tion with the organization of First Interstate Central Bank and the purchase and assumption transaction: an application by First Interstate Bancorp for authority to organize the bank with capital of $4 million was filed and approved; a certificate of authorization permitting the bank to transact commercial banking at the location of the head office of First National Bank was issued; and First Interstate Central Bank's purchase of part of the business of First National Bank under the purchase and assumption transaction was approved.

All depositors of First National Bank became depositors of First Interstate Central Bank, and there was an orderly transition of banking services without financial loss or delay to the public.

Counterfeiting. The superintendent warned all bankers that counterfeit cashier's checks drawn on Imperial Bank are being used to obtain property by fraudulent means. The perpetrator of the scheme answers newspaper ads for expensive cars and visits the seller to inspect the car and set the price. He then returns with the counterfeit check, usually after the close of business. The checks, numbered 090589, are green with a basket weave background. The protectographed amount does not say "Imperial Bank." There are outstanding warrants. For further information, please call Imperial Bank at (213) 417-5747.

LEGISLATION:

AB 2 (Reyes) calls for a ceiling on credit card interest rates on all credit cards issued by California banks. If enacted, the ceiling will be five points above the current six-month treasury bill rate.

AB 4 (Brown) will allow out-of-state banks to acquire any California bank with assets of $50 billion or more.

DEPARTMENT OF CORPORATIONS

Commissioner: Franklin Tom
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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:

Proposed Exemption. On March 10, 1986, Commissioner Tom published a notice of proposed changes concerning the adoption of section 260.105.37 of Title 10 of the California Administrative Code.

Section 260.105.37 was proposed to exempt transactions in certain securities included in the NASO's National Market System from the registration requirements of the law. A significant feature of the proposed exemption required that the outstanding voting securities of an issuer eligible for the exemption meet specified voting rights standards. As indicated in the Initial Statement of Reasons, the proposal arose as a result of a request for regulatory parity between National Market System securities and securities listed on the American Stock Exchange and the New York Stock Exchange. The voting rights standards rights of the proposed exemption were patterned after the voting rights rules of the New York and American Stock Exchanges. Subsequent to the public notice of the proposed exemption, however, the New York Stock Exchange announced an important amendment to its voting rights standards.

In view of this substantial change, the commissioner solicited additional comments on the concept of the voting rights standards included in proposed rule 260.105.37. The comment period ended on November 28, 1986. Presently, section 260.105.37 is undergoing in-house drafting by the Department.

Proposed Changes to California Credit Union Law Regulations. A public hearing was held by Commissioner Tom on the proposed amendments to section 922, regarding investments, as well as proposed new section 932, regarding investments in fixed assets and service corporations, under the California Credit Union Law (Financial Code section 14000 *et seq.*) (see CRLR Vol. 6,

No. 4 (Fall 1986) p. 60 for background information). The hearings were held in Los Angeles on October 1 and in Sacramento on October 2, 1986. Presently, the amendments to the proposed sections are pending in-house review at the Department of Corporations.

Proposed Changes to the Escrow Law. Commissioner Tom has given notice to amend section 1714.1 of Subchapter 9, Chapter 3, Title 10 of the California Administrative Code. Presently, section 1714.1 provides that an accountant will not be considered independent if he/she performs bookkeeping services for the escrow agent. This rule does not state a positive standard by which an accountant who prepares the audited financial statement required to be submitted as part of an escrow agent application may be determined to be independent from the escrow agent. Accordingly, section 1714.1 is proposed to be amended to provide a reference to the regulations of the California State Board of Accountancy for determining independence.

The proposal was submitted to the Office of Administrative Law (OAL). If approved by OAL, it will become effective in early March 1987.

Proposed Changes in the Industrial Loan Law. Commissioner Tom has given notice to amend section 1162, Chapter 3, Title 10 of the California Administrative Code. Chapter 296, Statutes of 1986 (effective January 1, 1987) amended, among other things, section 18206 of the Financial Code to authorize an industrial loan company to make or acquire loans secured by motor vehicles, repayable in other than equal periodic payments (*i.e.*, balloon payments typically found in motor vehicle leases) up to 50% of all consumer loans and obligations which are secured by motor vehicles or 20% of an industrial loan company's assets, whichever is less.

The Department of Corporations' Special Administrator for the Industrial Loan Law has expressed two concerns with respect to the new authority granted to industrial loan companies by Chapter 296: first, the definition of "balloon payment" under section 1162 should be amended to track statutory language, which refers to "periodic payments," while maintaining the term "installment" to cover circumstances where an industrial loan company purchases retail installment contracts (the amendment to subsection (a) of section 1162).

