loan loss provisions for outstanding loans to Third World countries, a decline in past due loans, and successful attempts to curb overhead expenses.

Comments Sent to Federal Reserve Board. On April 27, the Superintendent submitted comments to the Board of Governors of the Federal Reserve System expressing opposition to its proposed amendments to Regulation Y (12 C.F.R. Part 225), which would require bank holding companies and their subsidiary state-chartered banks to obtain approval from the Federal Reserve Board prior to the banks' acquisition of stock in a non-bank subsidiary.

The Superintendent requested that the amendments be withdrawn in their entirety on grounds that: (1) the legal authority cited in the Board's solicitation of public comment was reversed on appeal. The U.S. Court of Appeals vacated that portion of the opinion in *American Insurance Association v. Clarke*, 854 F.2d 1405 (D.C. Cir. 1988), which would have allowed the Board to approve or disapprove of operational subsidiaries acquired by a bank subsidiary; (2) the recent expansion of powers authorized for subsidiaries of California banks (including the authority to invest in, develop, own, and sell real property) is closely supervised by the State Banking Department and the FDIC, thereby safeguarding against undue risk; (3) under California law, these expanded activities may be conducted directly by state-chartered bank; the Board's amendment would have the effect of forcing the activities into the bank itself, creating a more direct risk to the safety and soundness of bank operations than would conducting the activities in an operations subsidiary; and (4) the proposal would constitute a broad and sweeping attack on the dual banking system by interfering with the state legislative/regulatory process that has authorized expanded powers.

LEGISLATION:

AB 643 (Calderon) would require financial institutions to provide handicap access to automated teller machines. This bill is pending in the Assembly Committee on Finance and Insurance.

AB 1024 (Calderon) would require the Department to conduct a survey on interstate banking, and report to the legislature by June 30, 1990 on the identities of California financial institutions which maintain branches in other states, California financial institutions owned by foreign entities, and financial institutions which do not meet the federal definition of "banks" that maintain home offices or branches in California. This bill is also pending in the Assembly Committee on Finance and Insurance.

SB 476 (Robbins) would extend the requirement that banks disclose information regarding consumer bank account charges to include certificate of deposit accounts. This bill passed the Senate on June 1 and is pending in the Assembly Finance and Insurance Committee.

The following is a status update on bills discussed in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 81-82:

AB 2521 (Johnston and Vuich), the California Bankers Association's bill which would repeal the entire existing Banking Code and replace it with 468 new sections of code, is a two-year bill pending in the Assembly Finance and Insurance Committee. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 70-71 for further information on this bill.)

AB 244 (Calderon), which would require financial institutions operating automated teller machines outside or away from their premises to comply with certain lighting, landscaping and location requirements, is a two-year bill pending in the Assembly Committee on Finance and Insurance. A similar bill introduced by Assemblymember Calderon (AB 3301) died in that committee last term.

AB 438 (Lancaster), which would exempt (among others) banks, savings associations, and credit unions from existing requirements relating to the contents of mortgage contracts, deeds of trust, real estate sales contracts, or any note or negotiable instrument issued in connection with any of these documents used to finance the purchase or construction of real property containing four or fewer residential units, passed the Assembly and is pending in the Senate Banking and Commerce Committee.

SB 270 (Stirling), as amended April 6, would create reporting requirements when a state-chartered bank converts into a national banking association. This bill would require the national banking association created by such conversion to file a prescribed officers' certificate with the Secretary of State, and would require the Secretary of State to enter the fact of the conversion on the corporate records of the state bank so converted. The bank shall no longer be considered organized under the laws of this state after the Secretary of State enters the fact of the conversion on the Secretary of State's corporate records. This bill is pending in the Assembly Finance and Insurance Committee.

DEPARTMENT OF CORPORATIONS

Commissioner: Christine W. Bender
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The Department of Corporations is a part of the cabinet-level Business and Transportation Agency. A Commissioner of Corporations, appointed by the Governor, oversees the Department.

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. On March 21, the Commissioner announced that the Greater San Diego Health Plan (GSDHP), operating as Western Health Plan of Southern California, has decided to cease operations in Los Angeles, Riverside, San Bernardino, and Orange counties, where it had approximately 16,000 enrollees. However, GSDHP will continue its operations in San Diego County, serving approximately 135,000 enrollees.

Subsequently, on June 8, the Commissioner directed GSDHP to cease and desist from making loans or transfers to, or investing its funds in, its parent company, Western Health Plans, Inc., other than for the purpose of making payments to medical care providers. The Commissioner found that GSDHP's excess tangible net equity has declined rapidly as a result of loans and transfers of funds to Western for the purpose of financing Western's operating losses. The Commissioner has assured officials at GSDHP that the order will not prevent the plan from continuing to provide or pay for health care services for its enrollees.

