was not "grandfathered from the CEBA Moratorium," and distinguishing its action in the First Federal case.

The U.S. District Court for the Central District of California found that the Bank Board's reason for denying the merger application was proper and that, therefore, the denial was neither arbitrary and capricious nor contrary to law. The district court made no finding as to the Bank Board's action in the *First Federal* case.

In affirming the district court's decision, the Ninth Circuit determined that FHLBB's action was proper, and that the *First Federal* decision did not establish a broad, binding rule. The court noted that "[w]hile the Bank Board may have wrongly decided *First Federal* based on a flawed interpretation of the statute..., and while it shirked its duty in not fully analyzing the statute in that case, it seems clear that it did not announce or even imply the *general* rule that appellants attribute to the *First Federal* case and on which appellants contend they have a right to rely." The court also relied heavily on the strong interest in applying a rule that corresponds to the plain language of the statute.

The insurance and banking industries are awaiting the Third District Court of Appeal's review of the Sacramento County Superior Court's decision in *Sanford v. Gillespie,* in which the lower court upheld banks' authority to sell insurance under Proposition 103. The insurance reform initiative, passed by the voters in 1988, repealed several provisions of the Insurance Code which prohibited banks from selling insurance, but neglected to repeal two similar provisions in the Financial Code. (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 81 and 88 and Vol. 9, No. 1 (Winter 1989) p. 70 for background information.) The superior court followed the Insurance Commissioner's ruling that the Financial Code provisions were repealed by implication with the passage of Proposition 103.

No less than four banks in California have acquired insurance agencies and are offering the full range of insurance products, including commercial insurance. Most of the licensed banks began the licensing process within the last year, and a large number of banks currently have insurance license applications pending. Because annuities achieve attractive fee income through a relatively simple product, they constitute the major insurance product being sold by California banks at this time. Property, casualty, life, and health insurance products are among other services banks are now offering.

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 and is empowered under section 25600 of the California Code of Corporations. The Commissioner of Corporations, appointed by the Governor, oversees and administers the duties and responsibilities of the Department. The rules promulgated by the Department are set forth in Chapter 3, Title 10 of the California Code of Regulations (CCR).

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 Regulatory Action Under the Credit Union Law. On November 23, the Department published notice of its intent to amend section 976 of its regulations, which concerns loans secured by real property. The proposed changes would:

-clarify that a credit union may make a loan secured only by real property owned by the member-borrower which is unimproved or improved, has or will have not more than four residential units, and is or will be the principal or second residence of the member-borrower; one other parcel which is unimproved or improved, has or will have not more than four residential units, and will not be a residence of the member-borrower; or agriculturally zoned;

-clarify that a loan secured by real property can be by a first or second lien which shall not, together with any loan secured by a prior encumbrance, exceed 80% of the appraised value of the property, with certain exceptions for loans insured by an instrumentality of the federal government or by a policy of private insurance written by an insurance company admitted in California. The term of the loan may not exceed 40 years if the loan is secured by a first lien, or 30 years if the loan is secured by a second lien;

-set forth new provisions for loans secured by a third lien;

-amend requirements regarding equal monthly payments to provide that they do not apply to a "line of credit loan," as well as variable interest rate loans or an adjustable payment, adjustable rate loan, or a renegotiable loan;

-amend provisions dealing with so-called "call provisions" or "call options;"

-provide that a policy of title insurance shall be obtained for all loans of $50,000 or more, and no title insurance policy shall contain exceptions precluding the credit union from obtaining marketable title;

-provide that, unless a lesser percentage is ordered by the Commissioner, the total of loans and liens on real property shall not exceed 40% of the total of all the outstanding loans and advances, with specified exceptions; and

-make other technical, clarifying changes and renumber various subsections within the rule.

No public hearing on the proposed regulatory changes was scheduled; the Department accepted written comments until January 11.

Regulatory Action Under the Corporate Securities Law. On October 10, the Office of Administrative Law (OAL) approved the Commissioner's amendment to section 260.105.33(a) of its regulations under the Corporate Securities Law, now entitled "Senior to Listed or Designated Securities." Effective November 9, the regulatory change exempts from the qualification requirements of Corporations Code sections 25110 and 25130 the offer or sale of a security (1) which is (A) issued by the issuer of a security listed on an exchange certified by the Commissioner, or (B) issued by the issuer of a security designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. and certified by the Commissioner, and (2) which is senior to such listed or designated security, including a senior security which is convertible into another senior security or into securities of the listed or designated class.

