



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 pro rata 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 revenue 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 Jelovchan, 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:

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.)

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

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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:

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



REGULATORY AGENCY ACTION

the California Code of Regulations (CCR) under the Knox-Keene Health Care Service Plan Act was approved by the Office of Administrative Law (OAL) and became effective October 8. Section 1300.43.15 exempts from the licensure requirements for health care service plans a plan whose only activity in California is limited to the offer and sale of plan contracts for enrollees who are residents of or domiciled in a foreign county, provided that: (1) the annual premium per enrollee does not exceed \$200; (2) the solicitors or firms soliciting the plans are physically present in the state; (3) the provision of health care services by the plan and the receipt of consideration from the subscriber does not violate the law of the foreign county in which the enrollee resides or laws of the United States; and (4) notice is filed with the Commissioner.

Changes in Regulations Under the Industrial Loan Law. The Department recently amended sections 1213 and 1211, and adopted section 1213.1, Title 10 of the CCR, under the Industrial Loan Law; these changes were approved by the OAL and became effective October 8.

Section 1213, which sets forth requirements for property appraisals, was amended to apply only to the appraisal of personal property; section 1213.1 was adopted to set forth requirements for appraisals of real property.

Section 1211, which permits the use of standard publications to ascertain market value of collateral, was amended to except obligations secured by real property.

Changes in Regulations Under the Credit Union Law. Proposed amendments to sections 985 and 986, Title 10 of the CCR, under the Credit Union Law were adopted by the Commissioner, approved by the OAL, and became effective on July 21. Section 985 has been amended to require credit unions to adopt a written appraisal policy for appraisals of real property offered as security for loans; the policy must require a "certified appraisal" as defined in section 1922.1(a) of the Civil Code. Section 986 has been amended to require credit unions to adopt a written appraisal policy for appraisals of automobiles or other personal property offered as security for a loan. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 84 for background information on these changes.)

Changes in Regulations Under the Franchise Investment Law. The Department's proposed amendments to sections

310.111 to 310.210 under the Franchise Investment Law relating to franchise applications were approved by the OAL and became effective on August 26. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 84 for detailed background information on these changes.)

Enforcement. On July 28, the Commissioner issued an order to take possession of The Escrow Department's office in Torrance. The president and owner of The Escrow Department is Jean McCain. The Commissioner appointed Russell Greenwood as conservator. Previously, on July 22, the Commissioner had frozen all escrow funds and transactions when a trust fund shortage of at least \$125,000 to as much as \$260,000 was discovered.

On September 12, the Los Angeles Superior Court entered a permanent injunction against Best Western International, Inc. (Best Western). The permanent injunction enjoins Best Western from offering or selling any franchise in this state in violation of the California Franchise Investment Law. Best Western is required to either register its offerings as franchises or file a notice of exemption with the Department of Corporations. In either case, full disclosure of all terms and conditions of the offering will have to be made to all Best Western members.

On May 11, the Los Angeles Superior Court issued an order of permanent injunction and ancillary relief pursuant to stipulation against Impact Petroleum, Inc., Donald J. Mooers, and James W. Mooers of Canoga Park. The Commissioner's civil complaint alleged that without a permit defendant Impact and its principals offered and sold securities relating to oil and gas wells through high-pressure telephone solicitations. The court's order prohibits the defendants from further violating the Corporate Securities Law and orders them to pay costs of investigation and penalties totalling \$35,000.

On July 12, the Commissioner announced a \$23.5 million settlement in the Department's action against the directors and officers of Western Community MoneyCenter. MoneyCenter, a Walnut Creek-based thrift and loan company, failed in 1984 with nearly \$100 million in thrift accounts held by the public. The state charged that the failure was due to mismanagement on the part of the officers and directors, and the failure of its accountants to properly audit its financial affairs. Still pending is the state's action against the accounting firm of Peat, Marwick &

Main, for \$42 million (the remainder of the MoneyCenter's deficit), \$25 million in civil penalties, and an injunction against further improper accounting practices.

LEGISLATION:

AB 2876 (Calderon) was signed by the Governor on August 23 (Chapter 549, Statutes of 1988). This bill requires licensees under the Personal Property Brokers Law, the Consumer Finance Lenders Law, and the Commercial Finance Lenders Law to file annual reports in a form prescribed by the Commissioner and under oath.

SB 1600 (Garamendi) was signed by the Governor on September 25 (Chapter 1360, Statutes of 1988). The bill adds section 711 to the Corporations Code, requiring persons possessing the power to vote specified shares of stock on behalf of another to maintain a record of the manner in which the shares are voted, and to disclose the voting record with respect to any matter involving a specified security upon written request.

SB 451 (Beverly) was signed by the Governor on August 29 (Chapter 716, Statutes of 1988). This bill exempt specific securities from qualification standards under the Corporate Securities Law of 1968; it exempts securities designated as national market system securities on an interdealer quotation system by the National Association of Securities Dealers, Inc., which has been certified by a rule or order of the Commissioner.

SB 2060 (McCorquodale) was vetoed by the Governor on September 19. With respect to corporate takeovers, this bill would have prohibited a target corporation from purchasing more than 3% of its equity securities for more than the postdisclosure market price unless the purchase is approved by the board of directors and the shareholders.

SB 2001 (Keene) was signed by the Governor on September 24 (Chapter 1288, Statutes of 1988). With respect to corporations with shares registered under the Securities and Exchange Act of 1934, this bill provides that an amendment of the articles of incorporation of a certificate of determination which includes a supermajority vote requirement must be approved by at least as large a proportion of the outstanding shares as is required by the amendment or certificate of determination for the approval of the specified action.

