AMENDED IN SENATE MAY 19, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL No. 664

Introduced by Committee on Banking and Financial Institutions (Senators Vargas (Chair), Blakeslee, Evans, Kehoe, Liu, Padilla, and Walters)

February 18, 2011

An act to *amend Sections 14315 and 14652 of, to* amend and renumber the headings of Division 1.1 (commencing with Section 4000), Division 1.2 (commencing with Section 4050), Division 1.3 (commencing with Section 4100), Division 1.5 (commencing with Section 4800), Division 1.6 (commencing with Section 4970), Division 1.7 (commencing with Section 4981), Division 1.8 (commencing with Section 4990), and Division 1.9 (commencing with Section 4995) of, *to add Sections 1861 and 1881 to,* to add Division 1.1 (commencing with Section 1000) and Division 1.2 (commencing with Section 2000) to, and to repeal and add Division 1 (commencing with Section 99) of, the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

SB 664, as amended, Committee on Banking and Financial Institutions. Financial institutions.

Existing law establishes the Department of Financial Institutions in the Business, Transportation and Housing Agency and provides that the department is in charge of the execution of specified laws relating to various financial institutions and financial services.

This bill would revise and recast various provisions of the Financial Code applicable to financial institutions and financial services regulated by the department and would make other conforming changes. The bill

would also require a bank that establishes a branch office in this state in accordance with the National Bank Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, to provide a specified notice to the Commissioner of Financial Institutions within 10 days of the establishment, relocation, or redesignation of offices. *The bill would make other conforming changes should AB 109 of the 2011–12 Regular Session become operative.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Division 1 (commencing with Section 99) of the Financial Code is repealed.

SEC. 2. Division 1 (commencing with Section 99) is added to the Financial Code, to read:

DIVISION 1. FINANCIAL INSTITUTIONS

Chapter 1. Definitions

99. This division ~~and Division 1.1~~, *Division 1.1 (commencing with Section 1000), Division 1.2 (commencing with Section 2000), Division 1.6 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), and Division 15 (commencing with Section 31000)* shall be known, and may be cited, as the ~~"Banking~~ "*Financial Institutions* Law."

101. If and to the extent that any provision of this division is preempted by federal law, the provision does not apply and shall not be enforced.

103. The word "bank" as used in this division means any incorporated banking institution that shall have been incorporated to engage in commercial banking business, industrial banking, or trust business.

105. Banks are divided into the following classes:

(a) Commercial banks.

(b) Industrial banks.

(c) Trust companies.

107. "Commercial bank" means a corporation organized for the purpose of engaging in the commercial banking business.

109. "Commercial banking business" includes, but is not limited to, the business of soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing, provided that nothing herein shall apply to or include money or its equivalent left in escrow, or left with an agent pending investment in real estate or securities for, or on account of, his or her principal. In addition, "commercial banking business" means to lend money on the security of real or personal property or without security; to discount or deal in bills, notes, or other commercial paper; to buy and sell for the account of customers, and, if eligible for investment, for its own account, securities, gold and silver bullion, foreign coins, and bills of exchange; and generally to transact a commercial banking business.

111. "Industrial bank" means a corporation organized for the purpose of engaging in the industrial banking business.

113. "Industrial banking business" includes the making of loans and acceptance of deposits, including deposits evidenced by investment or thrift certificates, but excluding demand deposits.

115. "Trust business" means the business of acting as executor, administrator, guardian or conservator of estates, assignee, receiver, depositary or trustee under the appointment of any court, or by authority of any law of this or any other state or of the United States, or as trustee for any purpose permitted by law.

117. "Trust company" means a corporation, industrial bank, or a commercial bank that is authorized to engage in the trust business.

119. "Bank" or "banks" includes commercial banks, industrial banks, and trust companies unless the context otherwise requires. However, "bank" does not include a savings association or a credit union.

121. (a) "Office" includes head office, branch office, and any other authorized place of business of a licensee.

(b) "Head office" means the principal place of business of a licensee.

123. "Real property" and "personal property" have the meanings defined in and shall be construed in accordance with

~~Title 1, Part 1, Division 2, Civil Code of California.~~ *Title 1 (commencing with Section 654) of Part 1 of Division 2 of the Civil Code.*

125. "Commissioner" means the Commissioner of Financial Institutions and "department" means the Department of Financial Institutions.

127. "Person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, joint stock company, limited liability company, unincorporated association, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

129. Unless the provision or the context otherwise requires, the definitions set forth in this chapter govern the construction of this division.

131. References in this division to the voting of shares shall be construed in accordance with Section 111 of the Corporations Code.

133. If the articles of a bank provide for more or less than one vote for any share on any matter, the references in Sections 139 and 141 to a majority or other proportion of shares means, as to such matter, a majority or other proportion of the votes entitled to be cast. Whenever, under Division 1 (commencing with Section 100), Title 1 of the Corporations Code or this division, shares are disqualified from voting on any matter, they shall not be considered outstanding for the determination of a quorum at any meeting to act upon, or the required vote to approve action upon, such matter under any provision of Division 1 (commencing with Section 100), Title 1 of the Corporations Code, of this division, or of the articles or bylaws.

135. Any requirement in this division for a vote of each class of outstanding shares shall be construed in accordance with Section 117 of the Corporations Code.

137. "Approved by (or approval of) the board" means approved or ratified by the vote of the board or by the vote of a committee authorized to exercise the powers of the board, except as to any matter not within the competence of the committee under Section 311 of the Corporations Code or any matter for which this division also requires approval of the shareholders or approval of the outstanding shares.

139. "Approved by (or approval of) the outstanding shares" has the meaning set forth in Section 152 of the Corporations Code and shall include approval by the affirmative vote of a majority of the outstanding shares of each class or series entitled, by any provision of the articles, of this division, or of Division 1 (commencing with Section 100), Title 1 of the Corporations Code, to vote as a class or series on the subject matter being voted upon, and shall also include approval by the affirmative vote of such greater proportion (including all) of the outstanding shares of any class or series if such greater proportion is required by the articles, by this division, or by Division 1 (commencing with Section 100), Title 1 of the Corporations Code.

141. "Approved by (or approval of) the shareholders" has the meaning set forth in Section 153 of the Corporations Code and shall include approval or ratification by the affirmative vote or written consent of such proportion (including all) greater than a majority of the shares of any class or series as may be provided in the articles, in this division, or in Division 1 (commencing with Section 100), Title 1 of the Corporations Code for all or any specified shareholder action.

143. "Articles" has the meaning set forth in Section 154 of the Corporations Code.

145. "Board" has the meaning set forth in Section 155 of the Corporations Code.

147. "California" means:

(a) When used with respect to a bank, in the case of a state bank, a bank that is organized under the laws of this state and, in the case of a national bank, a national bank that maintains its main office in this state.

(b) When used with respect to an office of a bank, an office which is located in this state.

(c) When used with respect to any corporation other than a bank, a corporation that is organized under the laws of this state.

149. "CAMELS composite rating" shall have the meaning set forth in Section 327.8(j) of Title 12 of the Code of Federal Regulations.

151. "Certificate of correction" means a certificate executed and filed with the Secretary of State pursuant to Section 109 of the Corporations Code, subject, however, to the provisions of Section 1105.

153. "Certificate of determination" has the meaning set forth in Section 156 of the Corporations Code, subject, however, to the provisions of Section 1104.

155. "Certificate of revocation" means a certificate executed and filed with the Secretary of State pursuant to the second and third sentences of subdivision (c) of Section 110 of the Corporations Code, subject, however, to the provisions of Section 600.12.

157. "Common shares" has the meaning set forth in Section 159 of the Corporations Code.

159. (a) "Confidential information" means any information regarding a licensee contained in, or related to, any of the following:

(1) Applications filed with the commissioner.

(2) Examination, operating, condition, or any other reports prepared by, on behalf of, or for the use of, the commissioner.

(3) Information received in confidence by the commissioner.

(b) Confidential information is the property of the commissioner.

161. "Constituent corporation," when used with respect to a corporation:

(a) In the case of a merger, has the meaning set forth in Section 161 of the Corporations Code.

(b) In the case of a consolidation, means a corporation that is consolidated with one or more other corporations.

163. "Contributed capital" means all of shareholders' equity other than retained earnings. However, nothing in this section shall prohibit a bank from transferring amounts from time to time from its retained earnings to its contributed capital, subject to any applicable statutes, regulations, and generally accepted accounting principles.

165. "Credit union" means a corporation of the type described in Section 14002 organized under the laws of this state or a corporation of similar type organized under the laws of the United States or of any state of the United States other than this state.

167. "Directors" has the meaning set forth in Section 164 of the Corporations Code.

169. "Disappearing," when used with respect to a corporation, means a constituent corporation that is not the surviving corporation.

171. "Distribution to its shareholders" has the meaning set forth in Section 166 of the Corporations Code. However, in Division 1 (commencing with Section 100), Title 1 of the Corporations Code and in this division, "distribution to its shareholders" does not include any purchase of shares by a bank or by a majority-owned subsidiary of a bank which is necessary to reduce or avoid loss to such bank or to such subsidiary on an extension of credit previously made in good faith. Also, in this division, "distribution to its shareholders" includes any distribution made by a bank or by a majority-owned subsidiary of a bank to the shareholders of any corporation of which such bank is a majority-owned subsidiary.

173. (a) "Foreign," when used with respect to a bank, an office of a bank, or any corporation other than a bank, means foreign (other nation) or foreign (other state).

(b) "Foreign banking corporation" means a foreign bank.

175. "Foreign nation" means any nation other than the United States, including, without limitation, any subdivision, territory, trust territory, dependency, colony, or possession of any nation other than the United States. "Foreign nation" includes Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States.

177. (a) The definition of "state of the United States" in Section 207 does not apply to this section. In this section, "state of the United States" means any state of the United States or the District of Columbia.

(b) "Foreign (other nation):"

(1) When used with respect to a bank, means any bank (including, without limitation, any commercial bank, merchant bank, or other institution that engages in banking activities that are usual in connection with the business of banking in the nation in which the institution is organized or operating) other than (A) a bank that is organized under the laws of a state of the United States or (B) a national bank that maintains its main office in a state of the United States.

(2) When used with respect to an office of a bank, means an office that is located in a place other than a state of the United States.

(3) When used with respect to any corporation other than a bank, means a corporation that is organized under the laws of a foreign nation.

179. "Foreign (other state)":

(a) When used with respect to a bank, means a bank that is organized under the laws of any state of the United States other than this state, or a national bank that maintains its main office in any state of the United States other than this state, and includes any savings bank, as defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(g)), that is organized under the laws of a state other than this state.

(b) When used with respect to an office of a bank, means an office that is located in a state other than this state.

(c) When used with respect to a corporation other than a bank, means a corporation that is organized under the laws of any state of the United States other than this state or under the laws of the United States.

181. "Insured:"

(a) When used with respect to a bank or an office of a bank, means a bank or office the deposits of which are insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(b) When used with respect to a deposit, means a deposit that is insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

183. "Law of the domicile" means:

(a) When used with respect to a national bank, the law of the United States.

(b) When used with respect to a state bank, the law of the state of the United States under which the bank is organized.

(c) When used with respect to a foreign (other nation) bank, the law of the foreign nation under which the bank is organized.

185. "Licensee" has the following meanings:

(a) Any bank authorized by the commissioner pursuant to Section 1042 to transact banking or trust business.

(b) Any industrial bank authorized by the commissioner pursuant to Section 1042 to transact industrial banking business.

(c) Any trust company authorized by the commissioner pursuant to Section 1042 to transact trust business.

(d) Any foreign (other nation) bank that is licensed under Article 2 (commencing with Section 1780) of Chapter 20 or under Article 3 (commencing with Section 1800) of Chapter 20.

(e) Any corporation licensed by the commissioner to transmit money pursuant to Division 1.2 (commencing with Section 1920).

(f) Any person authorized by the commissioner to conduct the business of a savings association pursuant to Division 2 (commencing with Section 5000).

(g) Any credit union authorized by the commissioner to conduct business pursuant to Section 14154.

(h) Any foreign (other state) credit union licensed by the commissioner to conduct business pursuant to Chapter 11 (commencing with Section 16000) of Division 5.

(i) Any foreign (other nation) credit union licensed by the commissioner to conduct business pursuant to Chapter 12 (commencing with Section 16500) of Division 5.

(j) Any industrial loan company authorized by the commissioner to conduct insurance premium finance business pursuant to Division 7 (commencing with Section 18000).

(k) Any corporation licensed by the commissioner as a business and industrial development corporation pursuant to Section 31154.

187. "Majority-owned subsidiary" has the meaning set forth for "subsidiary" in subdivision (a) of Section 189 of the Corporations Code.

189. (a) "National bank" or "national banking association" means a national banking association organized under the National Bank Act.

(b) For purposes of this division, a national bank is deemed to be a corporation.

191. "Officers' certificate" has the meaning set forth in Section 173 of the Corporations Code.

193. "Resulting," when used with respect to a corporation, means:

(a) In the case of a consolidation, the corporation into which the constituent corporations are consolidated.