On March 20, as a result of a financial statement revealing a significantly escalating net equity deficiency and a rapidly deteriorating financial viability, the Commissioner ordered Eyecare USA of California, Inc. to cease and desist from enrolling new members until the company can demonstrate that it is a fiscally sound operation with adequate provision against the risk of insolvency, and that it maintains the tangible net equity required by the Knox-Keene Health Care Service Plan Act of 1975. Further, Eyecare must demonstrate that it possesses the organizational and administrative capacity required to operate a health care service plan. The funds collected from enrollees for the purchase of eyewear will be held in a trust account until the eyewear is delivered to the enrollee.

On March 17, the Commissioner directed the Foundation Health Plan, headquartered in Sacramento, to cease and desist from the payment of expenses or other obligations of its parent company, Foundation Health Corporation. The order further directed Foundation Health Plan to bring its net equity into compliance with the state standards, thus requiring the Foundation to limit the use of its revenues to the payment of its own claims for health care services and administrative costs. The Commissioner assured Foundation officials that the order will not prevent the Plan from continuing to provide or pay for health care services for enrollees.

Municipal Bonds Investor Alert Bulletin. On March 23, the Department released the latest in its series of quarterly investor alert bulletins. *Municipal Bonds* warns that there were more than 123 municipal bond failures in 1987, and many of the investors were elderly or retired people who thought they were investing in risk-free government bonds, an impression which many broker-dealers offering these investments deliberately create. The Commissioner stated that many investors equate municipal bonds with general obligation government bonds, when in fact many of them are industrial development bonds used to develop manufacturing plants, retirement homes, racetracks, or shopping malls. The bonds are paid off only out of the revenues from the development, and there is no public liability if the development fails. The bulletin lists ten steps to help investors differentiate between legitimate offerings and more speculative ones.

Proposed Rule Changes Under Corporate Securities Law. In March, the Commissioner published notice of her intent to adopt several proposed changes to the Department's regulations, which appear in Title 10 of the California Code of Regulations (CCR). These regulations implement the Corporate Securities Law of 1968.

First, the Commissioner proposes to amend existing section 260.140.84 in several ways. That section currently sets forth investment company ("mutual fund") expense limitations based on a calculation of aggregate annual expenses as those expenses relate to the average net assets of the mutual fund. The aggregate annual expense limitation percentage caps set forth in subsection (a) of the rule will be repealed and new percentage caps are proposed. The definition of "aggregate annual expenses" in subsection (b) will be amended to include two additional exclusions for annual distribution expenses incurred in the sale of mutual fund shares and custodian costs attributable to investments in foreign securities in excess of custodian costs which would have been incurred had the investments been in domestic securities. Finally, subsection (d) of the rule, which requires investment companies to file a report with the Commissioner for the purpose of compiling information on expense limitations under the rule, will be amended to provide that the report need be filed only by a mutual fund whose investment adviser or manager is required to reduce or rebate, or both, advisory and management fees under the rule, or which has received an order under subsection (e) of the rule excluding additional expenses from the definition of "aggregate annual expenses."

The Commissioner also proposed to amend section 260.101.1(c)(2). The rule currently allows a broker-dealer or shareholder to file a notice or supplemental notice pursuant to the exemption from non-issuer qualification under section 25101(b) of the Corporations Code so that secondary trading of a security in California may be authorized. Where a broker-dealer or shareholder files a notice or supplemental notice on behalf of an issuer, either may do so if not the issuer of the security or a person controlling or affiliated with the issuer, and if not "aware or should have been aware" at the time of filing the notice of any fact which would make the information contained in the notice untrue. The Commissioner proposes to delete the "aware or should have been aware" requirement and substitute a requirement of actual knowledge, thus narrowing the obligation of a broker-dealer or shareholder who elects to file a notice on behalf of an issuer.

Section 260.105.28 creates an exemption from the non-issuer qualification requirements for the offer or sale of a security made in reliance upon the current Eligible Securities List published by the Commissioner if, among other things,

the person making the offer or sale is not a person (1) who filed the notice or (2) who is aware or should have been aware at the time of the offer or sale of any fact which makes the security offered or sold ineligible for exemption pursuant to section 25101(b). The Commissioner now proposes to amend the rule to provide an absolute reliance for one who did not file the notice and a conditional reliance for one who did file the notice, as well as to delete the "aware or should have been aware" requirement.

The public comment period on the above-described proposed regulatory changes closed on May 17.

