



## BANKING DEPARTMENT

*Acting Superintendent: Harold Doyle*  
(415) 557-3232

The State Banking Department administers all laws applicable to corporations engaging in the commercial banking or trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation, and discontinuance of various types of offices of these entities; and the establishment, operation, relocation, and discontinuance of various types of offices of foreign banks.

The superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor. The superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application, the superintendent must consider:

(1) the character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company;

(2) the need for banking or trust facilities in the proposed community;

(3) the ability of the community to support the proposed bank or trust company, considering the competition offered by existing banks or trust companies; the previous banking history of the community; opportunities for profitable use of bank funds as indicated by the average demand for credit; the number of potential depositors; the volume of bank transactions; and the stability, diversity and size of the businesses and industries of the community. For trust companies, the opportunities for profitable employment of fiduciary services are also considered;

(4) the character, financial responsibility, banking or trust experience and business qualifications of the proposed officers; and

(5) the character, financial responsibility, business experience and standing of the proposed stockholders and directors.

The superintendent may not approve any application unless he/she determines that the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company; conditions in the locality of the proposed bank or trust company afford reasonable promise of successful operation; the bank is being formed for legitimate purposes; the proposed name does not so closely resemble as to cause confusion the name of any other bank

or trust company transacting or which has previously transacted business in the state; and the applicant has complied with all applicable laws.

If the superintendent finds that the proposed bank or trust company has fulfilled all conditions precedent to commencing business, a certificate of authorization to transact business as a bank or trust company will be issued.

The superintendent must also approve all changes in the location of a head office, the establishment or relocation of branch offices and the establishment or relocation of other places of business. A foreign corporation must obtain a license from the superintendent to engage in the banking or trust business in this state. No one may receive money for transmission to foreign countries or issue travelers checks unless licensed. The superintendent also regulates the safe-deposit business.

The superintendent examines the condition of all licensees. However, as the result of the increasing number of banks and trust companies within the state and the reduced number of examiners following passage of Proposition 13, the superintendent now conducts examinations only when necessary, but at least once every two years. The Department is coordinating its examinations with the FDIC so that every other year each agency examines certain licensees. New and problem banks and trust companies are examined each year by both agencies.

The superintendent administers the Small Business Loan Program, designed to provide long-term capital to rapidly growing small businesses whose growth exceeds their ability to generate internal earnings. Under the traditional standards used by banks, these small businesses cannot provide adequate security to qualify for regular bank loans.

The superintendent licenses Business and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the superintendent oversees all deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

Effective March 13, Howard Gould resigned as Superintendent of Banks after accepting a position as partner and managing director of Secura Group, a financial industry consulting firm. As provided by statute, Chief Deputy Superintendent Harold Doyle will serve as

Acting Superintendent of Banks until Governor Deukmejian appoints Gould's successor.

## MAJOR PROJECTS:

*Legal Lending Limit.* On March 24, the Department announced its position that each bank's legal lending limit is to be determined daily, and is to be based on the sum of the shareholders' equity, allowance for loan losses, and capital notes and debentures of the bank as of the close of business of the previous business day.

*Quarterly Report.* At the close of business on December 31, 1988, the 270 state-chartered banks of deposit with 1,643 branches had total assets of \$94.5 billion, an increase of \$3.3 billion, or 3.6%, from December 31, 1987. During this one-year period, there was a net decrease of 9 banks and 76 branches. Fiduciary assets of the trust departments of 36 state-chartered banks, 1 title insurance company, and 91 non-deposit trust companies totalled \$182.7 billion, an increase of \$74.5 billion, or 68.9%, from December 31, 1987. The assets of 101 agencies and branches of foreign banking corporations (having 1,230 offices) increased 8.4% to \$74 billion.

*1988 Earnings of Federal Banks.* For the year ending December 31, 1988, the 13,200 federal banks earned a record \$25.3 billion—an increase of \$3.7 billion from December 31, 1987, and \$7.2 billion over the previous record of \$18.1 billion set in 1985. However, the failure of 221 federal banks during 1988 set a post-Depression record. The majority of bank failures occurred in Colorado, Louisiana, Oklahoma, and Texas—energy-producing states suffering from a regional recession. The unusually high failure rate resulted in a \$3.7 billion drop in the insurance fund in 1988, and caused the Federal Deposit Insurance Corporation (FDIC) to register a loss for the first time since it was established in 1934. The record profits, 52% of which were distributed by banks to stockholders, are attributed mainly to an expansion in the gross national product rate as well as the recording of interest income on loans to Brazil and the exclusion of the large loss posted by First Republic Bank Corporation of Dallas (since it was closed by regulators and reopened under a new owner).

