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. The 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:
"After the Crash" Handbook. In late November, the Department, in cooperation with state securities regulators around the country (represented by the North American Securities Administration Association), released a handbook entitled Coping With The Crash: A Step-by-Step Guide to Investor Rights. The joint effort apprises investors of their rights and available remedies if their securities broker did not treat them fairly during the recent market "down-turn." The handbook identifies typical complaints and lists regulatory bodies available to help, along with remedial and avoidance tips.

Status Update on Rule Changes. The following is a status update on rule changes discussed in CRLR Vol. 7, No. 4 (Fall 1987) at pp. 73-74. The proposed regulation under the Industrial Loan Act was adopted by the Commissioner on December 20, will be filed with OAL in mid-January, and is expected to be approved with no problems. The proposed changes under the Corporate Securities Law of 1968 were approved by OAL and are expected to become effective on approximately January 21, 1988. The proposed changes to the State Teachers' Retirement System regulations were approved by OAL and became effective December 20.


No public hearing was scheduled on the proposed amendments, which include changes to Rule 260.216.2(a)(8), adding another confirmation requirement with respect to transactions in a reported security; Rule 260.216.2(e), to define "reported security" and "effective transaction reporting plan"; Rule 260.216.16, striking the reference to requirements for dual employment or affiliation of agents, directors, partners, managing employees, or controlling persons of a broker-dealer (because the SEC rule has been repealed); Rule 260.218.4(d), striking the reference to "non-registered" broker-dealers; Rule 260.234, applying definitions and changing the requirements under which financial advisors may receive compensation based on capital gains, raising the gross assets required for investment advisory contracts for specific institutional investors, and simplifying the required "transitional provision"; Rule 260.237.1, retitling and revising the definition of "total aggregate indebtedness"; Rules 260.241.1(l) and 260.241.3(g), allowing immediate production or reproduction of necessary records on microfilm; and various technical changes.

Enforcement. On September 17, the Department ordered Maya Enterprises, Inc., its president Maya Burus, Maya Retail, Inc., Maya Bodylove, and Maya Hosiery (all from New York) to desist and refrain from selling unregistered franchises for hosiery boutiques in California.

On September 30, the Department and the Commodity Futures Trading Commission obtained an ex parte restraining order freezing the assets of and appointing a receiver for Reid, Cameron and Company of Cathedral City, California. Allegations include the following: (1) the company operated a boiler room which used high-pressure telephone sales tactics to persuade investors to purchase precious metals futures contracts; (2) the transactions were investment contracts, and therefore subject to Departmental regulations; and (3) the company violated the Federal Commodities Exchange Act by selling off-exchange futures contracts.