Second, the number of balloon payments should be limited to one in the case of loans or obligations secured by motor vehicles, and the balloon payment should be limited to the projected residual value of a motor vehicle at the time the loan or obligation is made (the amendment to subsection (b) of section 1162). By tying the balloon payment to the projected residual value, it is believed that the value of the security for the loan or obligation (*i.e.*, the motor vehicle) will approximate the sale price of the motor vehicle should the borrower default. Therefore, upon sale, an industrial loan company should not incur a loss on the transaction.

A consistent calculation of projected residual values is essential to the operation of section 18206 as applied to balloon payment loans or obligations secured by motor vehicles. The Special Administrator has recommended the use of the *Kelley Blue Book Residual Value Guide* in determining the projected residual value of a motor vehicle based on its longstanding acceptance and use by other financial institutions.

The proposed amendments to Section 1162 have been submitted for approval to the Office of Administrative Law.

Proposed Changes to the Franchise Investment Law. Section 310.100, which set forth an exemption to the registration requirements of section 31110 of the Franchise Investment Law for the offer and sale of franchises, was amended to further specify the conditions which must be met to hold a franchise exempt. Additionally, section 310.100.1 was amended to specifically require that the offer and sale of the franchise not be in violation of any law of the United States.

The proposals were submitted to the Office of Administrative Law and subsequently approved. The amendments became effective on November 5, 1986.

Enforcement. On September 15, a desist and refraining order was issued against Dennis Perez. Perez was ordered to stop offering and selling unqualified securities in the form of investment contracts. Investors were solicited through an advertisement in a Los Angeles area Spanish newspaper, *La Opinion*. Investors' funds were to be used to finance unspecified loans within the Hispanic community. The Commissioner found the investment to be a security in the form of an investment contract. No permit had been issued by the Department of Corporations authorizing the investment to be offered or sold within the state.

One investor, after being promised a return of 20% on his money in one year, placed $6,000 in an account with Perez. The whole amount was withdrawn by Perez and has yet to be returned. The commissioner cautioned investors to be wary of making investments with unknown promoters based upon newspaper advertisements.

On September 16, Vesper Corporation was ordered to cease its offer and sale of unqualified securities in the form of promissory notes and limited partnership interests. Vesper Corporation does business under the name Clergy Tax and Financial Services. A large number of investors with the company were clergymen. Typically, investors would come to the company for tax preparation assistance, and were then solicited to invest in the company or in offerings in which it had a financial interest. The company is currently delinquent in its payments to investors, and further investigation is being conducted. California residents were cautioned to be wary of investment solicitations by tax preparers and financial planners, some of whom are not registered with the state as investment advisors.

On September 16, Dynamic Energy-Access Products, Inc. and its president, Edward Vezirian, were ordered to stop offering and selling securities in the form of investment contracts and stock unless they first obtained a permit from the commissioner. Investors had been solicited to invest in a company Vezirian had planned to form, Dynamic Energy-Access Products, Inc. The company has been formed, but has not yet begun business operations. The Department has determined that Vezirian's offering does not qualify for a section 25102(f) limited offering exemption (non-public offering exemption).

On September 24, American Board of Trade, Inc. and American Board of Trade Services Corporation were ordered to desist and refrain from the offer or sale of unqualified, non-exempt securities in California in the form of interests in commercial paper.

On October 6, two cease and desist orders were issued to two corporations, Gold'n Links, Inc. and Avon Service Corporation, for violations of the Franchise Investment Law. The companies are prohibited from offering and selling franchises in California without first registering the offerings with the Department of Corporations. The companies had distributed brochures advertising the availability of investment opportunities to attendees of a franchise expo show held in Orange County in August. The advertised investments were determined to be franchises by the Commissioner and they had not been registered.

On October 7, Diablo Development #1, a California limited partnership, was issued a desist and refraining order for violating the Corporate Securities Law. Securities in the form of limited partnership interests in an oil and gas program were offered and sold to the public without first obtaining a permit from the Department of Corporations. Although no permit had been issued, a Limited Offering Exemption Notice under section 25102(f) of the California Corporations Code had been filed. A review of the transactions disclosed that the company did not qualify for the exemption.

On October 16, Paul Weil, an attorney for and director of Southwest Bancorp, stipulated to a desist and refrain order issued on August 11. Mr. Weil is prohibited from acting as securities counsel to Southwest Bancorp for five years. The order was issued in reference to a 1984-85 transaction in which Southwest Bancorp offered its preferred shareholders an exchange of common stock for their preferred stock. Under section 25120 of the California Corporate Securities Law, such an exchange requires approval of the commissioner. This offer and exchange was carried out despite the fact that Mr. Weil had been previously notified by the Department of Corporations that approval was required. Because the exchange offer constituted the offer and sale of a security which was neither qualified nor exempt from qualification, the commissioner considered the order necessary for the protection of existing and potential investors in Southwest Bancorp.