(b) In the case of a conversion, the corporation into which the converting corporation is converted.

195. "ROCA supervisory rating" shall have the meaning set forth in Section 327.8(k) of Title 12 of the Code of Federal Regulations.

197. "Savings association" includes a savings association, a savings and loan association, and a savings bank. However, "savings association" does not include any savings bank of the type defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(g)).

199. "Series," when used with respect to shares, has the meaning set forth in Section 183 of the Corporations Code.

201. "Shares" has the meaning set forth in Section 184 of the Corporations Code.

203. "Shareholder" has the meaning set forth in Section 185 of the Corporations Code.

205. "State":

(a) When used with respect to a corporation, means a corporation that is organized under the laws of a state of the United States.

(b) When used with respect to an office of a foreign (other nation) bank, means an office that the bank is authorized to maintain under the laws of a state of the United States.

207. "State of the United States" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

209. "Surviving," when used with respect to a corporation, means a corporation in which one or more other corporations are merged.

211. "Uniform Interagency Trust Rating System (UITRS)" shall have the meaning set forth in the policy statement regarding the uniform interagency trust rating system published by the Federal Financial Institutions Examination Council on October 13, 1998 (63 Fed. Reg. 54704).

213. "Uniform Rating System for Informational Technology (URSIT)" shall have the meaning set forth in the policy statement regarding the uniform rating system for information technology published by the Federal Financial Institutions Examination Council on January 20, 1999, and implemented on or before April 1, 1999 (64 Fed. Reg. 3109).

215. "Vote" has the meaning set forth in Section 194 of the Corporations Code.

217. "Voting power" has the meaning set forth in Section 194.5 of the Corporations Code.

Chapter 2. Transition Provisions

250. In this chapter, unless the provision or context requires otherwise:

(a) "New General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on and after January 1, 1977.

(b) "Prior Banking Law" means this division, as in effect on December 31, 1978.

(c) "Prior General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on December 31, 1976.

(d) "Revised Banking Law" means this division, as in effect on and after January 1, 1979, and as repealed and readded as of January 1, 2012.

(e) "Subject institution" means:

(1) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, the commercial banking business under this division.

(2) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, the trust business under this division.

(3) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 1850) of Chapter 21 of Division 1.1.

251. For purposes of Chapter 23 (commencing with Section 2300) of the new General Corporation Law, in the case of any subject institution existing on January 1, 1979:

(a) The term "new law" shall mean the new General Corporation Law, subject, however, to the provisions of Section 101 of the revised Banking Law.

(b) The term "prior law" shall mean the prior General Corporation Law, subject, however, to the provisions of Section 101 of the prior Banking Law.

(c) The term "effective date" shall mean January 1, 1979.

252. (a) Sections 600 and 600.2 of the revised Banking Law shall not apply to any subject institution existing on January 1, 1979, unless and until an amendment of the articles of such subject institution is filed with the Secretary of State pursuant to Section 2302 of the new General Corporation Law.

(b) An amendment of the articles of a subject institution existing on January 1, 1979, which is filed with the Secretary of State pursuant to Section 2302 of the new General Corporation Law may be adopted by approval of the board alone in accordance with the second sentence of Section 2302 of the new General Corporation Law, notwithstanding the fact that such amendment changes such articles to conform to the provisions of Sections 600 and 600.2 of the revised Banking Law.

(c) Neither Article 6 (commencing with Section 690), Chapter 5 of the revised Banking Law nor Section 904 of the new General Corporation Law shall apply to an amendment of the articles of a subject institution existing on January 1, 1979, which is filed with the Secretary of State pursuant to Section 2302 of the new General Corporation Law on account of the fact that such amendment conforms such articles to the provisions of Section 600.2 of the revised Banking Law.

253. In case the board of a subject institution has, prior to January 1, 1979, adopted a resolution levying an assessment on the common shares of such subject institution in accordance with an order issued by the commissioner pursuant to Section 661 of the prior Banking Law:

(a) If the assessment has, prior to January 1, 1979, become a lien on the common shares in accordance with Section 2704 of the prior General Corporation Law, the assessment shall be collected pursuant to the prior General Corporation Law:

(b) Otherwise, the resolution shall be deemed to be rescinded on January 1, 1979.

254. Article 3 (commencing with Section 640), Chapter 5 of the revised Banking Law applies to any distribution to its shareholders made after January 1, 1979, by a subject institution existing on January 1, 1979, except that any such distribution effected pursuant to a contract for the purchase or redemption of shares entered into by such subject institution prior to January 1, 1979, may be made if permissible under the applicable provisions of the revised Banking Law and the new General Corporation Law

or under the applicable provisions of the prior Banking Law and the prior General Corporation Law in effect at the time such contract was entered into.

Chapter 3. Department of Financial Institutions

Article 1. General Provisions

300. (a) In this section:

(1) "Business and industrial development corporation" means a corporation licensed under Division 15 (commencing with Section 31000).

(2) "Payment instrument" has the same meaning as set forth in Section 33059.

(3) "Traveler's check" has the same meaning as set forth in Section 1803.

(b) There is in the state government, in the Business, Transportation and Housing Agency, a Department of Financial Institutions which has charge of the execution of, among other laws, the laws of this state relating to any of the following: (1) banks or trust companies or the banking or trust business; (2) savings associations or the savings association business; (3) credit unions or the credit union business; (4) persons who engage in the business of receiving money for transmission to foreign nations or such business; (5) issuers of traveler's checks or the traveler's check business; (6) issuers of payment instruments or the payment instrument business; (7) business and industrial development corporations or the business and industrial development corporation business, or (8) insurance premium finance agencies or the insurance premium finance business.

301. This chapter is applicable to this division, Division 1.1 (commencing with Section 1000), Division 1.2 (commencing with Section 2000), Division 1.6 (commencing with Section 4800), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), and Division 15 (commencing with Section 31000).

Article 2. Commissioner of Financial Institutions

320. The chief officer of the Department of Financial Institutions is the Commissioner of Financial Institutions. The Commissioner of Financial Institutions is the head of the department and, except as otherwise provided in this code, is subject to the provisions of the Government Code relating to department heads, but need not reside in Sacramento.

321. As of the operative date of this section:

(a) In this section, "order" means any approval, consent, authorization, exemption, denial, prohibition, requirement, or other administrative action, applicable to a specific case.

(b) The office of the Superintendent of Banks and the State Banking Department are abolished. All powers, duties, responsibilities, and functions of the Superintendent of Banks and the State Banking Department are transferred to the Commissioner of Financial Institutions and the Department of Financial Institutions, respectively. The Commissioner of Financial Institutions and the Department of Financial Institutions succeed to all the rights and property of the Superintendent of Banks and the State Banking Department, respectively; the Commissioner of Financial Institutions and the Department of Financial Institutions are subject to all the debts and liabilities of the Superintendent of Banks and the State Banking Department, respectively, as if the Commissioner of Financial Institutions and the Department of Financial Institutions had incurred them. Any action or proceeding by or against the Superintendent of Banks or the State Banking Department may be prosecuted to judgment, which shall bind the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively, or the Commissioner of Financial Institutions or the Department of Financial Institutions may be proceeded against or substituted in place of the Superintendent of Banks or the State Banking Department, respectively. References in the Constitution of the State of California or in any statute or regulation to the Superintendent of Banks or to the State Banking Department mean the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively. All agreements entered into with, and orders and regulations issued by, the Superintendent of Banks or the State Banking Department shall continue in effect as if the agreements

were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively.

(c) The office of the Savings and Loan Commissioner and the Department of Savings and Loan are abolished. All powers, duties, responsibilities, and functions of the Savings and Loan Commissioner and the Department of Savings and Loan are transferred to the Commissioner of Financial Institutions and the Department of Financial Institutions, respectively. The Commissioner of Financial Institutions and the Department of Financial Institutions succeed to all the rights and property of the Savings and Loan Commissioner and the Department of Savings and Loan, respectively; the Commissioner of Financial Institutions and the Department of Financial Institutions are subject to all the debts and liabilities of the Savings and Loan Commissioner and the Department of Savings and Loan, respectively, as if the Commissioner of Financial Institutions and the Department of Financial Institutions had incurred them. Any action or proceeding by or against the Savings and Loan Commissioner or the Department of Savings and Loan may be prosecuted to judgment, which shall bind the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively, or the Commissioner of Financial Institutions or the Department of Financial Institutions may be proceeded against or substituted in place of the Savings and Loan Commissioner or the Department of Savings and Loan, respectively. References in the Constitution of the State of California or in any statute or regulation to the Savings and Loan Commissioner or to the Department of Savings and Loan mean the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively. All agreements entered into with, and orders and regulations issued by, the Savings and Loan Commissioner or the Department of Savings and Loan shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Institutions or the Department of Financial Institutions.

(d) All powers, duties, responsibilities, and functions of the Commissioner of Corporations and the Department of Corporations with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business are transferred to the Commissioner of Financial Institutions and the Department of

Financial Institutions, respectively. The Commissioner of Financial Institutions and the Department of Financial Institutions succeed to all the rights and property of the Commissioner of Corporations and the Department of Corporations, respectively, with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business; the Commissioner of Financial Institutions and the Department of Financial Institutions are subject to all the debts and liabilities of the Commissioner of Corporations and the Department of Corporations, respectively, with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business, as if the Commissioner of Financial Institutions and the Department of Financial Institutions had incurred them. Any action or proceeding by or against the Commissioner of Corporations or the Department of Corporations with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business may be prosecuted to judgment, which shall bind the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively, or the Commissioner of Financial Institutions or the Department of Financial Institutions may be proceeded against or substituted in place of the Commissioner of Corporations or the Department of Corporations, respectively. References in the Constitution of the State of California or any statute or regulation to the Commissioner of Corporations or to the Department of Corporations with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business mean the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively. All agreements entered into with, and orders and regulations issued by, the Commissioner of Corporations or the Department of Corporations in the exercise of authority under any law relating to credit unions, the credit union business, industrial loan companies, or the industrial loan business, shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Institutions or the Department of Financial Institutions.

322. The commissioner is appointed by the Governor, and holds office at the pleasure of the Governor. The appointment of the commissioner is subject to confirmation by the Senate.

323. The commissioner shall be a citizen of the United States and a resident of the state for at least three years prior to his or her

appointment. The commissioner shall be chosen solely for his or her qualifications and fitness to perform the duties of his or her office.

324. The annual salary of the commissioner is provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

325. Before entering upon the duties of his or her office, the commissioner shall take and subscribe to the constitutional oath of office and file the same with the Secretary of State.

326. The commissioner is responsible for the performance of all duties, the exercise of all powers and jurisdiction, and the assumption and discharge of all responsibilities vested by law in the department. The commissioner has and may exercise all the powers necessary or convenient for the administration and enforcement of, among other laws, the laws described in Section 300. The commissioner may issue such rules and regulations consistent with law as he or she may deem necessary or advisable in executing the powers, duties, and responsibilities of the department.

327. (a) The commissioner shall apply the Interagency Guidance on Nontraditional Mortgage Product Risks issued in September 2006 and the Statement on Subprime Mortgage Lending issued in June 2007 by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration to state-regulated financial institutions, including, but not limited to, privately insured, state-chartered credit unions.

(b) The commissioner may issue emergency and final regulations to clarify the application of this section as soon as possible.

(c) A bank or credit union to which the commissioner applies the documents described in subdivision (a) shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in those documents.

328. (a) The commissioner may make the agreements that he or she deems necessary or appropriate in exercising his or her powers.

(b) (1) The agreements authorized under subdivision (a) may include, but are not limited to, agreements with agencies of this state, of other states of the United States, of the United States, or

of foreign nations that regulate financial institutions, relating to examinations of banks, savings associations, credit unions, industrial loan companies, and other matters.

(2) Any agreement with a government agency that regulates financial institutions is exempt from the advertising and competitive bidding requirements of the Public Contract Code.

329. (a) For purposes of this section, the following definitions apply:

(1) "Applicable law" means:

(A) With respect to any bank, Division 1.6 (commencing with Section 4800), and any of the following provisions:

(i) Article 6 (commencing with Section 405) of Chapter 3.

(ii) Article 3 (commencing with Section 1130) of Chapter 5 of Division 1.1.

(iii) Chapter 6 (commencing with Section 1200) of Division 1.1.

(iv) Chapter 10 (commencing with Section 1320) of Division 1.1.

(v) Chapter 14 (commencing with Section 1460) of Division 1.1.

(vi) Article 1 (commencing with Section 1530) of Chapter 15 of Division 1.1.

(vii) Chapter 16 (commencing with Section 1550) of Division 1.1.

(viii) Chapter 20 (commencing with Section 1750) of Division 1.1.

(ix) Section 456.

(x) Section 457.

(xi) Section 459.

(xii) Section 460.

(xiii) Section 760.

(xiv) Chapter 21 (commencing with Section 1850) of Division 1.1.

(xv) Chapter 18 (commencing with Section 1660) of Division 1.1.

(xvi) Chapter 19 (commencing with Section 1670) of Division 1.1.