On October 3, the Commissioner published a modified version of proposed changes to section 260.103.6, regarding notice of a limited exchange transaction under section 25103(h) of the Corporations Code. Under the regulatory amendments, an acquiring corporation shall file a Notice of Exchange Transaction with the Commissioner no later than fifteen calendar days after the first sale of one-class voting common stock in the transaction in California. No notice is required to be filed if there is no sale in California. OAL approved the modified language on December 1; it became effective on January 1.

Proposed Regulatory Action Under the California Commodity Law. On October 19, the Commissioner proposed new regulations to implement Chapter 969, Statutes of 1990, which enacted the California Commodity Law of 1990, effective January 1, 1991. New Corporations Code sections 29570 and 29571, respectively, require the Commissioner to maintain annually a list of all commodity merchants who are transacting business in California and require each telephonic seller of a commodity or a commodity contract to file a notice with the Commissioner each year. Thus, the Commissioner proposes to adopt new regulatory sections 290.570 and 290.571 to establish a form of notice for commodity merchants and telephonic sellers. The Commissioner also proposes to amend section 250.12, which currently sets forth the general guidelines for requesting an interpretive opinion by the Commissioner; the amended version would reflect the authority of the Commissioner to issue interpretive opinions under the California Commodity Law of 1990.

The public comment period on these proposed regulatory changes ended on December 10. No comments were received; thus, the Commissioner adopted the changes and submitted them to OAL on December 11.

Proposed Regulatory Action Under the Corporate Securities Law. On October 26, the Department published notice of its intent to amend section 260.105.34 of its regulations, which currently exempts from the qualification requirement of Corporations Code section 25110 any offer or sale of an evidence of indebtedness which has been rated as an "investment grade security" by Standard & Poor's Corporation or Moody's Investor Services, Inc. The proposed amendment would additionally exempt "rated debt securities" from the nonissuer qualification requirement of Corporations Code section 25130; but would exclude from the rated debt securities exemption those debt securities which are collateralized by debt securities 5% of more of the fair market value of which are not investment grade securities (commonly referred to as "junk bonds"). However, consistent with the Department's amendment to section 260.105.33(a) (*see supra*), the exemption will now be available for evidences of indebtedness which are convertible into a security which is designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., and certified by the Commissioner. The Department accepted written comment on the proposed changes to section 260.105.34 until December 21.

On November 9, the Commissioner proposed several other changes in the Department's regulations under the Corporate Securities Law. Specifically, the Commissioner proposes to:

-repeal section 260.204, which currently exempts from the licensing requirements of Corporations Code section 25210 certain broker-dealers who have no place of business in California and limit their offers and sales to specified securities and specified persons;

-amend section 260.204.1 to clarify that a licensed real estate broker is exempt from section 25210 only when the broker's business as a dealer-broker, in addition to any transactions within the exemption set forth in section 25206, is limited to the transactions set forth in section 260.204.1; expand the exemption for licensed real estate brokers to include transactions "involving all of the outstanding securities of an existing business" if the transactions have been negotiated as transactions for "the purchase or sale of real estate or substantially all of the assets of the existing business, or both;" and repeal section 260.204.1(c), which currently sets forth an exemption for a licensed real estate broker who is a "specialist in the sale of a particular type of business," under certain conditions; and

-include a reference to the Commercial Finance Lenders Law, Financial Code section 26000 *et seq.*, in section 260.204.6(a), which currently sets forth an exemption for certain persons licensed as a broker or lender under various laws.

The Commissioner accepted written comments on these proposed regulatory changes until January 4.

On December 14, the Department announced its intent to amend its regulations under the Corporate Securities Law relating to employee benefit plans. Specifically, the Department proposes to:

-amend section 260.140.8, which sets forth provisions regarding securities on which there are restrictions on transfer, to provide that no open qualification will be approved if the transfer of securities is subject to any restriction imposed by the issuer's charter documents, indenture agreements, or other instruments or agreements under which the securities

will be issued; and to clarify which provisions are "presumptively reasonable" in section 260.140.8(b), which sets forth provisions indicating that a limited offering qualification may be approved to issue securities subject to transfer restrictions, if the restrictions do not unfairly prejudice the opportunity of the holder(s) to receive the fair value of these securities;

-amend section 260.140.41 to refer to employee, director, and consultant stock option plans (instead of the current "employee stock option plans"), and to require such plans to include specified information and meet certain criteria;

-repeal section 260.140.41.2, to be replaced by new section 260.140.46, which will refer to and set forth requirements regarding employee benefit plans pursuant to which securities are issued to employees, consultants, and directors (including stock option, stock purchase, and stock bonus plans);

-amend section 260.140.42 to refer to employee, director, and consultant stock purchase plans (instead of the current "employee stock purchase plans"), and to require such plans to include specified information and meet certain criteria; and

-amend section 260.140.45, which deals with the limitation on the number of shares issuable on exercise of all outstanding options, to clarify the method for calculating whether or not the number of shares exceeds 30% of the outstanding shares of the issuer.

