REGULATORY AGENCY ACTION

BANKING DEPARTMENT
Superintendent: Howard Gould (415) 557-3232

The State Banking Department 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 superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor. The superintendent approves applications by 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 proposed name does not so closely resemble as to cause confusion 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 or relocation of branch offices and the establishment 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 traveler's checks unless licensed. The superintendent also regulates the safe-deposit business.

The superintendent examines the condition of all licensees. However, as the result of the increasing number of banks and trust companies within the state and the reduced number of examiners following passage of Proposition 13, the superintendent now conducts examinations only when necessary, but at least once every two years. The Department is coordinating its examinations with the FDIC so that every other year each agency examines certain licensees. New and problem banks and trust companies are examined each year by both agencies.

The superintendent administers the Small Business Loan Program, designed to provide long-term capital to rapidly growing small businesses whose growth exceeds their ability to generate internal earnings. Under the traditional standards used by banks, these small businesses cannot provide adequate security to qualify for regular bank loans.

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 all 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:

tour in California by providing concert tickets and jackets to cosponsoring radio stations, which would in turn give them to listeners who called in when the stations advertised the concert and the "give-aways". The tickets would identify Miller as a sponsor and the jackets would bear logos of Miller products and the concert.

The Department notified Miller that it would consider the furnishing of the free tickets and jackets a violation of Business and Professions Code section 25600 and Rule 106, which prohibits a licensee from giving any premium, gift, or free goods in connection with the "sale or distribution" of any alcoholic beverage. Miller sought an order preventing ABC from enforcing its interpretation of the rule.

The court held that, although Miller's give-aways would not violate the portion of Rule 106 which prohibits gifts in connection with the "sale" of alcoholic beverages, they would violate the portion of Rule 106 prohibiting gifts in connection with the "distribution" of alcohol, as "distribution" is commonly defined to mean "the process by which commodities get to final consumers, including storing, shipping, and advertising" (emphasis original). The court also found that the legislature intended to authorize the Department to enforce its interpretation of Rule 106 due to the 1983 passage of Assembly Bill 686. AB 686 amended section 25600 to expand the scope of the statutory prohibition to donations made in connection with the distribution as well as the sale of alcoholic beverages.

In a different case, the ABC has decided not to appeal the Third District Court of Appeal's ruling in California Beer and Wine Wholesalers Association v. ABC, No. C000498 (May 13, 1988), which invalidated the portion of Rule 106 which authorized beer wholesalers to give retailers up to $50 in "advertising specialties." (See CRLR Vol. 8, No. 3 (Summer 1988) p. 85 for background information.) The ABC has decided to enforce the court's ruling by prohibiting all wholesalers of alcoholic beverages from giving any promotional items to retailers.

The court's ruling enables California's beer, wine, and distilled spirits wholesalers to save a great deal of money by not having to give retailers, as a means of increasing sales of their products, promotional items such as trays, sponges, and towels.
II. 

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mire) and Committee Print II (St. 
real estate activities in 
check so as not to interfere with 
endorsement of the bank at which 
endorsement rules are expected to cause some 
temporary confusion while members of 
the public and businesses adjust.

Comments Sent to House Banking Committee Members. On July 18, Superintend-ent Howard Gould addressed a letter to members of the U.S. House of 
Representatives' Banking Committee, expressing concern with the treatment 
of state-chartered banks' insurance and 
real estate activities in S. 1886 (Proxi-
mire) and Committee Print II (St. 
Germain).

While the proposed legislation pro-
vides that the insurance activities of 
freestanding, state-chartered banks and 
state-chartered bank holding companies will continue to be regulated by state 
laws, state-chartered bank affiliates 
owned by out-of-state bank holding 
companies would no longer be governed 
by the law of the state where the affilia-
tion is located. Superintendent Gould 
opposes the proposed legislation be-
cause he believes it impermissibly pre-
empts state authority over the insurance 
activities of state-chartered banks within 
its boundaries owned by out-of-state 
holding companies.