(B) With respect to any savings association, any provision of Division 1.6 (commencing with Section 4800) and Division 2 (commencing with Section 5000).

(C) With respect to any issuer of traveler's checks, any provision of Chapter 7 (commencing with Section 2120) of Division 1.2.

(D) With respect to any insurance premium finance company, any provision of Division 7 (commencing with Section 18000).

(E) With respect to any business and development corporation, any provision of Division 15 (commencing with Section 31000).

(F) With respect to any credit union, any of the following provisions:

(i) Section 14252.

(ii) Section 14253.

(iii) Section 14255.

(iv) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.

(v) Section 14401.

(vi) Section 14404.

(vii) Section 14408, only as that section applies to gifts to directors, volunteers, and employees, and the related family or business interests of the directors, volunteers, and employees.

(viii) Section 14409.

(ix) Section 14410.

(x) Article 5 (commencing with Section 14600) of Chapter 4 of Division 5.

(xi) Article 6 (commencing with Section 14650) of Chapter 4 of Division 5, excluding subdivision (a) of Section 14651.

(xii) Section 14803.

(xiii) Section 14851.

(xiv) Section 14858.

(xv) Section 14860.

(xvi) Section 14861.

(xvii) Section 14863.

(G) With respect to any person licensed to transmit money abroad, any provision of Chapter 1 (commencing with Section 2000) of Division 1.2.

(2) "Licensee" means any bank, savings association, credit union, transmitter of money abroad, issuer of payment instruments, issuer of traveler's checks, insurance premium finance agency, or business and industrial development corporation that is authorized by the commissioner to conduct business in this state.

(b) Notwithstanding any other provision of this code that applies to a licensee or a subsidiary of a licensee, after notice and an

opportunity to be heard, the commissioner may, by order that shall include findings of fact which incorporates a determination made in accordance with subdivision (e), levy civil penalties against any licensee or any subsidiary of a licensee who has violated any provision of applicable law, any order issued by the commissioner, any written agreement between the commissioner and the licensee or subsidiary of the licensee, or any condition of any approval issued by the commissioner. Notwithstanding any other provision of law, neither the commissioner nor any employee of the department shall disclose or permit the disclosure of any record, record of any action, or information contained in a record of any action, taken by the commissioner under the provisions of this section, unless the action was taken pursuant to paragraph (2) of subdivision (b), to persons other than federal or state government employees who are authorized by statute to obtain the records in the performance of their official duties, unless the disclosure is authorized or requested by the affected licensee or the affected subsidiary of the licensee. The commissioner shall have the sole authority to bring any action with respect to a violation of applicable law subject to a penalty imposed under this section.

Except as provided in paragraphs (1) and (2), any penalty imposed by the commissioner may not exceed one thousand dollars ($1,000) a day, provided that the aggregate penalty of all offenses in any one action against any licensee or subsidiary of a licensee shall not exceed fifty thousand dollars ($50,000).

(1) If the commissioner determines that any licensee or subsidiary of the licensee has recklessly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed five thousand dollars ($5,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed seventy-five thousand dollars ($75,000).

(2) If the commissioner determines that any licensee or subsidiary of the licensee has knowingly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the

commissioner, the commissioner may impose a penalty not to exceed ten thousand dollars ($10,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed 1 percent of the total assets of the licensee or subsidiary of a licensee subject to the penalty.

(c) Nothing in this section shall be construed to impair or impede the commissioner from pursuing any other administrative action allowed by law.

(d) Nothing in this section shall be construed to impair or impede the commissioner from bringing an action in court to enforce any law or order he or she has issued, including orders issued under this section. Nothing in this section shall be construed to impair or impede the commissioner from seeking any other damages or injunction allowed by law.

(e) In determining the amount and the appropriateness of initiating a civil money penalty under subdivision (b), the commissioner shall consider all of the following:

(1) Evidence that the violation or practice or breach of duty was intentional or was committed with a disregard of the law or with a disregard of the consequences to the institution.

(2) The duration and frequency of the violations, practices, or breaches of duties.

(3) The continuation of the violations, practices, or breaches of duty after the licensee or subsidiary of the licensee was notified, or, alternatively, its immediate cessation and correction.

(4) The failure to cooperate with the commissioner in effecting early resolution of the problem.

(5) Evidence of concealment of the violation, practice, or breach of duty or, alternatively, voluntary disclosure of the violation, practice, or breach of duty.

(6) Any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of that harm.

(7) Evidence that a licensee or subsidiary of a licensee received financial gain or other benefit as a result of the violation, practice, or breach of duty.

(8) Evidence of any restitution paid by a licensee or subsidiary of a licensee of losses resulting from the violation, practice, or breach of duty.

(9) History of prior violations, practices, or breaches of duty, particularly where they are similar to the actions under consideration.

(10) Previous criticism of the institution for similar actions.

(11) Presence or absence of a compliance program and its effectiveness.

(12) Tendency to engage in violations of law, unsafe or unsound banking practices, or breaches of duties.

(13) The existence of agreements, commitments, orders, or conditions imposed in writing intended to prevent the violation, practice, or breach of duty.

(14) Whether the violation, practice, or breach of duty causes quantifiable, economic benefit or loss to the licensee or the subsidiary of the licensee. In those cases, removal of the benefit or recompense of the loss usually will be insufficient, by itself, to promote compliance with the applicable law, order, or written agreement. The penalty amount should reflect a remedial purpose and should provide a deterrent to future misconduct.

(15) Other factors as the commissioner may, in his or her opinion, consider relevant to assessing the penalty or establishing the amount of the penalty.

(f) The amounts collected under this section shall be deposited in the appropriate fund of the department. For purposes of this subdivision, the term "appropriate fund" means the fund to which the annual assessments of fined licensees, or the parent licensee of the fined subsidiary, are credited.

330. The authority vested in the Superintendent of Banks under subdivision (2) of Section 1 of Article XV of the California Constitution is delegated to the commissioner.

331. Notwithstanding any other provision of law, the commissioner may adopt and implement any method of accepting electronic filings of applications, reports, or other matters, which, in the opinion of the commissioner, is secure. Any method of electronic filing chosen by the commissioner shall include a method to verify the identity of the person making the filing. The verification shall be deemed to satisfy all other verifications required by this division, and shall have the same force and effect as the use of manual signatures.

332. (a) (1) In this section, "federal law" includes, but is not limited to, the United States Constitution, any federal statute, any

federal court decision, and any regulation, circular, bulletin, interpretation, decision, order, and waiver issued by a federal agency.

(2) The definitions set forth in Section 1750 apply to this section.

(b) (1) Notwithstanding any other provision of law, except as provided in subdivision (c), if the commissioner finds that any provision of federal law applicable to national banking associations doing business in this state is substantively different from the provisions of this code applicable to banks organized under the laws of this state, the commissioner may by regulation make that provision of federal law applicable to banks organized under the laws of this state.

(2) If the commissioner finds that any provision of federal law applicable to foreign (other nation) banks with respect to federal agencies or federal branches in this state is substantively different from the provisions of this code applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 20 (commencing with Section 1750) of Division 1.1, the commissioner may by regulation make that provision of federal law applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 20 ~~commencing~~ *(commencing* with Section 1750) of Division 1.1.

(c) (1) Section 11343.4 and Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do not apply to any regulation adopted under subdivision (b).

(2) The commissioner shall file any regulation adopted pursuant to subdivision (b), together with a citation to this section as authority for the adoption and a citation to the provisions of federal law made applicable by the regulation, with the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

(3) Any regulation adopted under subdivision (b) shall become effective on the date when it is filed with the Secretary of State unless the commissioner prescribes a later date in the regulation or in a written instrument filed with the regulation.

(4) Any regulation adopted under subdivision (b) shall expire at 12 p.m. on December 31 of the year following the calendar year in which it becomes effective.

(5) Any regulation adopted pursuant to subdivision (b) shall be subject to the following restrictions:

(A) The commissioner shall not renew or reinstate the regulation adopted pursuant to subdivision (b).

(B) The commissioner shall not adopt a new regulation pursuant to subdivision (b), to address the same conformity issue that was addressed by the regulation that expired pursuant to subdivision (c).

(d) The commissioner may adopt regulations pursuant to subdivision (b) that are exempt from the expiration and restrictions of subdivision (c) if the regulations are adopted in compliance with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, including those listed in paragraph (1) of subdivision (c).

333. The powers of supervision and examination of all licensees are vested in the commissioner.

334. The commissioner may promulgate or waive such rules and regulations as may be reasonable or necessary to carry out his or her duties and responsibilities.

335. (a) The commissioner, whenever in his or her opinion such action is necessary or appropriate to carry out his or her duties, may call a meeting of the board of directors of a licensee.

(b) A meeting of the board of a licensee called by the commissioner shall be held upon four days' notice by first class mail or 24 hours' notice delivered personally or by telephone. The notice shall be given by the commissioner or, if the commissioner so orders, by an officer of the licensee.

(c) A meeting of the board of a licensee called by the commissioner shall be held at a place within this state as may be designated by the commissioner and specified in the notice of the meeting.

(d) The expenses of a meeting of the board of a licensee called by the commissioner shall be paid by the licensee.

336. The commissioner may, at any time, require a licensee to write down any asset held by the licensee to a valuation that will represent the asset's then fair market value.

Article 3. Deputies and Employees

350. The commissioner shall appoint a chief deputy who holds office at the pleasure of the commissioner. The annual salary of the chief deputy shall be fixed by the commissioner with the approval of the Director of Finance. The chief deputy shall have the same qualifications as the commissioner. The commissioner shall also appoint two deputies, one to serve in the City and County of San Francisco and one to serve in the City of Los Angeles.

351. The Chief Officer of the Division of Credit Unions is the Deputy Commissioner of Financial Institutions for the Division of Credit Unions. The Deputy Commissioner of Financial Institutions for the Division of Credit Unions shall administer the laws of this state relating to credit unions or the credit union business under the direction of the commissioner. The Deputy Commissioner of Financial Institutions for the Division of Credit Unions shall be appointed by the Governor and shall hold office at the pleasure of the Governor. The Deputy Commissioner of Financial Institutions shall receive an annual salary as fixed by the Governor.

352. The commissioner may employ deputies in addition to the chief deputy, and examiners, appraisers, technical assistants, investigators, administrative assistants, clerks, and other employees that he or she may need to discharge in a proper manner the duties imposed upon him or her by law. He or she shall prescribe their duties and fix their compensation in accordance with classifications made by the State Personnel Board. The commissioner may also, at those times and on those terms as may be approved by the Governor, employ those attorneys as he or she may need.

353. Before entering upon the duties of his office each deputy and examiner shall take and subscribe to the constitutional oath of office and file the same with the Secretary of State.

354. The commissioner may require, at any time, of any deputy, examiner, or other employee of the department, an official bond in such amount as the commissioner may deem necessary. The premium for bonds required by the commissioner shall be an expense of the department.

355. Neither the commissioner nor any deputy or employee of the department shall do or be any of the following with respect to

any bank, savings association, credit union, or industrial loan company supervised by the department:

(a) Be indebted, directly or indirectly, as borrower, endorser, surety, or guarantor to any such bank, savings association, credit union, or industrial loan company.

(b) Be an officer, director, or employee of any such bank, savings association, credit union, or industrial loan company.

(c) Own or deal in directly or indirectly, the shares or obligations of any such bank, savings association, credit union, or industrial loan company.

(d) Be interested in or, directly or indirectly, receive from any such bank, savings association, credit union, or industrial loan company or any officer, director, or employee thereof, any salary, fee, compensation, or other valuable thing by way of gift, credit, compensation for services, or otherwise. However, this subdivision does not prohibit any person from being interested in or directly or indirectly receiving (1) anything which is expressly excluded from a definition of "gift" or "honorarium" in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code) or in regulations issued under the Political Reform Act of 1974 by the Fair Political Practices Commission or (2) anything which, if received by the commissioner, would constitute a gift or honorarium within the meaning of the Political Reform Act of 1974 or regulations issued under the Political Reform Act of 1974 by the Fair Political Practices Commission but which the commissioner would not be prohibited from receiving under the Political Reform Act of 1974 or regulations issued under the Political Reform Act of 1974 by the Fair Political Practices Commission.

(e) Be interested in or engage in the negotiation of any loan to, obligation of, or accommodation for another person to or with any such bank, savings association, credit union, or industrial loan company.

Notwithstanding the foregoing the commissioner and any deputy or employee may have and maintain one or more deposit or similar accounts in any bank, savings association, credit union, or industrial loan company in this state and may maintain with any bank, savings association, credit union, or industrial loan company in this state a loan which was not obtained in violation of this section if the person reports the loan in writing to the department within 30 days

after the person commences his or her term of appointment or employment with the department and if the loan is not renewed, renegotiated, extended, or otherwise modified on or after July 1, 1997.

A violation of this section by any person shall constitute sufficient grounds for his or her removal or discharge.

356. If the commissioner is unable to perform his or her duties for more than 30 consecutive days or if the office of the commissioner becomes vacant, the chief deputy shall have all the powers and duties of the commissioner until the return or recovery of the commissioner, or, in case of a vacancy, until a new commissioner is appointed by the Governor and qualifies to hold office.