In June, the Commissioner announced several other proposed changes, and invited comments on these until August 4. Section 260.217, which currently sets forth qualifications for broker-dealers, will be amended to set forth qualifications for broker-dealers and agents. Section 260.217(a) will be amended to require that every individual who is a broker-dealer or general partner of a broker-dealer and every officer or agent of a broker-dealer pass the Series 63/ Uniform Securities Agent State Law Examination administered by the National Association of Securities Dealers, within specified time limits.

Section 260.217(b) will be amended to clarify that the provisions of amended subsection (a) do not apply to a broker-dealer or general partner, officer, or agent or a broker-dealer when acting within the scope of his/her affiliation of a broker-dealer licensed by the Cemetery Board, or who sells only evidences of indebtedness for issuers organized exclusively for religious purposes. The exemption for licensees of the Department of Real Estate would be repealed, as it is duplicative of other adopted exemptions.

Section 260.217.1, which currently sets forth qualifications for agents, would be repealed. Section 260.608.2(a) would be amended to provide that the fee for filing a Report of Agent Employment is increased to $25.

Rule Changes Under Franchise Investment Law. The Department's proposal to amend existing sections 310.002, 310.011, 310.001.1, 310.100, 310.100.1 and 310.125; adopt new section 310.000; and repeal existing section 310.000 of its regulations adopted under the Franchise Investment Law, Corporations Code section 31000 *et seq.*, was adopted by the Commissioner, approved by the Office of Administrative Law (OAL), and became effective on May 19. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 71 for details on these proposed changes.)

LEGISLATION:

SB 579 (Beverly), as amended April 17, would authorize industrial loan companies to participate as members of the Federal Deposit Insurance Corporation (FDIC) in lieu of membership in the Thrift Guaranty Corporation of California. This bill would delete all authority of industrial loan companies to advertise membership in, or guaranties through, the Guaranty Corporation, and would authorize it to dissolve under specified conditions, precluding any member from receiving a return of its account balance or assessments paid to it except upon its liquidation. SB 579 passed the Senate on May 4 and is pending in the Assembly Finance and Insurance Committee.

SB 754 (Davis). Existing law requires real estate brokers to deposit certain escrow funds, which are not immediately placed with a neutral escrow depository or with the broker's principal, into a trust account in a bank or recognized depository in this state. This bill would authorize those escrow funds and all funds received in connection with any escrow to be deposited into an industrial loan company insured by the FDIC. SB 754 passed the Senate on April 17 and is pending in the Assembly Committee on Finance and Insurance.

SB 930 (Seymour). As amended June 8, this bill would amend Business and Professions Code section 20001 and Corporations Code section 31005, to provide that a franchise does not include a nonprofit organization operated on a cooperative basis by and for independent retailers which provides wholesale goods and services primarily to its member retailers and in which, among other things, control and ownership of each member is substantially equal and the services of the organization are furnished primarily for the use of the members. This bill pending on the Senate floor at this writing.

SB 1444 (Boatwright) would authorize the merger of corporations and limited partnerships, setting forth the procedure to effectuate the merger and specifying the effect of the merger on the creditors of the entities involved in the merger. The bill would specifically require, unless otherwise provided in the partnership agreement, approval by all limited and general partners, the board of directors, and shareholders. The merger will be effective from the date of filing the merger agreement with the Secretary of State. The bill would vest in the resulting limited partnership or corporation all rights, privileges, and powers of each partnership and corporation and all property and all debts due to the partnership and corporation. This bill is a two-year bill pending in the Senate Committee on Insurance, Claims and Corporations.

SB 1212 (Keene), as amended May 17, would require that, prior to acquiring 10% or more of the capital stock or of the capital of an industrial loan company or holding company, a person must apply to the Commissioner requesting written consent for the acquisition. The bill would also provide that it is unlawful for any company to offer or sell any security, in an issuer transaction, unless the sale has been qualified under the Corporate Securities Law of 1968. The bill would specify that the security and transaction exemptions from qualification in the Corporate Securities Law of 1968 shall not apply to the offer or sale of any security or to any security of a company in an issuer transaction. The bill would also give the Commissioner additional authority with respect to the qualification of securities by these companies, including the authority to issue a stop order denying effectiveness to any qualification of the securities under specified provisions of the Corporate Securities Law of 1968. This bill is pending in the Senate Appropriations Committee.