The Department accepted written public comments on these proposed regulatory changes until February 15.

The Department received numerous public comments on its proposal to repeal section 260.104, which currently defines "written bid for a security or a written solicitation of an offer to sell a security" for purposes of Corporations Code section 25014(b), and replace it with a new section entitled "Unsolicited Orders." (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 117-18 for detailed background information.) As a result of the public comment, the Department slightly revised its proposal and published the modified language for a 15-day comment period ending December 26.

Proposed Regulatory Action Under the Industrial Loan Law. On October 26, the Department published proposed amendments to its regulations under the Industrial Loan Law, Financial Code section 18000 *et seq.* Regulatory section 1152 requires investment certificates to contain provisions regarding repurchases, designed to minimize the impact of panic-inspired "runs" on industrial loan companies by allowing the companies to delay the repurchase of certificates for up to six months after a demand for repurchase has been made by an investor. Proposed amendments to this section further restructure this "cooling-off period" by limiting the amount of thrift that may be repurchased in any one month in connection with investment certificates sold after the effective date of the amendments.

The Department also proposes to amend section 1154, which contains obsolete provisions regarding the form and amounts of fidelity bond coverage required to be maintained; the Department will require that coverage be in accordance with that required by the FDIC, and set forth new requirements for a request for waiver of fidelity bond coverage.

Section 1155, requiring specified contents to be included in the statement of loan or document, will be amended to delete a reference to an obsolete statutory provision; subsection (h) will be repealed and replaced by a new subsection which will require disclosure that the loan is being made pursuant to the Industrial Loan Law.

Proposed changes to section 1189, which enumerates the kinds of insurance which may not be required but which may be sold at the borrower's request, will delete references to a regulation which was repealed in 1981, and add subsection (d) to clarify that the Commissioner may disapprove the sale of any type of insurance which does not provide adequate coverage or is not good business practice, and thereafter that insurance may not be sold by the company.

Section 1190.3, which currently prohibits the premiums for vendors single interest insurance from being charged to borrowers, is being expanded to regulate the sale of participating deductible coverage insurance, which is insurance which may be added by the lender when a borrower neglects to provide insurance of his/her own choice on collateral for a loan. In general, the amendments provide that the sale of participating deductible coverage insurance shall be considered unreasonable unless it complies with stated consumer protections.

The Commissioner accepted written comments on these proposed regulatory changes until December 21.

Proposed Regulatory Action Under the Personal Property Brokers Law, Consumer Finance Lenders Law, and *Commercial Finance Lenders Law.* Following the close of an initial comment period ending September 21 on proposed amendments to regulatory sections 1460 and 1556 (see CRLR Vol. 10, No. 4 (Fall 1990) p. 118 for detailed background information on these proposed changes), the Department released a modified version of these changes for a 15- day comment period ending on December 26.

Proposed Regulatory Action Under the Health Care Service Plan Act. At this writing, the federal government is still reviewing the Department's proposed changes to its regulations implementing the Knox-Keene Health Care Service Plan Act (HCSPA) regarding the Medicare program. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 104-05 for detailed background information.) Changes in the federal Medicare law have delayed the consistency review.

On October 11, the Department released a slightly modified version of its changes to section 1300.70, which would establish mandatory requirements governing the structure, elements, and implementation of internal quality of care systems for health care service plans. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 105 for detailed background information on these changes.) Following a 15-day comment period, the Department approved the proposed changes and submitted them to OAL, which approved them on December 20.

On October 15, the Department released a modified version of amendments to its HCSPA regulations relating to tangible net equity (TNE), including changes to sections 1300.84, 1300.84.06, and 1300.84.3. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 117 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 136 for background information.) The modified version was approved by OAL on December 14.