357. If a deputy commissioner or any examiner has knowledge of the insolvency or unsafe condition of any licensee and willfully fails to report that fact to the commissioner in writing, he or she is guilty of a felony.

Article 4. Administration of the Department

370. The commissioner may have an office in the City of Sacramento, the City of Los Angeles, the City of San Diego, the City and County of San Francisco, or any other location in the state that he or she considers appropriate. The commissioner shall provide at the expense of the department such office space, furniture, and equipment as may be necessary or convenient for the transaction of the business of the department.

371. There is in the Department of Financial Institutions, the Division of Credit Unions. The Division of Credit Unions has charge of the execution of the laws of this state relating to credit unions and to the credit union business.

372. The department may expend moneys in accordance with law for the necessary travel expenses of officers and employees of the department while traveling in the line of their duties either within or without the State.

373. The commissioner shall adopt and keep an official seal. Papers executed by the commissioner in his or her official capacity pursuant to law and bearing the seal, or copies thereof certified by him or her, shall be received in evidence in like manner as the

original and may be recorded in the same manner and with the same effect as a deed regularly acknowledged.

374. (a) Whenever it is necessary for the commissioner to approve any instrument and to affix his or her official seal thereto, the commissioner shall charge a fee of twenty-five dollars ($25) therefor.

(b) Whenever it is proper for the department to furnish a copy of any paper that has been filed therein and to certify to the paper, the commissioner may charge twenty-five cents ($0.25) for each page copied.

(c) Whenever the commissioner is required or requested to certify copies of documents, the commissioner may charge a fee of twenty-five dollars ($25) for certifying the copied documents and for affixing his or her official seal.

375. Official reports made by the commissioner and verified reports of an examination made by the commissioner, exclusively or in conjunction with or with assistance from any agency of the United States, of a state of the United States, or of a foreign nation are prima facie evidence of the facts stated in the reports for all purposes.

376. At least once each month, the commissioner shall issue and disseminate as the commissioner deems appropriate a bulletin containing the following information:

(a) Information regarding any of the following actions taken since issuance of the previous bulletin:

(1) The filing, approval, or denial under Chapter 1 (commencing with Section 1000) of Division 1.1 of an application for authority to organize a California state bank, or the issuance under Chapter 3 *(commencing with Section 1040) of Division 1.1* of a certificate of authority to a California state bank.

(2) The filing, approval, or denial under Article 1 (commencing with Section 5400) of Chapter 2 of Division 2 of an application for the issuance of an organizing permit for the organization of a California savings association, or for the issuance under Article 2 (commencing with Section 5500) of Chapter 2 of Division 2 of a certificate of authority to a California savings association.

(3) The filing, approval, or denial under Article 2 (commencing with Section 14150) of Chapter 2 of Division 5 of an application for a certificate to act as a credit union, or the issuance of a certificate to engage in the business of a credit union.

(4) The filing, approval, or denial under Division 1.2 (commencing with Section 2000), Division 7 (commencing with Section 18000), or Division 15 (commencing with Section 31000) of an application for a license to engage in business, or the issuance under any of those laws of a license to engage in business.

(5) The filing, approval, or denial under Chapter 20 (commencing with Section 1750) of Division 1.1 of an application by a foreign (other nation) bank to establish its first office of any particular class (as determined under Section 1753) in this state, or the issuance under that chapter of a license in connection with the establishment of such an office.

(6) The filing, approval, or denial under Division 1.6 (commencing with Section 4800) of an application for approval of a sale, merger, or conversion.

(7) The filing, approval, or denial under Article 6 (commencing with Section 5700) of Chapter 2 of Division 2 of an application for approval of a conversion of a federal savings association into a state savings association, or the filing of a federal charter of a state savings association that has converted to a federal savings association.

(8) The filing, approval, or denial under Article 7 (commencing with Section 5750) of Chapter 2 of Division 2 of an application for approval of a reorganization, merger, consolidation, or transfer of assets of a state savings association.

(9) The filing, approval, or denial under Chapter 9 (commencing with Section 15200) of Division 5 of an application for approval of a merger, dissolution, or conversion of a credit union.

(10) The taking of possession of the property and business of a California state bank, savings association, credit union, or person licensed by the commissioner under any of the laws cited in paragraph (2).

(b) Other information as the commissioner deems appropriate.

377. Notwithstanding any other provision of this code, whenever any provision of this division requires the pledge of securities to be deposited with the Treasurer, to insure the performance of any act or duty, the securities after first being approved by the commissioner and upon the written order of the commissioner, shall be deposited with the Treasurer. The Treasurer, with the consent of the owner of the securities deposited or to be deposited with the Treasurer, may place the securities in the

custody of a qualified trust company or bank in the same manner and under the same conditions provided in Article 3 (commencing with Section 16550) of Chapter 4 of Part 2 of Division 4 of Title 2 of the Government Code.

378. Whenever the commissioner is notified of or discovers a violation of the state law punishable by criminal penalties, he or she shall promptly advise the Attorney General.

379. (a) For the purposes of this section the following definitions shall apply:

(1) "Control" has the meaning set forth in subdivision (b) of Section 1250. "Control" also means the ownership of a subject person by means of sole proprietorship, partnership, or by any other similar means.

(2) "Controlling person" means a person who, directly or indirectly, controls a subject person.

(3) "Subject person" means any of the following:

(A) A commercial bank, industrial bank, trust company, savings association, or credit union incorporated under the laws of this state.

(B) A person licensed by the commissioner under Chapter 1 (commencing with Section 2000) of Division 1.2 to receive money for transmission to foreign countries.

(C) A person authorized by the commissioner pursuant to Section 2004 to act as an agent of a person licensed by the commissioner to receive money for transmission to foreign countries.

(D) A person licensed by the commissioner pursuant to Division 7 (commencing with Section 18000) to transact business as a premium finance agency.

(E) A person licensed by the commissioner pursuant to Division 15 (commencing with Section 31000) to transact business as a business and industrial development corporation.

(F) A person licensed by the commissioner pursuant to Division 16 (commencing with Section 33000) to engage in the business of selling payment instruments in this state issued by the licensee.

(G) A corporation incorporated under the laws of this state for the purpose of engaging in, or that is authorized by the commissioner to engage in, business pursuant to Article 1 (commencing with Section 1850) of Chapter 21 of Division 1.1.

(H) A foreign corporation that is licensed by the commissioner pursuant to Article 1 (commencing with Section 1850) of Chapter 21 of Division 1.1 to maintain an office in this state and to transact at that office business pursuant to Article 1 (commencing with Section 1850) of Chapter 21 of Division 1.1.

(b) Notwithstanding any other provision of law, and subject to subdivision (c), the commissioner may deliver, or cause to be delivered, to local, state, or federal law enforcement agencies fingerprints taken of any of the following:

(1) An applicant for employment with the department.

(2) A person licensed, or proposed to be licensed, as a subject person.

(3) A director, officer, or employee of an existing or proposed subject person.

(4) An existing or proposed controlling person of a subject person.

(5) A director, officer, or employee of an existing or proposed controlling person of a subject person.

(6) A director, officer, or employee of an existing or proposed affiliate of a subject person.

(c) The authorization in subdivision (b) may only be used by the department for the purpose of obtaining information regarding an individual as to the existence and nature of the criminal record, if any, of that individual relating to convictions, and to any arrest for which the individual is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(d) No request shall be submitted pursuant to this section without the written consent of the person affected.

(e) Any criminal history information obtained pursuant to this section shall be confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

380. (a) The commissioner shall inform the Commissioner of Corporations and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions of any enforcement actions, including, but not limited

to, civil or criminal actions, cease and desist orders, license or authorization suspensions or revocations, or an open investigation.

(b) The commissioner shall inform the Commissioner of Corporations and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions if it appears that any bank, bank holding company, savings association, savings and loan holding company, credit union, industrial loan company, industrial loan holding company, or other licensee of the department is conducting its business in a fraudulent, unsafe, unsound, or injurious manner, or has suffered or will suffer substantial financial loss or damage, and it appears to the commissioner that the information is relevant to the regulatory activities of the other agency.

381. Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to hearings conducted by the department.

Article 5. Financial Institutions Fund

400. As of the operative date of this section, there is established a Financial Institutions Fund in the State Treasury. Except as otherwise provided in Division 5 (commencing with Section 14000), all money collected or received by the commissioner under this code shall be deposited with the Treasurer to the credit of the Financial Institutions Fund.

Article 6. State Banking Account

405. (a) The commissioner shall annually collect pro rata from the banks and trust companies under the supervision of the department a fund in amount sufficient in the commissioner's judgment to meet the expenses of the department in administering laws relating to banks or trust companies or to the banking or trust business that are not otherwise provided for and to provide a reasonable reserve for contingencies.

(b) The amount of the annual assessment for the fund on any bank or trust company shall not be less than five thousand dollars ($5,000). Above that minimum amount, except as otherwise provided subdivision (c), the annual assessment shall not exceed the sum of the products of a base assessment rate, or percentage

thereof, and segregated portions of its total resources, according to the following table:

Segregated Total Resources (In Millions or Fractions Thereof)	Percentage of Base Assessment Rate
First $2	100.0
Next $18	50.0
Next $80	12.0
Next $100	6.25
Next $800	6.0
Next $1,000	4.0
Next $4,000	3.5
Next $14,000	3.0
Next $20,000	2.5
Excess over $40,000	1.5

(c) (1) For purposes of determining the annual assessment on banks and trust companies that have one or more foreign (other state) branch offices, the resources of foreign (other state) branch offices shall be excluded from total resources, except that the commissioner may order the resources of foreign (other state) branch offices to be included in total resources if and to the extent that it is necessary in the commissioner's judgment to meet the expenses of the department on account of foreign (other state) branch offices and a reasonable reserve for contingencies.

(2) If the commissioner finds that a bank or trust company allocated any resource to a foreign (other state) branch office for the purpose, in whole or in part, of reducing its annual assessment, the commissioner may, for purposes of calculating the annual assessment on the bank or trust company, reallocate the resource to the bank's or trust company's head office.

(d) The base assessment rate shall be set by the commissioner from time to time at the commissioner's discretion, not to exceed two dollars and twenty cents ($2.20) per one thousand dollars ($1,000) of total resources.

406. The commissioner shall annually collect from national banking associations and foreign (other state) banks operating trust departments in this state an annual assessment to meet expenses of the department, not exceeding one one-hundredth of 1 percent of the amount required by law to be deposited with the Treasurer

as surety for the faithful performance and execution of all court and private trusts accepted by them.

407. Whenever the commissioner makes an assessment pursuant to Section 405 or 406, the commissioner shall fix the date when the assessment is due and payable and shall mail or otherwise deliver to each bank and trust company assessed an invoice showing the amount of its assessment and the date when the assessment is due and payable.

408. The commissioner, in addition to the annual assessment, shall collect from each bank authorized to engage in the trust business, to defray the cost of examination, a fee not to exceed seventy-five dollars ($75) per hour for each examiner necessarily engaged in the examination of the trust company, trust business, or trust department. The commissioner shall assess the fee upon completion of the examination of the trust company or trust business and shall mail or otherwise deliver an invoice for the fee to the institution. The institution shall pay the fee within 30 days after the invoice is mailed or otherwise delivered to it.

409. If any bank or trust company fails to make timely payment of any assessment made pursuant to Section 405, 406, or 408, the commissioner may, in the commissioner's sole discretion, (a) cancel the certificate of authority of the bank or trust company to conduct a banking or trust business or (b) levy a civil penalty pursuant to Section 329.

410. As of the operative date of this section:

(a) The State Banking Fund is converted into a separate account in the Financial Institutions Fund and designated as the State Banking Account.

(b) All moneys and other assets and all liabilities of the State Banking Fund shall be transferred to the State Banking Account.

411. Except as otherwise provided in Section 413 or 414, all salaries and other expenses of the department, other than those incurred in administering laws relating to savings associations or the savings association business, credit unions or the credit union business, industrial banks, the industrial banking business, insurance premium finance agencies, the insurance premium finance business, or Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, shall be paid out of the State Banking Account in the Financial Institutions Fund. Salaries and other expenses incurred

in the liquidation or conservation of any bank (other than an industrial bank) or of any person licensed under Division 1.2 (commencing with Section 2000) or Division 15 (commencing with Section 31000), including the compensation of employees of the department to the extent that they are engaged in that liquidation or conservation, if possible, and if advanced from the State Banking Account in the Financial Institutions Fund, shall constitute a first charge against the assets of the bank or licensee, as the case may be. Salaries and other expenses incurred in the liquidation or conservation of any industrial bank, including the compensation of employees of the department to the extent that they are engaged in that liquidation or conservation, if possible, and if advanced from the Industrial Bank Account in the Financial Institutions Fund, shall constitute a first charge against the assets of the industrial bank.

412. The commissioner shall deliver all moneys received or collected by the commissioner under Section 405, 406, or 408 or otherwise, other than moneys received or collected by the commissioner under laws relating to savings associations, the savings association business, credit unions, the credit union business, industrial banks, the industrial banking business, insurance premium finance agencies, the insurance premium finance business, or Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to the Treasurer, who shall deposit the moneys to the credit of the State Banking Account of the Financial Institutions Fund.

