



which meets specified conditions and to participate as an underwriting member or as an investor in an underwriting member of any reciprocal or interinsurance exchange meeting specified criteria.

*SB 296 (Vuich)* would require banks to furnish depositors, if not physically present at the time of the initial deposit into an account, a statement concerning charges and interest not later than five legal business days after the initial deposit. With respect to an increase in the rate of account charges or a variance in the interest rate, the bill would alter the notice time from fifteen days prior to the date of change or variance to eleven legal business days.

## DEPARTMENT OF CORPORATIONS

*Commissioner: Franklin Tom*  
(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 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:

*Industrial Loan Law Regulation Changes.* Effective January 1, 1987, section 1162 of the Department's regulations under the Industrial Loan Law have been amended to provide that any periodic payment which is more than twice the amount of any other periodic payment will be considered a balloon payment for purposes of section 18206 of the Financial Code. A consumer loan secured by a car, repayable in other than equal periodic payments, may have no more than one balloon payment during the term of the loan. Addition-

ally, the balloon payment cannot exceed the projected residual value of the car at the time the loan is made. The most recent issue of any residual value guide approved by the commissioner will prescribe the amount.

*Escrow Law Regulation Changes.* Section 1714.1 of Chapter 3, Title 10 of the California Administrative Code, relating to independent accountants, was recently amended. Financial statements must be prepared by an independent certified public accountant or independent public accountant. For the purpose of determining independence, the regulations of the California State Board of Accountancy will apply. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 67 for background information.)

*Proposed Regulation Changes.* On February 11, the commissioner noticed a proposal to amend regulations under the Personal Property Brokers, Consumer Finance Lenders, and Commercial Finance Lenders Law.

Specifically, the commissioner proposes to amend Title 10 of the California Administrative Code, section 1489(b)(3), which presently provides that insurance on household goods may only be provided for a three-year period if the loan which is secured by the goods is for the same three-year period. Loans made to purchase household goods may be for longer terms, but insurance written on them is limited to the three-year period. Consequently, the commissioner proposes to authorize all insurance sold under subsection (b)(3) to be coextensive with the term of the loan and explicitly prohibit the sale of any insurance which exceeds the term of the loan.

The commissioner seeks written comments on the proposed amendment before May 5, 1987.

*Enforcement.* On December 12, 1986, the commissioner issued a desist and refrain order to Par Investments, Inc. (Par), prohibiting the offer and sale of unregulated franchises. Additionally, an order revoking the effectiveness of registration was issued to Par Investment Systems, Inc. (Par Systems), the franchisee of a business brokerage system originally developed by Par Investments, Inc.

Par is a Beverly Hills real estate broker currently involved in license revocation proceedings instituted by the Department of Real Estate. Par's president and others are alleged to have commingled and unlawfully converted trust funds. Par Systems applied for franchise registration to the Com-



## REGULATORY AGENCY ACTION

missioner of Corporations. The application included a purported "license agreement" from Par to Par Systems. Par Systems' franchise application omitted any mention of the state administrative actions, or any of the over sixty pending civil actions involving Par.

The desist and refrain order was based upon a finding that the license agreement constitutes a franchise which was not registered under the California Franchise Investment Law. The order revoking the effectiveness of the franchise registration of Par Systems was based on the above mentioned omission of material facts which should have been in the application and the offering circular.

On December 16, 1986, a cease and desist order was issued to Professional Dental Services, Inc. (PDS) for violations of the Knox-Keene Health Care Services Plan of 1975. A notice of intention to revoke PDS's license was issued because, for at least the last eighteen months, PDS has maintained a tangible net equity deficiency. California law requires a health care service plan to maintain a minimum tangible net equity of at least \$10,000. Since this plan is a "referral plan," its tangible net equity problems are unlikely to affect its services to enrollees. The cease and desist order prohibits PDS from enrolling new members but allows the plan to continue to service existing enrollees pending further action by the commissioner.