SB 2552 (Keene) was signed by the Governor on June 4 (Chapter 26, Statutes of 1988). This bill provides that if



a tender offer or written proposal for approval of a reorganization is made to some or all of a corporation's shareholders by an interested party, an affirmative written opinion as to the fairness of the consideration to the shareholders of the corporation is required to be delivered to the shareholders. The opinion must be provided by a person who is not affiliated with the offeror, and who engages in the business of advising others as to the value of properties, businesses, or securities.

The following is a status update of bills discussed in detail in CRLR Vol. 8, No. 3 (Summer 1988) at pages 89-91:

AB 3076 (Stirling) was signed by the Governor on September 16 (Chapter 928, Statutes of 1988), and requires the Attorney General, by July 1, 1989, to study methods of enforcement of the law as it relates to consumer complaints against foreign corporations.

AB 3313 (Chandler) was signed by the Governor on August 22 (Chapter 513, Statutes of 1988). It extends existing law relating to the procedure a corporation is required to follow to redeem its certificated securities to the redemption of uncertified securities.

AB 3758 (Stirling), which makes various changes in the General Corporation Law relating to the organization and dissolution of corporations formed thereunder, was signed by the Governor on September 15 (Chapter 919, Statutes of 1988).

AB 3836 (N. Waters), which amends the statute allowing a corporate agent designated for service of process to resign as such agent, was signed by the Governor on July 13 (Chapter 352, Statutes of 1988).

AB 4371 (Lancaster), which (among other things) deletes the requirement that the Commissioner and the Regional Director of Region VI of the National Credit Union Administration notify each other when either authorizes a new credit union or the expansion of the field of membership of an existing one, was signed by the Governor on August 25 (Chapter 578, Statutes of 1988).

AB 4609 (Stirling), which permits directors to hold office for a shorter term than the presently-required annual term under specified conditions, was signed by the Governor on August 22 (Chapter 495, Statutes of 1988).

AB 4649 (Stirling), which extends to all nominee holders the requirement that broker-dealers, in whose name or for whom securities are held, must certify to

a foreign corporation upon request the number of shares held for beneficial owners with addresses in this state and outside this state, was signed by the Governor on September 16 (Chapter 953, Statutes of 1988).

SB 6 (Robbins), which would have established a state risk pool to provide health insurance coverage to persons who have been turned down because of a preexisting condition or who cannot afford to purchase coverage, was vetoed by the Governor on September 30.

SB 1755 (Lockyer), as amended in conference committee on August 26, was signed by the Governor on September 22 (Chapter 1204, Statutes of 1988). The bill provides that no claim for punitive damages arising out of the professional negligence of a health care provider shall be included in a complaint or other pleading unless permitted by court order. The bill also prohibits a cause of action against a person serving without compensation as a director or officer of certain nonprofit corporations on account of any negligent act or omission by that person within the scope of that person's duties from being included in a complaint, unless the plaintiff has established evidence that substantiates that claim and files a verified pleading and supporting affidavits.

SB 2260 (Keene) was signed by the Governor on September 29 (Chapter 1521, Statutes of 1988). It authorizes, for a specified five-year period, tax credits under the Personal Income Tax Law and Bank and Corporation Tax Law for the greater of \$25 per month per covered individual or 25% per month of the costs incurred during the taxable or income year by an eligible small employer to provide health coverage for an eligible individual and the individual's dependents.

SB 2578 (Robbins) was signed by the Governor on September 24 (Chapter 1339, Statutes of 1988). It requires the Commissioner to suspend for a period not exceeding twelve months or to bar from any position of employment, management, or control any broker-dealer, officer, director, partner, agent, employee of, or person performing similar functions for a broker-dealer, if that person has been convicted of any act or omission in violation of specified criminal offenses.

SB 315 (Montoya), which would have required financial planners to make specified disclosures to their clients, was defeated in the Assembly Finance and Insurance Committee.

AB 3028 (Lancaster) was signed by

the Governor on August 23 (Chapter 537, Statutes of 1988). Its provisions exempt student loans made pursuant to the Public Health Service Act from certain requirements relating to commencement, amount, and duration of periodic repayment schedules.

AB 3362 (Elder) was signed by the Governor on August 20 (Chapter 427, Statutes of 1988). It will (among other things) amend an existing provision that an industrial loan company shall not make any loan or purchase or discount any other obligation that provides for a repayment of principal over more than 120 months; this bill extends that period to 120 months and 30 days.

AB 3366 (Johnston), which revises certain definitions under the Franchise Investment Law, was signed by the Governor on August 25 (Chapter 562, Statutes of 1988).

AB 4372 (Lancaster), which amends various provisions relating to credit unions, was signed by the Governor on August 27 (Chapter 651, Statutes of 1988).

SB 2636 (Russell) was signed by the Governor on August 25 (Chapter 598, Statutes of 1988). This bill allows the Commissioner to extend an exemption under the Corporate Securities Law of 1968.

SB 2838 (Greene), which authorizes the Commissioner to impose a one-time supplemental assessment of up to \$150 on licensed escrow agents, was signed by the Governor on September 24 (Chapter 1300, Statutes of 1988).

The following bills died in committee or were dropped by their author: **AB 600 (Isenberg)**, which would have established the California Catastrophic Health Insurance Program; **AB 2900 (Johnston, Isenberg)**, which would have removed the present prohibition against use of an AIDS blood test for determination of insurability; **SB 1922 (Montoya)**, which would have required the Department to study nonprofit mutual benefit corporations in the field of trade associations and labor unions; and **AB 2030 (Seastrand)**, which would have included financial planners within the definition of "investment adviser".

DEPARTMENT OF INSURANCE

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