413. (a) In this section, “assessment statute” means any statute that authorizes the commissioner to make or collect an assessment (other than a fine) on financial institutions, including the following:

(1) Sections 405 to 407, inclusive.

(2) Section 2042.

(3) Section 33302.

(4) Article 2 (commencing with Section 8030) of Chapter 7 of Division 2.

(5) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.

(6) Section 1532.

(b) The commissioner may charge to and collect from the Financial Institutions Fund, the Credit Union Fund, each of the accounts included in the Financial Institutions Fund, and each of

the programs included in the State Banking Account an amount equal to the fund's, account's, or program's pro rata share of those expenses of the department which, in the opinion of the commissioner, it is not feasible to attribute to any single one of the funds, accounts, or programs. The fund's, account's, or program's pro rata share shall be determined and paid in the manner and at the time ordered by the commissioner.

(c) The provisions of any assessment statute that authorize the commissioner to make or collect an assessment for the purposes specified in the assessment statute include authority for the commissioner to make and collect an assessment for the additional purpose of providing money in an amount that will, in the commissioner's judgment, be sufficient to make payments that may be required under subdivision (b).

414. Notwithstanding any other provision of this code or of Section 53667 of the Government Code, the commissioner may, at any time during a fiscal year, pay any expense of the department from any of the following accounts and funds: the State Banking Account, the Savings and Loan Account, the Industrial Bank Account, the Financial Institutions Fund, the Credit Union Fund, and the Local Agency Deposit Security Fund. However, if the commissioner pays an expense of the department from an account or fund from which the expense is not, except for this section, permitted to be paid, the commissioner shall, as of a date within that fiscal year, reimburse the account or fund from which the expense was paid by making a transfer from the account or fund from which the expense would have been permitted to be paid.

Chapter 4. Operations

450. (a) In this section, "governmental agency" includes, without limitation, any agency of this state, of any other state of the United States, of the United States, or of any foreign nation.

(b) The commissioner may furnish information to a governmental agency that regulates financial institutions.

(c) The commissioner may furnish to a governmental agency that administers a loan guarantee or similar program, information relating to a person who participates in the program.

(d) The commissioner may furnish to a governmental agency that regulates business activities, other than the type described in subdivision (b), information relating to any of the following:

(1) A suspected violation of a law administered by the agency.

(2) A person involved in an application to the agency for a license, approval, or other authorization.

(e) The commissioner may furnish to a governmental agency that is a law enforcement agency information relating to a suspected crime.

(f) The commissioner may furnish information to any person who provides share insurance or guaranty of the shares of a credit union in accordance with Section 14858, 16004, or 16503.

(g) The commissioner may furnish confidential information regarding a licensee to the directors, officers, employees, attorneys, accountants, and consultants of that licensee in accordance with Section 452.

(h) This section does not prescribe the only circumstances under which the commissioner may furnish information.

451. With the prior approval of the commissioner, a foreign (other state) or foreign (other nation) financial institutions regulatory agency may examine a licensee and any of its offices, provided that the agency has a regulatory interest in the licensee. Any regulatory agency approved by the commissioner under this section shall be considered a supervisory agency under subdivision (f) of Section 7480 of the Government Code.

452. (a) Directors, officers, employees, attorneys, accountants, or consultants of a licensee may not disclose in any manner to any person confidential information regarding the licensee received from the commissioner. The prohibition in this section shall not apply to disclosures of confidential information by directors, officers, employees, attorneys, accountants, or consultants of the licensee:

(1) Made pursuant to a subpoena or other discovery proceeding.

(2) Made to any state or federal prosecuting or investigatory agency or authority.

(3) Made to any state, federal, or foreign (other nation) financial institutions regulatory agency that has a direct regulatory interest in the licensee.

(4) Made to any state or federal taxing agency.

(5) Made as otherwise required by law.

(6) Made as otherwise authorized by the commissioner in writing.

(b) Any director, officer, employee, attorney, accountant, or consultant that discloses confidential information in a manner other than allowed by this section shall be liable for a civil penalty not to exceed fifty thousand dollars ($50,000). The commissioner may impose a penalty under this section in accordance with the procedures set forth in Section 329.

(c) The prohibition set forth in subdivision (a) shall not apply to any discussion, analysis, or other use of confidential information provided by the commissioner that occurs between directors, officers, employees, attorneys, accountants, or consultants of the licensee.

453. Every licensee shall make and file with the commissioner whenever required by him or her a report in any form as the commissioner may prescribe and verified in any manner the commissioner prescribes, showing its financial condition and any other information as the commissioner may require at the close of business on any day designated by him or her. Any verification shall state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement in the report is true.

454. The commissioner shall call for the report specified in Section 453 from all licensees at least four times each year upon dates selected by the commissioner.

455. The commissioner may at any time require any licensee to make and file with him or her a special report furnishing any information as the commissioner may specify when necessary to inform him or her fully of the actual financial condition and all other affairs of the licensee. The reports shall be in the form and filed on a date prescribed by the commissioner and shall, if required by the commissioner, be verified in any manner that he or she prescribes.

456. Every licensee shall keep its corporate records, financial records, and books of account in words and figures of the English language and in form satisfactory to the commissioner.

457. Every licensee shall notify the commissioner of any change in the following officers of the licensee, to the extent that those officers exist within the licensee: chairperson, chief executive

officer, president, general manager, managing officer, chief financial officer, or chief credit officer.

458. (a) Each report required under this article, or under any other provision of law administered by the commissioner, shall be filed with the commissioner at the time that the commissioner may require. If any licensee fails to make any required report at the time specified by the commissioner or fails to include therein any matter required by this article, any provision of law administered by the commissioner, or by the commissioner, it shall be liable to the people of this state in the sum of not more than one hundred dollars ($100) for each day that the report is delayed or withheld by the failure or neglect of the licensee.

(b) The provisions of Section 329 shall not apply to this section.

459. (a) Every licensee shall file with the commissioner one copy of all material filed by the licensee with any applicable federal financial institutions regulatory agency, law enforcement agency, or other federal agency that is required to be filed by law or order of the agency.

(b) Each copy required to be filed pursuant to subdivision (a) shall be filed with the commissioner on or before the date upon which the original is filed with the federal regulatory agency and shall be available for inspection by the public except to the extent the information contained therein is accorded confidential treatment under federal law or regulations. That material shall be open for inspection by the Attorney General.

460. Any person intentionally making a false statement in any report required to be rendered under this article or other provision of law administered by the commissioner is guilty of perjury.

461. Any debt due a licensee on which interest is past due and unpaid for the period of one year shall be charged off, unless the debt is well secured or is in process of collection.

462. Any person that provides services to any licensee, at the request of the commissioner, shall submit to an examination by the commissioner. Should the commissioner deem it necessary or desirable that an examination be made of a person, the examination shall be made at the expense of the person examined. If the person refuses to permit an examination to be made, the commissioner may order every licensee receiving services from that person to discontinue receiving those services or otherwise conducting

business with that person, and the licensees shall comply with that order.

463. (a) All references in this code and the Corporations Code to financial statements, balance sheets, income statements, and statements of changes in financial position of a licensee, and all references to assets, liabilities, earnings, retained earnings, shareholders' equity, net worth, and similar accounting items of a licensee, mean those financial statements or those items prepared or determined in conformity with generally accepted accounting principles then applicable in the United States, fairly presenting in conformity with generally accepted accounting principles accepted in the United States the matters which they purport to present, subject to any specific accounting treatment required by any applicable provision of the Corporations Code, this code, or any regulation, order issued by the commissioner, or agreement entered into by the commissioner and a licensee.

(b) The commissioner may, by regulation or order, require that any financial statement or accounting item of a licensee be prepared or determined in a manner other than in conformity with generally accepted accounting principles accepted in the United States if the commissioner finds that such other manner is necessary or appropriate to carry out the purposes or provisions of this code.

464. (a) An officer of a financial institution, within the meaning of Section 1101(1) of the federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec. 3401(1)), shall furnish the State Department of Health Care Services or its designee with information in the possession of the bank or company regarding the assets of any person who is applying for, or is receiving assistance or benefits from, the State Department of Health Care Services and has provided authorization pursuant to Section 14013.5 of the Welfare and Institutions Code.

(b) The obtaining of financial records by the State Department of Health Care Services, or its designee, pursuant to this section shall be subject to the cost reimbursement requirements of Section 1115(a) of the federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec. 3415(a)) and shall be at no cost to the applicant, recipient, or any other person, as defined in paragraph (3) of subdivision (c) of Section 14013.5 of the Welfare and Institutions Code.

(c) An authorization obtained by the State Department of Health Care Services, or its designee, under Section 14013.5 of the Welfare and Institutions Code shall be considered as meeting the requirements of Section 1103(a) of the federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec. 3403(a)) and, notwithstanding Section 1104(a) of the federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec. 3404(a)), need not be furnished to the financial institution.

(d) The certification requirements of Section 1103(b) of the federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec. 3403(b)) shall not apply to requests by the State Department of Health Care Services, or its designee, pursuant to an authorization provided under Section 14013.5 of the Welfare and Institutions Code.

(e) A request by the State Department of Health Care Services, or its designee, pursuant to an authorization provided under Section 14013.5 of the Welfare and Institutions Code shall be deemed to meet the requirements of Section 1104(a)(3) of the federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec. 3404(a)(3)) and of Section 1102 of the act (12 U.S.C. Sec. 3402), relating to a reasonable description of financial records.

Chapter 5. Examinations and Reports-Banking

Article 1. Examination

500. (a) (1) For purposes of this section, "foreign bank" means the business in this state of every foreign (other nation) bank licensed under Article 3 (commencing with Section 1800) of Chapter 20 of Division 1.1

(2) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from a bank regulatory agency of the United States, of a state of the United States, or of a foreign nation is deemed to be an examination caused by the commissioner.

(3) No provision of this subdivision shall be deemed to require that the commissioner cause an examination to be made onsite at the offices of a bank.

(4) The commissioner shall cause every California state bank and every foreign bank to be examined to the extent and whenever

and as often as the commissioner shall deem it advisable, but in no case less frequently than once every 12 months, except that the following banks shall be examined pursuant to federal law no less frequently than state banks and foreign banks that meet the respective federal criteria:

(A) California state banks that meet the criteria set forth in Section 1820(d)(4) of Title 12 of the United States Code.

(B) Foreign banks that meet the criteria set forth in Section 211.26(c)(2) of Title 12 of the Code of Federal Regulations.

(5) The examinations required by paragraph (4) may be conducted in alternate examination periods, as appropriate, if the commissioner determines that an examination of the state bank by the appropriate federal regulator, insuring or guaranteeing corporation during the intervening examination period carries out the purpose of this section. The commissioner may not accept two consecutive examinations, or two consecutive examination reports, made by federal regulators, insuring or guaranteeing corporations, or agencies with respect to the condition of the state bank.

(6) The commissioner shall cause every California state trust company to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less frequently than once every 24 months.

(7) The commissioner may examine subsidiaries of every California state bank, state trust company, and foreign (other nation) bank licensed under Article 3 (commencing with Section 1800) of Chapter 20 of Division 1.1 to the extent and whenever and as often as the commissioner shall deem it advisable.

(b) The commissioner may at any time examine any of the following:

(1) Any office of a bank organized under the laws of this state.

(2) Any office of a foreign (other state) bank that maintains an office in this state.

(3) Any office of a foreign (other nation) bank that maintains an office in this state.

(c) The officers and employees of every California state bank, California state trust company, and foreign bank being examined shall exhibit to the examiners, on request, any or all of its securities, books, records, and accounts and shall otherwise facilitate the examination so far as it may be in their power.

501. (a) Whenever, in the judgment of the commissioner, it is necessary or advisable to make an extra examination of or to devote any extraordinary attention to any bank, any foreign bank, or any office of a foreign bank, he or she has the authority to do so and to charge and collect from the bank or foreign bank, in the case of an extra examination, an amount not exceeding seventy-five dollars ($75) per hour for each examiner engaged in the examination and, in the case of extraordinary attention, an amount not exceeding the department's expenses in providing the extraordinary attention, including, but not limited to, compensation of employees.

(b) Whenever in the judgment of the commissioner it is necessary or expedient for any examiner engaged in any examination to travel outside this state, the commissioner may charge for the travel expenses of the examiner.

502. (a) The commissioner may by order or regulation grant exemptions from this section in cases where the commissioner finds that the requirements of this section are not necessary.

(b) Each California state bank shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain those audited financial statements of the bank for or as of the end of the fiscal year prepared in accordance with generally accepted accounting principles and any other information that the commissioner may require.

(2) The audit report shall be based upon an audit of the bank conducted in accordance with generally accepted auditing standards and any other requirements that the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the bank to take such action

as the commissioner may find necessary to enable the independent certified public accountant or independent public accountant to remove the qualification.

