



poses an additional \$100,000 for training at all levels within the Department. The Superintendent considers this budget proposal a necessary element in the Department's efforts to assure that staff is equipped to address the regulatory challenges of the future. In addition to this budget request, the Department has already committed funds to build a video training library and is working with the Conference of State Bank Supervisors Education Foundation to bring additional training opportunities to the Department.

-Enforcement Positions. Two new investigators are proposed to assist in identifying and addressing inappropriate activities conducted by Department licensees. In conjunction with this proposal to employ investigative staff, the Department has also implemented new procedures for routinely fingerprinting and conducting criminal background checks on all prospective officers, directors, and controlling persons in applications for new licenses or changes of control of existing licensees. Deputy Superintendent John Paulus has stated that the Department has always had this authority under the Financial Code but has exercised it selectively; however, everyone will now be fingerprinted.

-Financial Analyst Position. The Department's budget proposes to create a new financial analysis support capability within the Department by establishing a financial analyst position. The position will support the managers of the Department's examination and supervision function.

Change of Address. Effective February 1, 1988, the State Banking Department is located at 111 Pine Street, Suite 1100, San Francisco, CA 94111.

Travelers Checks Applications. An application filed by Barclays Bank of Canada to engage in the business of issuing travelers checks under the provisions of the California Travelers Checks Act was filed on October 23 and approved on December 11, 1987.

Fire Destroys Bank. The Katella-Mountain View Office of Barclays Bank of California, located at 320 Katella Way, Anaheim, was destroyed by fire on December 14. All records have been transferred to the downtown Anaheim office, located at 100 West Lincoln Avenue, Anaheim, until further notice.

Warning to Bankers. A warning to refrain from violating the Banking Law by doing business in California without a license was issued against the American Pacific Trust Company, 1303 Avocado Street, Suite 260, Newport Beach;

Guardian International Bank, Ltd., headquartered in the Colony of Montserrat in the British West Indies; and Churchill International Bank, 9903 Santa Monica Blvd., Beverly Hills.

LEGISLATION:

SB 315 (Montoya) was reactivated in January, has passed the Senate, and is pending in the Assembly Finance and Insurance Committee at this writing.

As amended on April 5, SB 315 would enact provisions in the Business and Professions Code to require those who hold themselves out as financial planners to make specified disclosures to prospective clients, including disclosures regarding the planner's educational background, training and expertise, potential conflicts of interest, and relevant convictions. The disclosure must be made in writing if the client so requests. Failure to make required disclosures could result in a \$500 fine. (For related discussion, see *supra* MAJOR PROJECTS.)

AB 2030 (Seastrand), a companion bill of SB 315, would include within the definition of "investment adviser," financial planners and other persons who, as an integral component of other financially related services, provide specified investment advisory services to others for compensation and as part of a business, or who hold themselves out as providing these investment advisory services to others for compensation. This bill would thus subject financial planners to the Department of Corporations' registration requirement applicable to investment advisers. AB 2030 is pending in the Senate Business and Professions Committee.

AB 3515 (Johnson) would require the Superintendent of Banks to wait ninety days after filing before considering the application of a person applying for approval to acquire control of a bank, if that person is a citizen of a foreign country or a bank or bank holding company which has (or is controlled by a company which has) its head office located outside the United States. The bill would also provide for notice of those proposed acquisitions to foreign bank holding companies with head offices or principal operations located in the United States, and would permit such a foreign bank holding company, after prescribed notification, to cause or permit the bank or controlling person to become its subsidiary, to acquire assets of the bank or controlling person in any amount, and to merge or consolidate with the bank or controlling person.

This bill is pending in the Assembly Finance and Insurance Committee.

AB 1224 (Calderon) would have increased the fine for a bank or trust company which opened a branch office without first obtaining permission of the Superintendent from \$100 to \$250; the bill was dropped by its author.

AB 2662 (Areias, Harris) would have revised the maximum finance charge which a premium finance agency may, in an insurance premium finance agreement, contract for, receive, and collect, and would have applied this rate to insurance premium finance agreements made by banks. This bill was also dropped.

AB 2500 (Brown) was amended on January 11 to authorize a county board of supervisors to direct the county treasurer to negotiate an agreement with a financial institution to establish a program to provide for public assistance funds deposit and disbursement. The county treasurer would be authorized to negotiate with a financial institution to provide services free of charge to persons who wish to cash public assistance checks. This bill was dropped by its author.

