchange or system are exempt from California's securities qualification rules.

As approved by the Governor on May 8 (Chapter 86, Statutes of 1990), this bill authorizes the Commissioner to require certified exchanges or interdealer quotation systems to file annual reports containing the variances granted from an exchange or system's listing criteria, including variances from corporate governance and voting rights standards; reasons for any such variances; how such variances are reviewed for their effect upon investors and for the purpose of determining whether the variances should be continued; and other information deemed relevant by the Commissioner. The bill also requires the Commissioner to file a report with the legislature, on or before June 30, 1992, setting forth the Commissioner's findings and recommendations based on these reports.

*AB 4064 (Epple)* is one of many legislative responses to the Lincoln Savings and Loan scandal. As amended May 3, this bill would amend Corporations Code section 25140 to impose restrictions on the sale of securities by banks, savings associations, and industrial loan companies; and require specified regulators (including DSL and the Department of Corporations) to exchange information regarding enforcement action taken against financial institutions and open investigations of financial institutions. This bill is pending in the Senate Banking and Commerce Committee.

*SB 2494 (Vuich)*, as amended May 31, would prohibit any financial institution with defined insured deposits from offering to the public, at any office at which it accepts deposits, any security of which it is the issuer, or any security of its holding company, parent, or affiliates that is not insured by a federal agency or instrumentality, except as permitted by state or federal law or regulation or by prior written approval of a financial institution regulator. It would

also prohibit employees of financial institutions from soliciting the sale of those securities or directing persons to a place where those securities may be purchased. This bill is pending in the Assembly Finance and Insurance Committee.

*AB 4157 (Waters, N.)*, as amended April 26, would require the Department of Housing and Community Development to notify any concerned governmental agency whenever it is determined by investigation that an escrow agent has done any of certain specified acts. The bill is pending in the Senate Committee on Housing and Urban Affairs.

*SB 2574 (Robbins)*, which would require a share exchange tender offer to be approved by the board of the acquiring corporation, is pending in the Assembly Finance and Insurance Committee.

*AB 2774 (Eastin)*, as amended April 16, would remove the ceiling on increases in the annual assessment on licensed escrow agents, to enable the Department of Corporations to fully fund its escrow agent regulatory program. The bill would also strengthen and enhance the Commissioner's regulatory power, specifically authorizing the Commissioner to seek injunctions against escrow agents and to revoke an escrow agent's license for failure to comply with any order. The bill permits the Commissioner to impose a civil penalty of \$500 per day, up to a maximum of \$15,000 for the late filing of reports by escrow agents. The bill is pending in the Senate Banking and Commerce Committee.

*SB 1762 (Vuich)*, as amended May 30, would authorize the Commissioner to censure, deny, suspend or revoke a broker-dealer or investment adviser certificate for willful violation of the Commodity Exchange Act. The Commissioner could take the same actions upon a finding that the broker-dealer or investment adviser is subject to any currently effective order of the Commodity Futures Trading Commission denying registration to or revoking or suspending the registration of that person under the Commodity Exchange Act, or if the Commissioner finds that the person is subject to any currently effective order of any board of trade or commodity exchange suspending or expelling that person from membership or association with any member of the board of trade or commodity exchange. This bill is pending in the Assembly Ways and Means Committee.

The following is a status update of bills described in CRLR Vol. 10, No. 1



(Winter 1990) at page 105:

*AB 2259 (Bentley)*, as amended on January 24 to authorize a parent company to merge into its subsidiary corporation, is pending in the Senate Committee on Insurance, Claims and Corporations.

*SB 503 (Stirling)*, as amended August 21, 1989, would permit the director of a corporation to consider and act in the best interests of the public as well as in the best interests of the corporation and its shareholders. This bill is still pending in the Assembly Judiciary Committee.

*AB 1666 (Wright)*, which exempts specified transactions from qualification under the Corporate Securities Law of 1968, was signed by the Governor on April 5 (Chapter 40, Statutes of 1990).

## LITIGATION:

In *In Re American Continental Corporation/Lincoln Savings and Loan Association*, No. 589302 (Orange County Superior Court), the Department has been dismissed as a named defendant. The case is a class action filed on behalf of 23,000 investors who lost upwards of \$200 million in the collapse of Lincoln Savings and its now-bankrupt parent company, American Continental Corporation (ACC). Plaintiffs sued ACC, Lincoln, and its owner Charles H. Keating, Jr., both the law and accounting firms of ACC/Lincoln, and the state of California and its Department of Corporations. The Department approved the issuance and sale to the public of \$350 million in high-risk, uninsured junk bonds at the branch offices of Lincoln. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 103 and 113-14; and Vol. 9, No. 4 (Fall 1989) p. 100 for background information on the Lincoln scandal.)

Other defendants include Karl Samuelian and former Corporations Commissioner Franklin Tom. In 1983, Samuelian—one of Governor Deukmejian's chief fundraisers—recommended that the Governor appoint Tom, a member of Samuelian's law firm, as Commissioner of the Department of Corporations. When Tom resigned in 1987 to return to Samuelian's law firm, Deukmejian replaced him with Christine Bender, another former member of Samuelian's firm.

Samuelian was hired by ACC's owner, Charles Keating, to represent the company before California state regulators. At one meeting in March 1988, Samuelian and Tom lobbied Bender and her staff to approve a second ACC junk bond issue for \$150 million. The first request, for the public sale of \$200 mil-

lion worth of high-risk bonds, was approved by Tom in 1986. Bender eventually approved the second request, despite questions about ACC's worsening financial condition that were raised by federal banking regulators and the state Department of Savings and Loan (DSL).

Commissioner Bender testified before the Assembly Finance and Insurance Subcommittee in November 1989. Bender stated that no application had ever received greater scrutiny by the Department, that the Department had thoroughly reviewed ACC's financial position, and that the Department consulted with many state and federal agencies regarding ACC. Bender admitted that DSL had informed the Department of Corporations of its concerns about Lincoln and ACC in 1988. She concluded, however, that "...in the course of [DSL's] review of ACC's securities applications and its contacts with savings and loan regulators, [they] were unable to uncover any concrete evidence that ACC would not be able to continue to make payments on its debentures as scheduled."

The state of California and the Department were dismissed as defendants in the class action on May 3. Superior Court Judge David Sills ruled that the state enjoys statutory immunity from prosecution "for acts of its employees...where the act or omission was the result of the exercise of discretion...whether or not such discretion is abused."

Recently, Samuelian and Tom announced a tentative agreement to pay up to \$14.3 million to resolve claims by investors. Over \$4 million would be paid up front, and if the investors are unable to recover an additional \$10 million from "other sources", the law firm's insurer will make up the difference. It is still unknown when investors will start recouping any of their losses.

## DEPARTMENT OF INSURANCE

*Commissioner: Roxani Gillespie*

*(415) 557-3245*

*Toll Free Complaint Number:*

*1-800-233-9045*

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 Codes 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 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 1,450 insurance companies which carry premiums of approximately \$53 billion annually. Of these, 650 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) regulates compliance with the general rating law. Rates generally are not set by the Department, but through open competition under the provisions of Insurance Code sections 1850 *et seq.*; and

(6) becomes the receiver of an insurance company in financial or other significant difficulties.

The Insurance Code empowers the Commissioner to hold hearings to determine whether brokers or carriers are complying with state law, and to order an insurer to stop doing business within the state. However, the Commissioner may not force an insurer to pay a claim—that power is reserved to the courts.

DOI has over 800 employees and is headquartered in San Francisco. Branch offices are located in San Diego,