503. The commissioner, whenever in his or her opinion the condition of the bank, trust company, or foreign banking corporation is such as to require such audit, may require any bank, trust company, or foreign banking corporation to employ a certified public accountant to make a special audit of the affairs of such bank or trust company at its expense.

504. The commissioner, for good cause, at any time and from time to time may employ appraisers to appraise the value of any investment, asset, or property held or upon which a lien is held as security for a loan. The bank, trust company, or foreign banking corporation shall pay to the commissioner on demand the cost of such appraisal.

505. The commissioner, a deputy commissioner, and every examiner assigned to an examination may administer an oath to any person whose testimony is required for the purposes of any examination authorized by this division and may by issuance of subpoena compel the appearance of any person and the production of any evidence for the purposes of the examination.

506. Whenever he or she deems it expedient, the commissioner may call a meeting of the stockholders of any bank or trust company. Notice of the time and place of the meeting shall be given to each stockholder by a notice mailed to the stockholder by registered mail at the stockholder's last known address at least 15 days before the date of the meeting. Any expenses of such meeting shall be borne by the bank or trust company.

507. During any emergency period declared by the President of the United States, each bank shall conform to any order of the commissioner directed to it, relating to and conforming with regulations, limitations, or restrictions which are applicable thereto prescribed by the Secretary of the Treasury, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System regulating or governing the operations of banks which are members of the Federal Reserve System.

508. During any emergency period declared by the Governor no bank shall transact any banking business except to such extent and subject to such regulations, limitations, or restrictions as may be prescribed by the commissioner, which, as to member banks,

shall be as consistent as the exigencies of the situation permit with the provisions of the Federal Reserve Act and regulations issued thereunder or, as to insured banks, shall be as consistent as the exigencies of the situation permit with the rules and regulations governing banks whose deposits are insured by the Federal Deposit Insurance Corporation.

509. (a) The commissioner may, in his or her discretion, bring an action in the name of the people of this state in a superior court to enjoin a violation of, to enforce compliance with, or to collect a penalty or other liability imposed under, this division or any regulation or order issued under this division. The amount of any penalty or liability collected shall be deposited into the State Banking Account in the Financial Institutions Fund. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or other appropriate relief may be granted.

(b) A receiver, monitor, conservator, or other designated fiduciary officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise all of the powers of the defendant's officers, directors, partners, trustees, or of persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or any other designated fiduciary officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(c) If the commissioner determines it is in the public interest, the commissioner may include in an action authorized by subdivision (a), a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the person injured by the act or practice that is the subject matter of the action. The court has jurisdiction to award additional relief.

(d) The provision of subdivision (a) that authorizes the appointment of a monitor, receiver, conservator, or other designated

fiduciary or officer of the court, and subdivisions (b) and (c) do not apply to any of the following:

(1) A state bank that is authorized by the commissioner to transact commercial banking or trust business.

(2) A national bank.

(3) A foreign (other state) bank that maintains a branch office in this state in accordance with federal law, the law of this state, and the law of the bank's domicile.

(4) A foreign (other nation) bank that is licensed by the commissioner to maintain a branch office or agency, as defined in Section 1750, in this state.

(5) A foreign (other nation) bank that maintains a federal branch or agency, as defined in Section 1750, in this state.

(e) The provisions of this section that authorize the commissioner to bring actions and seek relief are not intended to, and do not, affect any right that any other person may have to bring the same or similar actions, or to seek the same or similar relief.

Article 2. Reports

520. (a) A California state bank shall prominently display in the lobby of its main office and each branch office, except an automated teller machine branch office, a notice that any person may obtain a financial report from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a financial report. The bank shall, promptly after receiving a request for a financial report, mail or otherwise furnish the financial report to the requester. The first financial report shall be provided without charge.

(b) The financial report called for in this section shall contain either (1) the information that the commissioner may require by regulation or (2) in the absence of a regulation, the last balance sheet and income statement, each without any schedules, that the bank filed with the commissioner pursuant to Section 453.

~~Chapter 6. Bank Extraordinary Situation Closing~~

~~530. This chapter is known and may be cited as the "Bank Extraordinary Situation Closing Act."~~

~~531. "Extraordinary Situation" means any condition or occurrence, other than as set forth in Section 3100, that may interfere or is inconsistent with the conduct of normal business operations at one or more offices of a bank or which poses a threat to the safety or security of persons or property, or both.~~

~~532. Whenever the commissioner determines that an extraordinary situation exists anywhere in this state the commissioner may, by proclamation, authorize banks located in the affected area or areas to close any or all of their offices. The office or offices so closed shall remain closed until the commissioner proclaims that the extraordinary situation has ended or until such earlier time as the officers of the bank determine that one or more closed offices should reopen and in either event for such further time thereafter as may reasonably be required to reopen.~~

~~533. (a) Whenever the officers of a bank are of the opinion that an extraordinary situation exists which affects or may affect one or more of a bank's offices, they shall have the authority in the reasonable and proper exercise of their discretion to determine not to open such offices on any business or banking day, or, if such offices have opened to close one or more of them during the continuation of such extraordinary situation even if the commissioner has not issued and does not issue a proclamation of extraordinary situation. The office or offices so closed shall remain closed until such time as the officers determine with respect to each such office that the extraordinary situation has ended and for such further time thereafter as may reasonably be required to be reopened; however, in no case shall such office or offices remain closed for more than 48 consecutive hours excluding other legal holidays without requesting the approval of the commissioner nor, in case such request is denied by the commissioner, for more than 24 consecutive hours excluding other legal holidays after such denial.~~

~~(b) The officers of a bank may close one or more of the bank's offices on any day or days designated for mourning, rejoicing, or other special observance by proclamation of the Governor or the President of the United States.~~

~~534. A bank closing an office or offices pursuant to the authority granted under subdivision (a) of Section 533 shall give~~

~~prompt notice of its action to the commissioner, by any means available.~~

~~535. Any day on which a bank or any one or more of its offices is closed pursuant to the authorization granted by this chapter shall be, with respect to such bank or any of its offices which are closed, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by this chapter.~~

~~536. Provisions of this chapter shall be construed and applied as being in addition to, and not a substitution for, or limitation of, any other law of this state or the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of extraordinary situations or conditions beyond the bank's control or otherwise.~~

Chapter ~~7.~~ *6.* Enforcement

Article 1. General Provisions

550. In this article:

(a) "Appropriate licensee business" means the business that a licensee may conduct in accordance with the charter or license that the commissioner has issued to that licensee.

(b) "Customer" means a depositor of a bank, a member of a credit union, or a customer of any other licensee.

(c) "Holding company" shall have the meaning set forth in Section 1280.

(d) "Officer of a subject institution" means any director, officer, official, or employee of the subject institution.

(e) "Person" means a subject institution or a subject person.

(f) "Subject institution" means any of the following:

(1) Licensee.

(2) Subsidiary of a licensee.

(3) Foreign (other state) or foreign (other nation) bank or credit union that maintains an office in this state, with respect to any such office other than a national bank or federal credit union.

(4) Any other person lawfully conducting the business of a bank or credit union in this state other than a national bank or federal credit union.

(g) "Subject person," when used with respect to a subject institution, means any of the following:

(1) Director, officer, employee, or agent of the subject institution.

(2) Member, consultant, joint venture partner, or other person that participates in the affairs of a subject institution.

(3) Independent contractor, including any attorney, appraiser, or accountant, who knowingly or recklessly participates in any of the following acts if the act caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the subject institution:

(A) A violation of any applicable law, regulation, or order.

(B) A breach of fiduciary duty.

(C) An unsafe or unsound act.

(h) "Violation" includes any act performed, alone or with other persons, for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation of any applicable statute, regulation, provision of a written order issued by the commissioner, or provision of a written agreement made between the commissioner and a subject institution or subject person.

551. Any subject person who is entitled to a hearing pursuant to this article may waive that right at any time. A waiver under this section shall relieve the commissioner from having to issue a formal notice of hearing that would otherwise be required by this article.

552. (a) Within 30 days after an order is issued pursuant to Section 567, 581, 582, 586, or 591, or subdivision (c) of Section 587, the person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(b) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner or within any longer period to which the person subject to the order consents, the order shall be deemed rescinded.

(c) Within 30 days after the hearing, or within any longer period to which the person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm,

modify, or rescind the order within that time limit, the order shall be deemed rescinded.

(d) The right to petition for judicial review of the order shall not be affected by the failure of the person subject to the order to apply to the commissioner for a hearing on the order pursuant to subdivision (a).

553. In addition to any other action or requirement the commissioner deems necessary or advisable, an order issued pursuant to Section 580, 581, 582, 585, 586, or 587 may require the person subject to the order to do any of the following:

(a) Make restitution or provide reimbursement, indemnification, or guarantee against loss, if the subject institution, subject person, or holding company was unjustly enriched by the action or violation or if the action or violation involved a reckless disregard for any provision of this division, of any regulation or order issued under this division, of any other applicable law, or of any agreement with the commissioner.

(b) Restrict the growth of the subject institution.

(c) Dispose of any loan or other asset.

(d) Correct violations of law.

(e) Employ qualified officers or employees, who may be subject to approval of the commissioner.

(f) Limit the activities or functions of the subject institution, subject person, or holding company.

554. If the commissioner takes possession of a subject institution without a prior notice or hearing, or takes action against a subject person without prior notice or hearing, the commissioner shall, upon taking possession or taking that action, concurrently provide to the subject institution or subject person a written order. The order shall set forth the condition or conditions of the subject institution or action or actions of the subject person that constitute the basis or bases for the commissioner's action. In any case where the commissioner takes possession of a subject institution, the commissioner shall establish, by clear evidence, the basis for his or her action.

Article 2. Actions Involving the Conduct of Business by Unauthorized Persons

560. No person who has not received a certificate from the commissioner authorizing it to engage in the banking business shall solicit or receive deposits, issue certificates of deposit with or without provision for interest, make payments on checks, or transact business in the way or manner of a bank or trust company.

561. No person who has not received a certificate from the commissioner authorizing it to engage in the banking business shall advertise that it is accepting deposits, and issuing notes or certificates therefore, or make use of any office sign, at the place where its business is transacted, having thereon any artificial or corporate name, or other words indicating that the place or office is the place or office of a bank or trust company, that deposits are received there or payments made on checks, or any other form of banking business is transacted, nor shall any person make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed paper, whatever, having thereon any artificial or corporate name or other words indicating that the business is the business of a bank or trust company, or transact business in a way or manner as to lead the public to believe that its business is that of a bank or trust company, except to the extent expressly authorized by this division.

562. No person who has not received a certificate from the commissioner authorizing it to engage in the banking business shall transact business under any name or title that contains the word “bank” or “banker” or “banking” or “industrial bank” or “industrial loan company” or “investment and loan” or “savings bank” or “thrift and loan” or “trust” or “trustee” or “trust company” or act or advertise in any manner that indicates that the business is the business of a bank or trust company. Any building and loan association or savings association having in its corporate name words not clearly indicating the nature of its business shall state, on all signs, letterheads, and advertising matter, “This is a building and loan association” or “This is a savings association” or words to that effect.

563. No provision of Section 560, 561, or 562 prohibits any of the following from transacting any business or performing any activity if it is authorized by applicable law to transact the business

or perform the activity and is not prohibited by any applicable law, other than Sections 560, 561, or 562, from transacting the business or performing the activity:

(a) Any California state commercial bank, industrial bank, or trust company.

(b) Any national bank.

(c) Any insured foreign (other state) state bank.

(d) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility, as defined in Section 3800, in this state.

(e) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 20 (commencing with Section 1750) of Division 1.1 to maintain an office in this state.

(f) Any foreign (other nation) bank that maintains a federal agency, as defined in subdivision (g) of Section 1750, or federal branch, as defined in subdivision (h) of Section 1750, in this state.

(g) Any California state corporation that is incorporated for the purpose of engaging in, and that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 1850) of Chapter 21 of Division 1.1.

(h) Any corporation incorporated under Section 25A of the Federal Reserve Act (12 U.S.C. Sec. 612 et seq.).

(i) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 1850) of Chapter 21 of Division 1.1 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 1850) of Chapter 21 of Division 1.1.

(j) Any industrial bank that is organized under the laws of another state of the United States and is insured by the Federal Deposit Insurance Corporation.

564. Any person or any bank violating any provision of the foregoing sections of this article shall be liable to the people of the state in the amount of one hundred dollars ($100) per day or part thereof during which that violation continues.

565. No person shall represent by advertisement, circular, or otherwise, or in any manner mislead anyone to believe, that any securities are legal investments for savings banks in this state or conform to the requirements of law relating to such investments, unless those securities are in fact at that time legal investments for

such banks or do in fact so conform. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

566. (a) The commissioner may bring an action in the name of the people of this state in superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under, any law subject to the jurisdiction of the commissioner. The commissioner may bring an action in the name of the people of this state in superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under, any regulation promulgated under the power of the commissioner. The commissioner may bring an action in the name of the people of this state in superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under, any (1) agreement entered into with the commissioner or (2) order issued by the commissioner. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or other relief may be granted as appropriate.