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. 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



REGULATORY AGENCY ACTION

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:

"Investing in Coins" Alert Bulletin. On January 5, the Department released its latest in a series of quarterly *Investor Alert* bulletins. The Council of Better

Business Bureaus and the North American Securities Administrators Association (NASAA) cooperated in the project. *Investing in Coins* warns approximately fifteen million American investors to guard against fraudulent operations resulting, in part, because the rare coin market is unregulated. The bulletin discusses the evolution of coin collecting from hobby to serious investment, the major risks and pitfalls in the market, and some tips on avoiding fraud.

Status Update on Rule Changes. The proposed amendments to regulations under the Corporate Securities Law of 1968, located in chapter 3, Title 10 of the California Code of Regulations (see CRLR Vol. 8, No. 1 (Winter 1988) p. 79 for details on these proposed changes), were adopted by the Commissioner, approved by the Office of Administrative Law (OAL), and became effective on February 6.

In addition, the Commissioner adopted other changes to regulations under the Corporate Securities Law of 1968. Effective December 20, section 260.204.7 was added regarding the State Teachers' Retirement System, which exempts from sections 25210 and 25230 of the Corporations Code, individuals who, pursuant to section 22205.2 of the Education Code, contract to perform investment management or advisory services only for the State Teachers' Retirement System, provided that the securities transactions are effected by or through a broker-dealer who is licensed under section 25210 or exempt from licensure under section 25200 of the Corporations Code.

Effective January 21, section 260.141.11 was amended, regarding exemptions to restrictions on transfers of securities. Subsection 17 was added to exempt an offer and sale of outstanding securities in an issuer transaction that is subject to the qualification requirement of section 25110 of the Corporations Code but exempt from that qualification requirement under section 25102(f) of the Code.

Proposed Changes in Regulations Under the Corporate Securities Law. The Commissioner has published the Department's intent to amend regulations relating to broker-dealers. No public hearing was scheduled on the proposed amendments, which include changes to section 250.9.1(a)(2), regarding information in the NASAA/NASD Central Registration Depository; section 260.241.4, to conform to the Securities and Exchange Act of 1934 and require each licensed broker-dealer who is a

member of NASD to file certain changed information; and section 260.242, to require that an application to surrender a certificate as a broker-dealer or investment adviser shall be filed on a particular form which is substantially similar to the provisions of the Securities and Exchange Act of 1934 and the Investment Advisors Act of 1940. The comment period on these proposed regulations closed on February 11.

Proposed Changes in Regulations Under the Credit Union Law. The Department's intent to amend regulations relating to real property appraisals was recently published by the Commissioner. A proposed change to section 985 would require that real property appraisals be made in accordance with a written appraisal policy approved by the board of directors of the credit union, and that policy shall require "certified appraisals" in compliance with the Lancaster-Montoya Appraisal Act. A similar change to section 986 would require a written appraisal policy for personal property appraisals to be approved by the credit union's board of directors, and specifies standards which should be included in the policy. The comment period on these proposed changes closed on April 15.

Proposed Changes in Regulations Under the Franchise Investment Law. On February 3, the Commissioner published the Department's intent to amend regulations relating to franchise applications and the Uniform Franchise Offering Circular. The proposed changes affect section 310.111, which would specify that all applications for registration under the Franchise Investment Law be filed upon the Uniform Franchise Registration Application (UFRA); section 310.112 would be amended to refer to all applications for registration and make other technical changes; section 310.114 would be repealed and its present requirements would be moved into section 310.114.1, which would be retitled, clarified, and amended to be consistent with the offering circular prescribed by the UFRA; section 310.122 would be clarified to refer to the UFRA; section 310.156.1(b) would be repealed and replaced with a requirement that earnings claims conform with Item 19 of the Uniform Franchise Offering Circular; and section 310.210 would be amended to modify the prohibition against disclosing a pending action that did not result in conviction or plea of *nolo contendere* on a Salesperson Disclosure Form.

The comment period on these proposed regulations closed on February 15.



Proposed Changes in Regulations Under the Industrial Loan Law. On January 19, the Commissioner published the Department's intent to amend its regulations under the Industrial Loan Law relating to line-of-credit loans. New section 1170.1 would define line-of-credit loans and require an industrial loan company to seek prior written approval from the Commissioner for its plan or guideline, which must contain specified provisions, prior to making or agreeing to make such a loan. The comment period on this proposed regulation closed on March 25.