AB 1946 (Wright), as amended May 15, would amend health care service plans under the Knox-Keene Health Care Service Plan Act of 1976 to (1) require that the fee for filing a notice of major health plan modification not exceed $750; (2) require health plan benefits to be consistent with recommendations adopted by the American Academy of Pediatrics in September 1987; (3) make it unlawful for any person to willfully make any untrue statement of material fact in any application, notice, amendment, report, or other submission filed with the Commissioner, or to willfully omit to state in any application, notice, or report any material fact which is required to be stated, and (4) repeal the Commissioner's authority to summarily suspend or revoke the transitional license of a plan under specified circumstances. This bill is pending in the Assembly Ways and Means Committee.

AB 2135 (Bader), as amended May 22, would provide that an application for registration of an offer to sell a franchise shall be filed with the Commissioner upon the Uniform Franchise Registration Application as identified, modified, and supplemented by rule of the Commissioner. The bill would fur-

ther provide that the fee for filing the application for registration of the offer to sell a franchise is $675 rather than $450; the fee for the filing of renewal of registration is $450 rather than $150; and the fee for filing a material, rather than major, modification is $50. The bill would add a fee of $675 for filing an application for the approval of written notice of violation. This bill is pending in the Assembly Ways and Means Committee.

The following is a status update of bills described in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 83-84:

AB 1125 (Chandler), as amended May 2, would specify that a director of a nonprofit mutual benefit corporation is required to perform duties in a manner the director believes to be in the best interests of the members of the corporation. This bill is pending in the Assembly Judiciary Committee.

AB 705 (Lancaster), as amended April 20, would provide that a certificate to act as a credit union remains in full force and effect until surrendered and accepted by the Commissioner, or until suspended or revoked by the Commissioner with proof of bond coverage, including fraud, dishonesty, and faithful performance coverage. AB 705 passed the Assembly on June 7 and is pending in the Senate Committee on Banking and Commerce.

AB 657 (Floyd), which would permit the Commissioner to refuse to issue a permit for qualification of securities in a recapitalization or reorganization unless its issuance is fair, just, equitable and in the public interest, is still pending in the Assembly Finance and Insurance Committee.

AB 1666 (Wright), as amended May 11, would exempt specified transactions from qualification with the Commissioner under the Corporate Securities Law of 1968, where the exchange of securities is in consideration of the issuance of securities of another corporation if, among other things, the corporation to be acquired has 35 or fewer security holders; all security holders of the corporation to be acquired have consented to the transaction in writing; and each recipient security holder has represented that the acquisition of the securities in the transaction is for the holder's own account and not with a view to or for sale in connection with any distribution of the security. This bill is pending in the Assembly Ways and Means Committee.

SB 290 (Greene), as amended May 3, provides that a copy of the latest statement required to be filed by a foreign corporation relating to operations and designating an agent for service of process is sufficient evidence of the appointment of an agent for service of process. SB 290 passed the Senate on May 25 and is pending in the Assembly Judiciary Committee.

SB 275 (Campbell), which would eliminate the notice requirement as a condition of exemption of specified securities from qualification with respect to the offer or sale of securities, is still pending in the Senate Appropriations Committee.

SB 269 (Stirling), which would delete the prepayment of minimum tax upon filing a certificate to change status from a nonprofit public benefit corporation to a nonprofit mutual benefit corporation, passed the Senate on May 25 and is pending in the Assembly Judiciary Committee.

SB 526 (Russell), which would increase the time period for filing an application with the Commissioner to qualify any security for which a registration statement has been filed under the Securities Act of 1933, is still pending in the Senate Banking and Commerce Committee.

AB 10 (Hauser), which would create the California Health Insurance Program, is still pending in the Assembly Finance and Insurance Commission.

AB 60 (Isenberg), as amended April 24, would establish the California Catastrophic Health Insurance Program, providing for scope of coverage, rate limitations, deductibles, co-payments, and method of operation, including authority to contract with public and private entities for program administration, and subscriber eligibility and enrollment. This bill is still pending in the Assembly Ways and Means Committee.

SB 6 (Robbins), as amended May 9, would create the California Health Coverage Association. This bill is still pending in the Senate Appropriation Committee.

SB 317 (Stirling), which provides that certain nonprofit corporations organized prior to January 1, 1971, and which have never filed an annual statement could be subject to suspension by the Secretary of State, passed the Senate on May 11 and is pending in the Assembly Judiciary Committee.

DEPARTMENT OF INSURANCE

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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 provide for the Commissioner's powers and duties. Authorization for the Insurance Department is found in section 12906 of the 800-page Insurance Code.

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 1,300 insurance companies, which carry premiums of approximately $26 billion annually. Of these, 650 specialize in writing life and/or accident and health policies.

In addition to its licensing function, the DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects over 120 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 sig-