LEGISLATION:

SB 118 (Robbins), as introduced December 19, would amend section 1346 of the Health and Safety Code to clarify the Commissioner's powers and authorities in administering the Knox-Keene Health Care Service Plan Act. The bill would add the following to the Commissioner's powers: (a) at his/her discretion, to require HCSPs, other than health maintenance organizations (HMOs) as defined, to report within a reasonable time period, not to exceed 60 calendar days, experience data on claims for the contracts into which the plan has entered with a public entity or political subdivision of the state; (b) to require HCSPs, which are HMOs and which fix rates of payment for the individuals and families of a public group on the basis of each plan's revenue requirements for providing services to the group, to disclose, upon the request of a public entity or political subdivision with which it

contracts to provide services to that group, the method and data used in calculating the rates of payment. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

LITIGATION:

The unprecedented proliferation of litigation by injured investors and all types and levels of government agencies— several of which permitted the harm to occur—continues to swirl around Charles H. Keating, the now-bankrupt American Continental Corporation (ACC) owned by Keating, and the Irvine-based Lincoln Savings and Loan Association, an ACC subsidiary. In 1983-84, former Department of Savings and Loan Commissioner Larry Taggart approved Keating's original application to acquire Lincoln, despite the fact that Keating had been cited by the Securities and Exchange Commission in 1979 for receiving illegal loans and using corporate funds for the personal benefit of insiders; and, in late 1984, approved Lincoln's request to transfer $900 million to a subsidiary a few days before a new federal rule went into effect forcing S&Ls to limit direct investments to 10% of their assets. Further, the Department of Corporations twice authorized the sale of junk bonds by Lincoln employees to Lincoln depositors. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 117-19 and 128-29; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 135-38 and 149-50; and Vol. 10, No. 1 (Winter 1990) pp. 103 and 113-14 for extensive background information.)

People of the State of California v. ACC, the Department's civil fraud action against Keating, ACC, and two of ACC's top officers, is still pending in federal court in Arizona under U.S. District Court Judge Richard Bilby. The Department, which authorized ACC to sell junk bonds from branch offices of Lincoln Savings and Loan, charges defendants with securities fraud, fraud in application for qualification, offer/sale of unauthorized securities, and unauthorized advertising.

Although the Department's case was filed in Los Angeles County Superior Court in March 1990, the defendants removed the case to federal court; it was then transferred to Judge Bilby along with numerous other civil actions concerning Keating, ACC, and Lincoln. Although the case is technically stayed due to ACC's bankruptcy, the Department has been permitted to file a motion for summary judgment in the case; defendants have not yet responded because they have yet to complete discovery. The Department has also filed a motion to default Charles Keating, due to Keating's failure to file a responsive pleading to the Department's complaint since he was served in May 1990. Both motions are scheduled for an April 19 hearing before Judge Bilby.

Keating recently spent a month in jail as a result of the filing of related state criminal charges by the Los Angeles County District Attorney's Office; he was released on October 18 after a federal judge reduced his bail from $5 million to $300,000. On November 9, Los Angeles County Superior Court Judge Lance Ito set aside 22 of the 42 criminal counts, on grounds they were too vague or failed to state a violation of law. On November 19, prosecutors filed an amended indictment containing 46 counts. Judge Ito was scheduled to hold a hearing on the sufficiency of the amended indictment on January 11. The federal grand jury in Los Angeles is expected to hand down a federal indictment against Keating in the near future.

In Re American Continental Corporation/Lincoln Savings and Loan Association, No. 589302 (Orange County Superior Court), the class action filed on behalf of 23,000 investors who lost approximately $300 million in the collapse of Lincoln/ACC through their purchase of now-worthless junk bonds, has also been transferred to Judge Bilby. The Department was dismissed as a named defendant in this action in May 1990. Plaintiffs' objection to the transfer to federal court (triggered by defendants' filing of cross-complaints alleging federal questions) is now on appeal in the U.S. Court of Appeals for the Ninth Circuit.

The March 1991 trial date in the class action has been postponed until at least January 1992. The court in which trial will be held is unclear; Judge Bilby may try the federal claims, with the state law claims severed for state court trial. At this writing, partial settlements totalling $40 million have been negotiated and approved by the court.

DEPARTMENT OF INSURANCE

Commissioner: John Garamendi
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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 Code sections 12919 through 12931 set forth the Commissioner's powers and duties. Authorization for DOI is found in section 12906 of the 800-page Insurance Code; the Department's regulations are codified in Chapter 5, Title 10 of the California Code of Regulations (CCR).

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 approximately 1,450 insurance companies which carry premiums of approximately $53 billion annually. Of these, 650 specialize in writing life and/or accident and health policies.

In addition to its licensing function, DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects more than 170 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.

The Insurance Code empowers the Commissioner to hold hearings to determine whether brokers or carriers are complying with state law, and to order an insurer to stop doing business within the state. However, the Commissioner may not force an insurer to pay a claim—that power is reserved to the courts.