Enforcement. At the request of the Commissioner, a temporary restraining order was issued on December 30 against Elite Escrow Services in Hawthorne, its president and owner, John Knott, and its office manager, Beverly Kennedy. The order followed a series of actions taken by the Department against the company and the individuals for continuous noncompliance with bonding requirements.

A criminal complaint was filed against Richard E. Donovan of Covina on January 7. The complaint alleges 37 felony counts, including sale of securities without a permit, grand theft, securities fraud, and unlicensed broker-dealer activities.

On January 22, an emergency *ex parte* temporary restraining order and appointment of receiver was obtained by the Department against Dynavest Corporation in Newport Beach, several related entities, and its principals, John A. and Virginia Wojcicki. The order was issued because, among other things, Dynavest's corporate office had been abandoned and several of the corporation's bank accounts had been raided. A preliminary injunction was granted and the receiver was confirmed on February 29.

On February 2, the Department permanently barred John J. Wilder, president of Ambassador Escrow, Inc. (in Victorville and Barstow), from the escrow industry for violations of the California Escrow Law. Wilder allegedly opened escrows after being ordered by the Department to cease business and he failed to obtain the required fidelity bond.

On February 17, the Department took possession of the trust accounts and related books and records of Steven D. Jones and Associates Escrow in Brea. The company's escrow license was also revoked for several reasons, including lack of surety bond, violation of prior Department order, and various violations of the Escrow Law.

On March 3, William C. McNeill, President of Professional Dental Services (PDS), stipulated to the issuance of an order under section 1386(c) of the Knox-Keene Health Care Service Plan Act of 1975, barring him from the health care industry as of March 24. McNeill is prohibited from serving in any capacity for, or receiving any commissions, fees, or other compensation from, any health care service plan, solicitor firm, or management company. The action resulted because McNeill had been issued a cease and desist order for incurring a \$100,000 tangible net equity deficiency in PDS (December 16, 1986); he had previously been enjoined from violating various Knox-Keene Act provisions (June 29, 1987); and PDS' license had been revoked (July 24, 1987).

LEGISLATION:

AB 3028 (Lancaster), as amended on March 22, would authorize the Commissioner to disclose certain investigation and examination reports, not deemed to be public records, to the officers and directors of the company subject to the report for purposes of corrective action. The bill would also make it a misdemeanor to make untrue statements or omit material information in documents filed with the Commissioner. This bill is pending in the Assembly Finance and Insurance Committee.

AB 3361 (Elder), relating to industrial loan companies, would remove the authorization of the Commissioner to orally notify the company that its advertising is disapproved by the Department. This bill is pending in the Assembly Finance and Insurance Committee.

AB 3362 (Elder) also relates to industrial loan companies. The bill provides that any loan or other obligation made or acquired by such companies that have investment certificates outstanding which are secured primarily by real property and have an outstanding principal balance of \$17,500 or more shall be secured by real or personal property, as specified. This bill is also pending in the Assembly Finance and Insurance Committee.

AB 3366 (Johnston) would revise the definitions of "area franchise" and "subfranchise" and revise certain exemptions relative to net worth of the franchisor, under the Franchise Investment Law. The bill also provides that a stop order issued by the Commissioner denying the effectiveness of or suspending or revoking any franchisor's registration shall remain in effect if no hearing is requested within thirty days

after the stop order. Finally, it would shorten the time period within which to notify a franchisee of a proposed material modification of the franchise agreement and for the franchisee to rescind agreement to the modification. AB 3366 is pending in the Assembly Finance and Insurance Committee.

AB 3460 (LaFollette), relating to health care service plans, would revise the definitions of "specialized health care service plan contract" and "group contract," eliminate nongroup specialized plans, and require the same conversion rights (upon termination of employment or membership in the group, or cessation of qualification based upon marriage or death of the employee or member) for dependent spouses covered by specialized health care service plan contracts as for those covered by other specified group plans. This bill is pending in the Assembly Finance and Insurance Committee.

AB 4372 (Lancaster) would expand the Commissioner's authority to deny, as to credit unions, an application for a merger and would revise the presently-authorized reasons for denial. The bill also includes provisions relating to location and mailing addresses, non-public investigatory and examination records, surety and bonding requirements, and duties of credit union directors. Finally, the bill would create a new crime for willfully making any untrue statement of a material fact in any document filed with the Commissioner or willfully omitting in any document any material fact which is required to be stated. This bill is pending in the Assembly Finance and Insurance Committee.