On January 7, 1987, a cease and desist order and a notice of intention to revoke the health care service plan were issued to Apple Health and Dental Plan, Inc., also because Apple has maintained a tangible net equity deficiency.

*Publication of Investor Alert.* On January 15, in cooperation with the North American Securities Administrators Association and the Council of Better Business Bureaus, the commissioner issued the quarterly *Investor Alert*, which discusses "How to Choose and Deal With a Stockbroker." The *Investor Alert* provides information about shopping for a broker, setting up and overseeing accounts, and communicating with the broker. It also provides tips on settling disputes with the broker and contains a list of organizations offering arbitration of customer disputes. The publication is directed to an audience with minimal experience in the stock market.

### LEGISLATION:

*AB 177 (Calderon)*, as amended

March 11, would amend sections 18218.5, 22458.7, 24458.7, 22476, and 26476 of the Financial Code, relating to loans. Existing law provides for the licensure of various financial brokers and lenders by the commissioner of corporations. This bill would increase the fee chargeable by an industrial loan company, personal property broker or broker, and a consumer finance lender or broker for return by a depository institution of a dishonored check from \$5 to \$10. Certain lenders would be authorized to sell promissory notes evidencing the obligation to repay loans purchased from and made by any of those licensees to institutional investors. The collection of payments with regard to those notes would be required to be deposited and maintained in a trust account.

*AB 247 (Bane)* would amend section 6556 of, and repeal section 5614 of, the Financial Code, relating to savings associations. The provisions which state that no stock of a savings association may be sold or offered for sale to the public without a permit from the Savings and Loan Commissioner would be repealed. Also, denial of a request to establish a branch office of a savings association could no longer be based on restrictions imposed by the Savings and Loan Commissioner under an existing agreement with the Federal Home Loan Bank Board.

*AB 300 (Bronzan)*, as amended March 18, would amend section 1373 of, and add sections 1373.65 and 1373.68 to the Health and Safety Code; and would amend sections 10125, 10127, 10176, 10177, 11512.5, and 11512.8 of, and add sections 10125.5 and 11512.75 to the Insurance Code, relating to mental health. Nonprofit hospital service plans and certain health insurers are currently required to offer coverage for mental health services. Under this bill, these health insurers would be required to offer a specified level of mental health services. Offering or providing lesser or greater coverage of additional mental health services would not be precluded.

Health care service plans (except HMOs or specialized health care service plans) which provide group coverage, would be required to offer professional mental health services meeting the standards specified by this bill. This bill has been referred to the Committee on Finance and Insurance.

*AB 381 (Lancaster)* would amend section 1808.4 of the Vehicle Code. Existing law provides for the confi-

dentiality of the home address of specified persons, including attorneys employed by the Department of Justice or an office of the district attorney or public defender. Under AB 381, attorneys employed by the Department of Corporations would be included within this provision. This bill has been referred to the Transportation Committee.

*SB 6 (Robbins)* would add Part 6.5 (commencing with section 12700) to Division 2 of the Insurance Code and would amend sections 131, 1110, and 1589 of, and add section 984.5 to the Unemployment Insurance Code, relating to health insurance. Existing law does not provide for a health coverage association to provide mental health insurance to residents of this state who are not otherwise able to obtain health insurance. Such an association would be established under this bill, which would specify required terms of coverage, rate limitations, and utilization review procedures.

*SB 315 (Montoya)*, as amended March 23, is a reintroduction of last year's SB 315, and would provide for the regulation of financial planners by the commissioner of corporations. The bill would enact provisions in the Business and Professions Code to require financial planners, as defined, to be subject to licensure pursuant to the existing requirements relative to "investment advisers" or to conduct that activity under the direct supervision of a licensee. The bill would also enlarge the scope of persons subject to licensure as investment advisers.

### DEPARTMENT OF INSURANCE

*Commissioner: Roxanni Gillespie*  
(415) 557-0366

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