The Superintendent was in favor of 
an amendment to the insurance pro-
vision presented by Congressmember 
Kleczka, which would have preserved 
state authority over insurance activities 
of state-chartered banks, regardless of 
their holding company affiliation. How-
ever, the Committee, which has ap-
proved S. 1886 and Committee Print II, 
defeated Congressmember Kleczka's proposed amendment.

Likewise, Superintendent Gould is 
concerned with the real estate pro-
visions of the pending legislation which, 
although providing for individual states' 
regulation of the real estate activities of 
state-chartered banks, imposes a mora-
torium on the future exercise of state-
authorized real estate activities by state-
chartered subsidiaries of bank holding 
companies. The bill is currently await-
ing hearing in the House as H.R. 5094. 
(For more information, see CRLR Vol. 
8, No. 2 (Spring 1988) p. 82.)

Superintendent Urges Banks to 
Adopt Real Estate Investment Policies. In May, Superintendent Gould address-
ed a letter to the chief executive officer of each California bank authorized to 
engage in direct investment in real 
estate. Recognizing the risk of jeopar-
dizing banks' current authority to en-
gage in real estate activities or of having 
federal restrictions placed on it if ap-
propriate steps are not taken to assure 
the authority is exercised properly, the 
Superintendent urged the board of di-
rectors of each bank authorized to 
engage in real estate activities to adopt 
policy guidelines addressing each bank's 
-specific methods of operation in the real 
estate investment area, particularly with 
regard to the relationship between bank 
insiders and the bank's real estate activi-
ties. The Superintendent's letter dis-
cussed situations in which insiders are 
appropriately benefiting from their 
relationship with the bank, by, for ex-
ample, selling goods, services, or real 
estate to the bank at higher than pre-
vailing fair market values, or situations 
where bank executives have a financial 
or personal interest in the real estate 
projects of the bank.

The Superintendent's letter states 
that beginning in July, the Department's 
examiners will check for the existence of 
each bank's policies regarding its real 
estate activities, and will outline their 
provisions in the examination report, in 
order to assess the potential exposure 
which exists in this area. According to 
Patrick Carroll, Staff Services Analyst 
in the Department's Research Section, 
examiners have begun checking whether 
banks have developed specific policies, 
and a few banks have forwarded their 
policies directly to the Department.

Comments Sent To FDIC. On May 
13, Superintendent Gould commented on the proposal of the Federal Deposit 
Insurance Corporation (FDIC) to estab-
lish a risk-based capital analysis system 
relating the amount of a bank's capital 
to the level of risk contained in its 
assets. The Superintendent urged FDIC 
to undertake a comprehensive evalua-
tion of the potential impacts of the 
proposal on the financial system prior 
to full implementation of the proposed 
guidelines.

The Superintendent included with his 
letter the results of a survey which the 
Department distributed to California 
banks for calculation of their risk capi-
tal ratio. The survey indicated that the 
FDIC's proposal would significantly 
affect banks having assets in excess of 
$1 billion, while having no significant 
effect on the capital positions of banks 
under $300 million in size. In addition 
to recommending modifications to sev-
eral of the proposal's provisions, the 
Superintendent recommended that the 
proposal exempt smaller banks from its 
provisions, and that other risk factors 
impacting capital adequacy be addressed, 
including operational risks and interest 
rate risks. To date, FDIC has not imple-
mented final guidelines.

Banks Authorized to Invest in Farmer 
Mac Stock. In June, the Department 
determined that state-chartered banks 
may invest in federal Agricultural 
Mortgage Corporation (Farmer Mac) 
stock. The determination was made 
pursuant to section 772 of the Financial 
Code, which provides for investment by 
banks in the capital stock, obligations, 
and securities of corporations, subject 
to such regulations as the Superintend-
ent may prescribe.