(b) A receiver, monitor, conservator, or other designated fiduciary officer of the court appointed by the court pursuant to this section may, with the approval of the court, exercise all of the powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties. No action at law or in equity may be maintained by any party against the commissioner or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of his or her exercise of those powers or performing these duties pursuant to the order of, or with the approval of, the court.

(c) If the commissioner finds that it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including a claim for restitution, disgorgement, or damages on behalf of the person injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award ancillary relief.

(d) Neither the provision of subdivision (a) that authorizes the appointment of a monitor, receiver, conservator, or other designated fiduciary or officer of the court nor any provision of subdivision (b) or (c) applies to any of the following:

(1) A licensee that is authorized by the commissioner to transact appropriate licensee business.

(2) A foreign (other state) or foreign (other nation) bank or credit union that maintains an office in this state in accordance with federal law, the law of this state, and the law of the bank or credit union's domicile.

(e) The provisions of this section that authorize the commissioner to bring actions and seek relief are not intended to, and do not, affect any right that any other person may have to bring the same or similar actions or to seek the same or similar relief.

567. If the commissioner finds that a person has conducted, or that there is reasonable cause to believe that a person is about to conduct, business that requires a license issued by the commissioner and that person has not been issued the required license, the commissioner may, without any prior notice or hearing, order the person to cease and desist from conducting any unauthorized business unless and until the person is issued a license to engage in appropriate licensee business.

Article 3. Orders Against Licensees and Subject Persons

580. If, after notice and an opportunity to be heard, the commissioner finds any of the factors set forth in subdivision (a) or (b) with respect to any subject institution, subject person, or any holding company, the commissioner may order the subject institution, subject person, or holding company to cease and desist from the act or violation:

(a) That the subject institution, subject person, or holding company has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that the subject institution, subject person, or holding company is about to engage or participate, in any unsafe or unsound act with respect to the business of the subject institution.

(b) That the subject institution, subject person, or holding company has violated, is violating, or that there is reasonable cause

to believe that the subject institution, subject person, or holding company is about to violate any:

(1) Provision of any division subject to the jurisdiction of the commissioner.

(2) Provision of any regulation promulgated by, or subject to the jurisdiction of, the commissioner.

(3) Provision of any other applicable law.

(4) Provision of any written agreement between the subject institution, subject person, or holding company, and the commissioner.

581. If the commissioner finds that any of the factors set forth in Section 580 is true with respect to any subject institution, subject person, or holding company, and that the action, omission, or violation is likely to have any of the consequences set forth in subdivisions (a) to (d), inclusive, the commissioner may, without any prior notice or opportunity to be heard, order the subject institution or subject person to cease and desist from the following:

(a) Any act, omission, or violation that may cause the insolvency of the subject institution.

(b) Any act, omission, or violation that may cause significant dissipation of the assets or earnings of the subject institution.

(c) Any act, omission, or violation that may weaken the condition of the subject institution.

(d) Any act, omission, or violation that may otherwise prejudice the interests of the customers of the subject institution.

582. If the commissioner finds that a subject institution's books or records are so incomplete or inaccurate that the commissioner is unable through the normal supervisory process to determine the financial condition of the subject institution or the details or purpose of any transaction or transactions that may materially affect the financial condition of the subject institution, the commissioner may, without any prior notice or hearing, order the subject institution to do either of the following:

(a) Cease any activity or practice that gave rise, in whole or in part, to the incomplete or inaccurate state of the books or records.

(b) Take affirmative action to restore the books or records to a complete and accurate state.

Article 4. Suspension or Removal of Subject Persons

585. If, after notice and an opportunity to be heard, the commissioner finds that any of the factors set forth in subdivision (a), any of the factors set forth in subdivision (b), and any of the factors set forth in subdivision (c) are true with respect to a subject person of a subject institution or holding company, the commissioner may issue an order suspending or removing the subject person from the subject person's office, if any, with the subject institution or holding company, and prohibiting the subject person from participating in any manner in the conduct of the affairs of the subject institution or holding company without the approval of the commissioner:

(a) (1) That the subject person has, directly or indirectly, violated, or has caused a subject institution to violate, any provision of any:

(A) Division subject to the jurisdiction of the commissioner.

(B) Regulation promulgated by, or subject to the jurisdiction of, the commissioner.

(C) Other applicable law.

(D) Order issued by the commissioner or under the commissioner's authority.

(E) Written agreement between the subject institution, subject person, or holding company and the commissioner.

(2) That the subject person has, directly or indirectly, engaged or participated in any unsafe or unsound act in connection with the business of the subject institution, holding company, or any other business institution.

(3) That the subject person has, directly or indirectly, engaged or participated in any act that constitutes a breach of the subject person's fiduciary duty.

(b) That, by reason of the act, violation, or breach of fiduciary duty described in subdivision (a):

(1) The subject institution, holding company, or business institution has suffered or will probably suffer financial loss or other harm.

(2) The rights or interests of the customers or members of the subject institution have been or could be prejudiced.

(3) The subject person has received financial gain or other benefit.

(c) That the act, violation, or breach of fiduciary duty described in subdivision (a) either involves dishonesty on the part of the subject person or demonstrates the subject person's willful or continuing disregard for the safety or soundness of the subject institution, holding company, or business institution.

586. If the commissioner finds that any of the factors set forth in subdivision (a) of Section 585, any of the factors set forth in subdivision (b) of Section 585, and any of the factors set forth in subdivision (c) of Section 585 are true with respect to a subject person of a subject institution, and that it is necessary or advisable for the protection of the subject institution or holding company, or the rights or interests of the customers or members of the subject institution, the commissioner may, without any prior notice or opportunity to be heard, issue an order suspending the subject person from the subject person's office, if any, with the subject institution or holding company, and prohibiting the subject person from participating in any manner in the conduct of the affairs of the subject institution or holding company without the prior approval of the commissioner.

587. (a) If the commissioner finds that any of the factors set forth in paragraph (1) and the factor set forth in paragraph (2) are true with respect to a subject person or former subject person of a subject institution or holding company, the commissioner may, without any prior notice or opportunity to be heard, issue an order suspending the subject person or former subject person from his or her office, if any, with the subject institution or holding company and prohibiting him or her from further participating in any manner in the conduct of the affairs of the subject institution or holding company without the approval of the commissioner:

(1) That the subject person or former subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with commission of or participation in any of the following:

(A) A crime that involves dishonesty or breach of trust and that is punishable by imprisonment for a term exceeding one year.

(B) A criminal violation of any provision of this division.

(C) A criminal violation of Section 1956, 1957, or 1960 of Title 18 of, or Section 5322 or 5324 of Title 31 of, the United States Code.

(D) A criminal violation of a law of any jurisdiction other than the United States that is substantially similar to any of the statutes specified in subparagraph (C).

(2) That continued or resumed service or participation by the subject person or former subject person may pose a threat to the rights or interests of the customers or members of the subject institution or may threaten to impair public confidence in the subject institution.

(b) An order issued pursuant to subdivision (a) shall remain in effect until the indictment or the information, complaint, or similar pleading is finally disposed of or, if the order is earlier terminated by the commissioner, until the order is so terminated.

(c) If the commissioner finds that the factors set forth in paragraphs (1) and (2) are true with respect to a subject person or former subject person of a subject institution or holding company, the commissioner may, without any prior notice or opportunity to be heard, issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the subject institution or holding company and prohibiting him or her from further participating in any manner in the affairs of the subject institution or holding company without the approval of the commissioner:

(1) That the subject person or former subject person has been finally convicted of any crime of the type described in paragraph (1) of subdivision (a). For purposes of this paragraph, an agreement to enter a pretrial diversion or similar program is deemed to be a conviction.

(2) That continued or resumed service or participation by the subject person or former subject person may pose a threat to the interests of the customers of the subject institution or may threaten to impair public confidence in the subject institution.

(d) The fact that any subject person of a subject institution charged with a crime of the type described in paragraph (1) of subdivision (a) is not finally convicted of the crime does not preclude the commissioner from issuing an order regarding the subject person pursuant to any other provision of this article.

588. (a) Any subject institution, subject person of a subject institution, or former subject person of a subject institution to whom an order is issued under Sections 585 to 587, inclusive, may apply to the commissioner to modify or rescind the order. In deciding whether to grant or deny the application, the commissioner shall consider whether it is in the public interest to modify or rescind the order and whether it is reasonable to believe that the subject person or former subject person will, if and when he or she becomes a subject person of a subject institution or holding company, comply with all applicable provisions of law, or any regulation or order issued by the commissioner.

(b) The right of any subject person or former subject person of a subject institution or holding company to whom an order is issued under Sections 585 to 587, inclusive, to petition for judicial review of the order shall not be affected by the failure of the subject institution or holding company to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

589. (a) In this section, "subject depository institution" means any:

(1) Licensee or any bank or credit union that maintains an office in this state.

(2) Affiliate of any of the institutions specified in paragraph (1).

(3) Subsidiary of any of the institutions specified in paragraph (1).

(4) Holding company of any of the institutions specified in paragraph (1).

(b) It is unlawful for any subject person or former subject person of a subject institution to whom an order is issued under Sections 585 to 587, inclusive, willfully to do, directly or indirectly, any of the following without the approval of the commissioner, so long as the order is in effect:

(1) Act as a subject person of any subject depository institution.

(2) Vote any shares or other securities having voting rights for the election of any person as a director of a subject depository institution.

(3) Solicit, procure, transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of a subject depository institution having voting rights.

(4) Otherwise to participate in any manner in the affairs of any subject depository institution.

Article 5. Suspension or Possession of a License

590. The commissioner may revoke or suspend any license issued by, or under the authority of, the commissioner, if, after notice and opportunity to be heard, the commissioner finds any of the following:

(a) The licensee has violated, is violating, or that there is reasonable cause to believe that the licensee is about to violate, any provision of any of the following:

(1) Any division subject to the jurisdiction of the commissioner.

(2) Any regulation promulgated by, or subject to the jurisdiction of, the commissioner.

(3) A provision of any other applicable law.

(4) A provision of any order issued by the commissioner.

(5) A provision of any written agreement between the licensee and the commissioner.

(6) A condition imposed on any written approval granted by the commissioner.

(b) Any fact or condition exists which, if it had existed at the time of the original application for the license, would be grounds for denying the application for the license.

(c) The licensee is conducting its business in an unsafe manner.

(d) The licensee is in such condition that it is unsafe or unsound for the licensee to transact appropriate licensee business.

(e) The licensee has inadequate capital or net worth or is insolvent.

(f) The licensee failed to pay any of its obligations as they came due or is reasonably expected to be unable to pay its obligations as they come due.

(g) The licensee is the subject of an order for relief in bankruptcy, or has sought other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or any person has applied for any such relief under any such law against the licensee and the licensee has by any affirmative act approved of, or consented to, the action or the relief has been granted.

(h) The licensee has ceased to transact appropriate licensee business.

(i) The licensee refuses to submit its books, papers, and affairs to the inspection of any examiner.

(j) Any officer of the licensee refuses to be examined upon oath touching the concerns of the licensee.

(k) The licensee has, with the approval of its board, requested the commissioner to take possession of its property and business.

591. If the commissioner finds that any of the factors set forth in Section 590 is true with respect to any licensee and that it is necessary for the protection of the public interest, the commissioner may issue an order immediately suspending or revoking the licensee's license.

592. If the commissioner finds that any of the factors set forth in subdivisions (a) to (k), inclusive, is true with respect to a licensee, the commissioner may by order, without any prior notice or opportunity to be heard, take possession of the property and business of the licensee:

(a) The licensee has violated any provision of (1) any division subject to the jurisdiction of the commissioner, (2) any regulation promulgated by, or subject to the jurisdiction of, the commissioner, (3) any provision of any other applicable law, (4) any provision of any order issued by the commissioner, (5) any provision of any written agreement made between the commissioner and the licensee, or (6) a condition imposed on any written approval granted by the commissioner.

(b) The licensee is conducting its business in an unsafe or unsound manner.

(c) The licensee is in such condition that it is unsafe or unsound for the licensee to transact appropriate licensee business.

(d) The licensee has inadequate capital or net worth or is insolvent.

(e) If the licensee is a bank, the tangible shareholders' equity of the bank is less than the following:

(1) If the bank is a commercial bank or industrial bank, the greater of three percent of the bank's total assets or one million dollars ($1,000,000).

(2) If the bank is a trust company other than a commercial bank authorized to engage in trust business, one million dollars ($1,000,000).

(f) The licensee failed to pay any of its obligations as they came due or is reasonably expected to be unable to pay its obligations as they come due.

(g) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against the licensee and the licensee has by any affirmative act approved of or consented to the action or the relief has been granted.

(h) The licensee has ceased to transact the business the licensee is authorized to conduct pursuant to its license.

(i) The licensee refuses to submit its books, papers, and affairs to the inspection of any examiner.

(j) Any officer of the licensee refuses to be examined upon oath touching the concerns of the licensee.

(k) The licensee has, with the approval of its board, requested the commissioner to take possession of its property and business.