On October 24, the Department of Corporations obtained a preliminary injunction in Los Angeles Superior Court against Corporate Guarantee, Inc. The defendant was enjoined from offering or selling securities without a permit or on the basis of fraud and misrepresentation, and from operating as a broker-dealer without a license. Investors were solicited through advertisements in the *Los Angeles Times*, and were promised a 21% return on their money through high quality bonds which would be purchased by the defendant. At least $300,000 has been invested, and to date, no investor has received any return. The complaint alleges that the defendant violated the Corporations Code by transacting business as a broker-dealer without the required license, and that it used false statements in order to induce investors.

On November 4, Commissioner Tom adopted a proposed decision from the Office of Administrative Hearings in the matter of *Commissioner v. Cal State Properties Fund-85, Ltd.* (Cal State). The administrative law judge found that the Department's refusal to issue a permit to Cal State to sell limited partnership interests in a real estate syndication to the public was appropriate. Cal State had failed to file an accurate application, made untrue statements of fact, and omitted to provide material facts in its application. The evidence showed that Cal State was unable or unwilling to comply with the applicable statutes and regulations.

On November 4, a desist and refrain order was issued to McMurry Companies, Johanna Southwest Corporation, Kimkel Corporation, and Gene McMurry for violation of the California Corporate Securities Law. McMurry approached investors sometimes as an insurance salesman, and sometimes as a "certified financial planner," and induced them to invest in oil and gas drilling programs to be conducted by the above-mentioned companies. Others were induced to invest in arbitrage agreements, and their money was used to invest in trading in commodities and securities. At least 21 investors invested over $240,000. No investor has received any of the promised interest payments, at a rate of 24% to 36%, or any of their principal.

On December 1, the Los Angeles Superior Court issued a temporary restraining order and an ex parte appointment of receiver over Marlin Properties, Inc., Marlin Industries, Inc., and Marlin Equities, Inc. These corporations were acting as general partners of 18 limited partnerships formed for the purpose of rehabilitating historical landmarks for tax shelter investments. The Marlin entities allegedly did not perform the rehabilitation work, and investors' funds were used for other purposes. Because of the use of funds for other purposes, there were insufficient funds to meet the debt service obligations of the partnerships, resulting in foreclosure of some of the buildings. The unusual remedy of seeking a receivership and temporary restraining order without notice to the defendants was viewed as necessary because of extensive commingling and abuse of investor funds, and fear that books and records might be destroyed and additional funds diverted.

LEGISLATION:

AB 3837 (Stirling) amends sections 8302, 8304, and 8321 of the Commercial Code, and amends section 163, 174, 183, 313, 407, 409, 411, 412, 416, 417, 418, 422, 423, 509, 705, 1302, 1303, 1305, 2115, 2201, 2251, 5342, 5515, 7515, 9414, 12465, and 25117, and adds sections 109.5, 156.1, 171.1, 191.1, and 12446 to the Corporations Code.

This bill deleted provisions of the Commercial Code which specified that: (1) the priority of a secured party is unaffected by a bona fide purchaser of an interest in a security free from adverse claims, and (2) the first person to perfect a security interest using specified registration has priority over other secured parties.

Certain provisions of a corporation's articles of incorporation may now be made dependent upon facts ascertainable outside the articles or terms of an agreement of a merger. The bill also changes the requirements for foreign corporations to be exempt from certain provisions of the Corporations Code. The 45-day notice required for an amendment to the bylaws or articles of a public benefit corporation that would terminate memberships may now be waived, if all members entitled to vote recieve prior written notice and sign the waiver. Existing law provided for the escheat to the state of certain property; under this bill, a proprietary interest in a consumer cooperative corporation shall become the property of the corporation. Exemptions from constitutional usury provisions has been extended to evidence of indebtedness that has a rating by an agency or system that has been certified by rule or order of the commissioner. This bill has passed both houses and has been chaptered.

SB 315 (Montoya). (See CRLR Vol. 6, No. 2 (Spring 1986) p. 63.) As amended in July, this bill would have required financial planners to be subject to licensure pursuant to the existing requirements in the Corporations Code for investment advisors. The commissioner would have been required to establish specified standards, procedures, and fees for regulation of financial planners. Disclosure requirements would have been imposed on financial planners, and they would be subject to civil and criminal penalties. SB 315, however, was vetoed by the Governor.

FUTURE MEETINGS:

To be announced.

DEPARTMENT OF INSURANCE

Acting Commissioner:
Roxanni Gillespie
(415) 557-0366

Insurance is the only interstate business wholly regulated by the several