Warnings Issued. During the past 
several months, the Department has 
issued a warning to cease and desist 
from doing business in California to the 
following entities, which are not author-
ized to transact business in the way or 
manner of a bank: The Interstate Con-
sumer Services Bank (June 10); First 
International Bank & Trust, Ltd. (San 
Diego) (July 27); European Industrial 
Development Bank, Ltd. (Los Angeles) 
(August 8); and Swiss Trade & Com-
merce Trust Co., S/A (Anaheim) (Aug-
ust 8).

Quarterly Report. At the close of 
business on March 31, 1988, the 280 
state-chartered banks of deposit with 
1,724 branches had total assets of $91.6 
billion, an increase of $2.9 billion, or 
3.2% from March 31, 1987. During this 
period, there was a net increase of 4 
banks and a net increase of 25 branches. 
Fiduciary assets of the trust depart-
ments of 41 state-chartered banks, one 
title insurance company, and 22 non-
deposit trust companies totaled $110.5
billion, a decrease of $86.1 billion, or 43.7% from March 31, 1987. The assets of 102 agencies and branches of foreign banking corporations (having 117 offices) increased 18.1% to $70.7 billion.

Analysis of State Banks' Performance—First Quarter 1988. For the quarter ending March 31, 1988, total net after-tax revenues for the 280 state-chartered banks was $183 million; large banks (over $500 million in size) had net after-tax earnings of $134 million. The percentage of banks with earnings losses for the quarter was 14.7%.

Annual Assessment. Under section 270 of the Financial Code, the Superintendent is required to collect from the banks and trust companies under the Department's supervision an annual proportionate assessment, not to exceed one-hundredth of one percent of the bank or trust company's total resources (deducting secured deposits of public moneys and bills payable). In August, the Department set the assessment base rate at $0.94 per thousand dollars of total resources, representing 43% of the statutory maximum base rate of $2.20. The assessment base rate was set after analyzing the status of the Banking Fund, the current year's budget, anticipated revenues from other sources, and the total resources of licensees as of June 30, 1988. According to Patrick Carroll, Staff Services Analyst in the Department's Research Section, the annual assessment is the Department's main source of funding.

Enforcement. On July 20, an order enforcing the Superintendent's March 25 cease and desist order against California Capital Fund (see CRLR Vol. 8, No. 3 (Summer 1988) p. 87) was issued by the Alameda County Superior Court (No. 640086-6).

Permanent injunctions were issued by the Orange County Superior Court (No. 53-23-62) on February 5 and May 7, respectively, against Achille Haddad and Sharon Jelovech, individually and doing business as Central Trust Company, Central Trust Investment Bankers, or Central Pacific Bancorp, ordering them, among other things, to cease and desist from transacting business in the way or manner of a commercial bank or trust company. (For more information, see CRLR Vol. 8, No. 1 (Winter 1988) p. 78.)

LEGISLATION:

1. SB 315 (Montoya), which would have required those advertising themselves as financial planners to furnish a specified disclosure statement to their clients or face civil liability, was defeated in the Assembly Finance and Insurance Committee on August 2. The bill, which was strongly opposed by the banking industry, would have required financial planners to disclose information about their educational and professional qualifications, any past felony conviction, any ties to recommended investments, and the planner's sources of financial information. Senator Montoya has tried unsuccessfully to pass such a measure for four years. (For additional information on this bill, see CRLR Vol. 8, No. 3 (Summer 1988) p. 87 and Vol. 8, No. 2 (Spring 1988) p. 82.)

2. Other Bills. The following bills, previously reported in CRLR Vol. 8, No. 3 (Summer 1988) at page 87, have died in committee:
- SB 2583 (Craven), regarding payment of interest by banks on bearer bonds where there has been a call of those bonds and the bank has not timely responded; AB 3114 (Lancaster), which would have repealed section 1230 of the Financial Code; and AB 2030 (Seastrand), a companion bill to SB 315 (Montoya).

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 to 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 Depository 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:

Changes in Regulations Under the Knox-Keene Health Care Service Plan Act. New section 1300.43.15 of the Department's regulations in Title 10 of