SB 2636 (Russell) would allow the Commissioner to extend, by order, an exemption under the Corporation Securities Law of 1968. The Commissioner may presently exempt from the qualification requirement an offer or sale of a security if the same class of securities was qualified in an issuer transaction which became effective within eighteen months prior to the offer or sale in the nonissuer transaction. SB 2636 would extend the exemption to nonissuer transactions occurring after the expiration of the eighteen-month period if the Commissioner so determines.

The bill would also extend to any investment adviser representative or agent certain provisions of the Corporate Securities Law of 1968. That is, the bill would authorize denial of an application for a certificate or suspension or revocation of an existing certificate if the person is subject to any currently



REGULATORY AGENCY ACTION

effective order of the Securities and Exchange Commission, the securities administrator of any other state, or any national securities association or exchange whereby that person's registration is revoked or suspended or that person's membership is suspended or terminated.

Finally, in addition to other technical changes, the bill specifies that a court may appoint a monitor, designated fiduciary, or officer of the court, in addition to the currently allowed receiver or conservator, to exercise the powers of a corporation's officers, directors, partners, trustees, or others in an action brought by the Commissioner to enforce compliance with the Corporate Securities Law of 1968 or any rule or order of law.

This bill is pending in the Senate Banking and Commerce Committee.

SB 2838 (Greene) would delete the cost of living adjustment limitations upon the assessment paid to the Commissioner by licensed escrow agents. In addition, the bill would make willful untrue statements of material fact in any application, notice, or report filed with the Commissioner unlawful (misdemeanor or felony) and subject to a fine. This bill is also pending in the Senate Banking and Commerce Committee.

SB 315 (Montoya) was reactivated in January, has passed the Senate, and is pending in the Assembly Finance and Insurance Committee at this writing.

As amended on April 5, *SB 315* would enact provisions in the Business and Professions Code to require those who hold themselves out as financial planners to make specified disclosures to prospective clients, including disclosures regarding the planner's educational background, training and expertise, potential conflicts of interest, and relevant convictions. The disclosures must be made in writing if the client so requests. Failure to make required disclosures could result in a \$500 civil penalty. (For a related discussion regarding financial planners, see *supra* agency report on DEPARTMENT OF BANKING.)

AB 2030 (Seastrand), a companion bill of *SB 315*, would include within the definition of "financial adviser," financial planners and other persons who, as an integral component of other financially related services, provide specified investment advisory services to others for compensation and as part of a business, or who hold themselves out as providing these investment advisory services to others for compensation. This bill would thus subject financial planners to the Department of Corporations' regis-

tration requirements applicable to investment advisers. *AB 2030* is pending in the Senate Business and Professions Committee.

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 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 significant difficulties.

Through the California Insurance Code, the Commissioner has the power to order a carrier to stop doing business within the state, but does not have the power to force a carrier to pay a claim, a power reserved to the courts. The Commissioner may hold an administrative hearing to determine whether a particular broker or carrier is complying with state law.

The Commissioner is aided by a staff of over 400, located in San Diego, Sacramento, Los Angeles and San Francisco, the Department's headquarters. The Commissioner directs ten functional divisions and bureaus, including the recently reestablished Consumer Affairs Division. This division has been expanded and now includes the Rate Regulation Division. The Consumer Affairs Division is specifically designed to make the DOI accessible to consumers and more accountable to their needs and questions.

The Consumer Service Bureau (CSB) is part of the Consumer Affairs Division and handles daily consumer inquiries. CSB receives over 300 calls each day. Almost 50% of those calls result in the mailing of a complaint form to the consumer. Depending on the nature of the returned complaint, it is then referred to policy services, investigation or CSB.

Since 1979, the Department has maintained the Bureau of Fraudulent Claims, charged with investigation of suspected fraud by claimants. The California insurance industry claims losses of more than \$100 million annually to such claims. Licensees pay an annual fee of \$150 to fund the Bureau's activities.

MAJOR PROJECTS:

Consumer Insurance Advisory Panel Members Named. On March 28, Insurance Commissioner Roxani Gillespie appointed seven members to a newly-formed Consumer Insurance Advisory Panel for the Department of Insurance. This panel replaces an earlier consumer advisory board which the Commissioner disbanded in 1988. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 81; Vol. 7, No. 4 (Fall 1987) p. 77; and Vol. 6, No. 3 (Summer 1986) pp. 52-53 for background