*1988 Earnings of California Banks.* Aggregate earnings for the 270 state-chartered banks during 1988 totalled a record \$801 million. An increase of 863% over 1987, the record profits are attributed mainly to a dramatic decline in



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loan loss provisions for outstanding loans to Third World countries, a decline in past due loans, and successful attempts to curb overhead expenses.

*Comments Sent to Federal Reserve Board.* On April 27, the Superintendent submitted comments to the Board of Governors of the Federal Reserve System expressing opposition to its proposed amendments to Regulation Y (12 C.F.R. Part 225), which would require bank holding companies and their subsidiary state-chartered banks to obtain approval from the Federal Reserve Board prior to the banks' acquisition of stock in a non-bank subsidiary.

The Superintendent requested that the amendments be withdrawn in their entirety on grounds that: (1) the legal authority cited in the Board's solicitation of public comment was reversed on appeal. The U.S. Court of Appeals vacated that portion of the opinion in *American Insurance Association v. Clarke*, 854 F.2d 1405 (D.C. Cir. 1988), which would have allowed the Board to approve or disapprove of operational subsidiaries acquired by a bank subsidiary; (2) the recent expansion of powers authorized for subsidiaries of California banks (including the authority to invest in, develop, own, and sell real property) is closely supervised by the State Banking Department and the FDIC, thereby safeguarding against undue risk; (3) under California law, these expanded activities may be conducted directly by state-chartered bank; the Board's amendment would have the effect of forcing the activities into the bank itself, creating a more direct risk to the safety and soundness of bank operations than would conducting the activities in an operations subsidiary; and (4) the proposal would constitute a broad and sweeping attack on the dual banking system by interfering with the state legislative/regulatory process that has authorized expanded powers.

## LEGISLATION:

*AB 643 (Calderon)* would require financial institutions to provide handicap access to automated teller machines. This bill is pending in the Assembly Committee on Finance and Insurance.

*AB 1024 (Calderon)* would require the Department to conduct a survey on interstate banking, and report to the legislature by June 30, 1990 on the identities of California financial institutions which maintain branches in other states, California financial institutions owned by foreign entities, and financial institutions which do not meet the federal definition of "banks" that maintain home

offices or branches in California. This bill is also pending in the Assembly Committee on Finance and Insurance.

*SB 476 (Robbins)* would extend the requirement that banks disclose information regarding consumer bank account charges to include certificate of deposit accounts. This bill passed the Senate on June 1 and is pending in the Assembly Finance and Insurance Committee.

The following is a status update on bills discussed in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 81-82:

*AB 2521 (Johnston and Vuich)*, the California Bankers Association's bill which would repeal the entire existing Banking Code and replace it with 468 new sections of code, is a two-year bill pending in the Assembly Finance and Insurance Committee. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 70-71 for further information on this bill.)

*AB 244 (Calderon)*, which would require financial institutions operating automated teller machines outside or away from their premises to comply with certain lighting, landscaping and location requirements, is a two-year bill pending in the Assembly Committee on Finance and Insurance. A similar bill introduced by Assemblymember Calderon (AB 3301) died in that committee last term.

*AB 438 (Lancaster)*, which would exempt (among others) banks, savings associations, and credit unions from existing requirements relating to the contents of mortgage contracts, deeds of trust, real estate sales contracts, or any note or negotiable instrument issued in connection with any of these documents used to finance the purchase or construction of real property containing four or fewer residential units, passed the Assembly and is pending in the Senate Banking and Commerce Committee.

*SB 270 (Stirling)*, as amended April 6, would create reporting requirements when a state-chartered bank converts into a national banking association. This bill would require the national banking association created by such conversion to file a prescribed officers' certificate with the Secretary of State, and would require the Secretary of State to enter the fact of the conversion on the corporate records of the state bank so converted. The bank shall no longer be considered organized under the laws of this state after the Secretary of State enters the fact of the conversion on the Secretary of State's corporate records. This bill is pending in the Assembly Finance and Insurance Committee.

## DEPARTMENT OF CORPORATIONS

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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