593. (a) If the commissioner takes possession of the property and business of a licensee pursuant to Section 592, the licensee may, within 10 days, apply to the superior court in the county where its head office is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make any further order as may be just. The judgment of the court may be appealed by the commissioner or by the licensee as allowed by law.

(b) At any time after the commissioner takes possession of the property and business of a licensee pursuant to Section 592, the licensee may, with the approval of the commissioner, resume business upon conditions as the commissioner may prescribe.

594. (a) Upon taking possession of the property and business of any licensee, the commissioner shall give notice of that fact to all persons holding or having in their possession any assets of the licensee. No person knowing of the taking, or who has been notified thereof, shall have a lien or charge upon any assets of the licensee for any payment, advance, or clearance thereafter made or for any liability thereafter incurred.

(b) The giving of notice in accordance with this section shall not be deemed to be a prerequisite to the taking of possession of the property and business of the licensee.

595. The commissioner is deemed to take possession of the entire property and business of a licensee when the commissioner takes possession of the business and property of the head office of the licensee.

Chapter ~~8.~~ 7. Liquidation and Conservation

Article 1. General Provisions

600. In this article, "Federal Insurance Agency" means the Federal Deposit Insurance Corporation or the National Credit Union Administration, as appropriate, or their respective successors-in-interest.

601. Upon taking possession of the property and business of any licensee, the commissioner has authority, and it is his or her duty, to collect all moneys due to the licensee and to do other acts as are necessary or expedient to collect, conserve, or protect the licensee's assets, property, and business, and he or she shall proceed to conserve or liquidate the affairs of the licensee as provided in this article.

602. No attachment shall be issued against the property of any licensee subject to conservation or liquidation pursuant to this article.

603. Upon taking possession of the property and business of any licensee pursuant to Section 592, the commissioner may proceed to liquidate or conserve the licensee in the manner provided by this article.

604. Upon taking possession of the property and business of a licensee pursuant to Section 592, the commissioner may tender to any person or persons an appointment as conservator, liquidator, receiver, or liquidating committee of the licensee.

605. The commissioner shall supervise the acts of the conservator, liquidator, receiver, or liquidating committee appointed under this article and may remove the conservator, liquidator, receiver, or any or all members of the liquidating committee in his or her discretion.

606. If required by the commissioner, the conservator, liquidator, receiver, or members of the liquidating committee appointed under this article shall provide proof of bond coverage that extends to the conservator, liquidator, receiver, or members of the liquidating committee. The bond shall include fraud, dishonesty, and faithful performance coverage. The premium for that bond shall be paid out of the assets of the licensee.

607. (a) If the commissioner retains possession of the assets of the licensee for the purpose of liquidation or conservation, the commissioner shall, to the extent possible, use the services of civil service employees of the commissioner's office, and the attorneys employed by the commissioner or the Department of Justice shall render all necessary legal services, as the commissioner may request.

(b) The commissioner, from time to time, under his or her official seal, may appoint one or more special deputy commissioners as his or her agent or agents with the powers specified in the certificate of appointment to assist him or her in the duties of conservation or of liquidation and distribution. The certificate of appointment shall be filed in the office of the commissioner and a certified copy in the office of the clerk of the county in which the head office of the licensee is located. The commissioner may employ counsel and procure expert assistance and advice as may be necessary in the liquidation and distribution of the assets of the licensee and for that purpose may retain any of the officers or employees of the licensee as the commissioner may deem necessary.

608. The compensation of civil service employees, special deputies, counsel, and other employees and assistants appointed to assist in the conservation or liquidation of any licensee and the distribution of its assets and all expenses of supervision and liquidation shall be fixed by the commissioner and shall be paid out of the funds of the licensee in the hands of the commissioner. The expenses of liquidation shall be reported to the court upon each application for payment of a dividend.

609. If a licensee is not insured by a Federal Insurance Agency, upon the commissioner taking possession of the business and property of the licensee, the superior court of the State of California for the county in which the head office of the licensee is located shall have exclusive original jurisdiction of all proceedings relating

thereto and of any action or other proceedings brought under the provisions of this article. All papers relating to the proceeding, including copies of the certificate of appointment of any special deputy and the inventories required to be filed, shall be filed and be made a part of the record of the proceeding without the payment of any additional fees. No damages may be awarded in the proceeding but, if sought, may only be recovered in a separate action.

Article 2. Conservation or Liquidation of an Insured Licensee

620. If the licensee whose property and business has been taken pursuant to Section 592 is insured by a Federal Insurance Agency, the commissioner may tender to the appropriate Federal Insurance Agency an appointment as conservator, liquidator, or receiver of the licensee. The commissioner shall determine whether the licensee whose property and business has been taken shall be liquidated or conserved. If the Federal Insurance Agency accepts the appointment, the Federal Insurance Agency shall have, in addition to any powers conferred by applicable federal law, the powers conferred on the commissioner pursuant to this article.

621. The Federal Insurance Agency may be, and act as, a conservator, liquidator, or receiver without bond.

622. If the Federal Insurance Agency accepts the appointment in accordance with Section 621, the rights of customers and other creditors of the insured licensee shall be determined in accordance with the applicable provisions of the laws of this state.

623. The Federal Insurance Agency conservator, liquidator, or receiver shall possess with respect to the insured licensee all the powers, rights, and privileges given the commissioner under this article with respect to the conservation or liquidation of a licensee, as appropriate, and the property and assets of which he or she has taken possession, except insofar as the same may be in conflict with the provisions of applicable federal law.

624. (a) The commissioner may sell to any other licensee any part or the whole of the business of a licensee that is subject to liquidation or conservatorship. The purchase and sale shall be approved by the purchasing licensee, as follows:

(1) If the purchasing licensee is organized under the laws of this state, by two-thirds of all of its directors.

(2) If the licensee is any licensee other than a licensee organized under the laws of this state, in accordance with the laws of the jurisdiction under which the licensee is organized.

(b) (1) Subject to any applicable federal statutes and regulations, any bank or credit union organized under the laws of this state may, with the approval of two-thirds of all of its directors, purchase from the receiver of a national banking association or a federal credit union the whole or any part of the business of the national banking association or federal credit union.

(2) Subject to any applicable federal statutes and regulations and any applicable laws of the jurisdiction under which a foreign corporation is organized, any foreign corporation or office of a foreign corporation that is licensed by the commissioner to transact business in this state and that is authorized to accept shares or deposits in this state, may purchase from the receiver of a national banking association or federal credit union the whole or any part of the business of the national banking association or federal credit union.

(c) The provisions of Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code shall not apply to any purchase and sale of the type described in subdivision (a) or (b).

(d) When a purchase and sale of the type described in subdivision (a) or (b) becomes effective, the licensee shall, ipso facto and by operation of law and without further transfer, substitution, act, or deed, to the extent provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale and except as withheld or limited by the agreement or by the order:

(1) Succeed to the rights, obligations, properties, assets, investments, shares, deposits, demands, and agreements of the licensee whose business is sold, subject to the right of every customer of a licensee to withdraw his or her shares or deposit in full on demand after the sale, irrespective of the terms under which the share or deposit was made.

(2) Succeed to the rights, obligations, properties, assets, investments, shares, deposits, demands, and agreements of the licensee whose business is sold under all trusts, executorships, administrations, guardianships, conservatorships, agencies, and other fiduciary or representative capacities, to the same extent as

though the purchasing licensee had originally assumed, acquired, or owned the same, subject to the rights of trustors and beneficiaries under the trusts so sold to nominate another or succeeding trustee of the trust so sold after the sale.

(3) Succeed to and be entitled to take and execute the appointment to executorships, trusteeships, guardianships, conservatorships, and other fiduciary and representative capacities to which the licensee whose business is sold is or may be named in wills, whenever probated, or to which it is or may be named or appointed by any other instrument.

(e) For purposes of subdivision (d), any purchase and sale of the type referred to in subdivision (d) shall be deemed to be effective at the time provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale.

Article 3. Conservatorship of an Uninsured Licensee

640. Whenever the commissioner deems it necessary in order to conserve the assets of any licensee that does not have federal deposit or share insurance for the benefit of the customers and other creditors, he or she may appoint a conservator of the licensee and require the conservator to post a bond as the commissioner deems proper. The conservator, under the direction of the commissioner, shall take possession of the books, records, and assets of every description of the licensee and take any action as the conservator may deem necessary to conserve the assets of the licensee pending further disposition of its business.

641. A conservator appointed in accordance with Section 640 has all of the powers and rights with relation to the business and the property of the licensee for which he or she is appointed conservator as are possessed by the commissioner under this article with relation to a licensee of which the commissioner has taken possession, and the conservator is subject to the same obligations as are imposed upon the commissioner under this article. During the time that the conservator remains in possession of the licensee the rights of the licensee, and of all persons with respect thereto, subject to the other provisions of this article, are the same as if the commissioner had taken possession of the property and business of the licensee for the purposes of liquidation. All expenses of the

conservatorship shall be paid out of the assets of the licensee and shall be a lien thereon which shall be prior to any other lien. The conservator shall receive a salary in an amount no greater than that which would be paid by the commissioner to a special deputy in charge of the liquidation of a licensee.

642. The commissioner may order an examination at the earliest possible date of a licensee for which the commissioner has appointed a conservator.

643. While any licensee is in the hands of a conservator, the commissioner may require the conservator to set aside and make available for withdrawal by customers and for payment to other creditors on a ratable basis such amounts as in the opinion of the commissioner may safely be used for that purpose.

644. The commissioner, in his or her discretion, may permit the conservator to receive shares or deposits, but any shares or deposits received while the licensee is in the hands of a conservator shall be held as trust funds and shall not be subject to any limitation as to payment or withdrawal. The shares or deposits shall be segregated and shall not be used to liquidate any indebtedness of the licensee existing at the time the conservator was appointed or for the payment of any later indebtedness incurred for the purpose of liquidating any indebtedness of the licensee existing at the time the conservator was appointed. The shares or deposits shall be kept on hand in cash, invested in direct obligations of the United States, or deposited with the Federal Reserve Bank.

645. If the commissioner is satisfied that it may be done safely and that it would be in the public interest, he or she may terminate a conservatorship and permit the licensee for whom a conservator was appointed to resume the transaction of its business under the direction of its board, subject to any terms, conditions, restrictions, and limitations as the commissioner may prescribe.

646. The conservator of a licensee that has been permitted to resume accepting member shares or deposits shall first cause a notice to be published in a newspaper of local circulation. The notice shall state the date on which the affairs of the licensee will be returned to its board and that the provisions of Section 644 will not be effective after 30 days from that date. The form of the notice and the newspaper in which the same is to be published shall be first approved by the commissioner. On the date of the publication of the notice, the conservator shall mail a copy of the notice to

every person who made any deposit in the licensee after the date of the appointment of the conservator. The conservator shall address the copy of the notice to the persons who have made the deposits at the addresses appearing upon the books of the licensee. The conservator shall also mail a similar notice to every person making a deposit in the licensee after the date of the publication of the notice and before the affairs of the licensee are returned to its board.

647. The commissioner may assess and collect from all licensees for whom a conservator is appointed their ratable share of the costs incurred in the administration of this article.

648. Any licensee that the commissioner has taken possession of pursuant to Section 592, and for which a conservator has been appointed pursuant to this article, may be reorganized under a plan that requires the consent of any of the following:

(a) Customers and other creditors of the licensee representing at least 75 percent in amount of its total member shares or deposits and other liabilities as shown by the books of the licensee, excluding member shares or deposits and other liabilities which are to be satisfied in full under the provisions of the plan.

(b) Stockholders owning at least two-thirds of the outstanding stock as shown by the books of the licensee.

(c) Members of the licensee.

(d) Customers and other creditors of the licensee representing at least 75 percent in amount of its total shares or deposits and other liabilities as shown by the books of the licensee, excluding shares or deposits and other liabilities that are to be satisfied in full under the provisions of the plan, and, if applicable to the licensee, of stockholders owning at least two-thirds of its outstanding stock as shown by the books of the licensee.

649. All customers, creditors, stockholders, if applicable, and other interested persons shall be given notice of any proposed plan of reorganization in the manner and at the times as the commissioner directs.

650. No plan of reorganization shall become effective until the commissioner finds that the plan is fair and equitable to all customers, creditors, and stockholders, if applicable, and is in the public interest and until the commissioner approves the same in writing, subject to any conditions, restrictions, and limitations as the commissioner may prescribe.

651. No creditor having security for the payment of his, her, or its claim shall be affected in his, her, or its right to enforce the security by the provisions of any plan for the reorganization of the licensee. Any plan of reorganization involving the reduction of claims of creditors shall apply only to that portion of a secured creditor's loan that is not covered by the pledged security.

652. When any plan of reorganization becomes effective, all books, records, and assets of the licensee shall be disposed of in accordance with the provisions of the plan and the affairs of the licensee shall be conducted by its board in the manner provided by the plan and under the conditions, restrictions, and limitations that may have been prescribed by the commissioner. When any plan of reorganization adopted and approved as herein provided becomes effective, all customers and other creditors and, if applicable, stockholders of the licensee, whether or not they have consented to the plan of reorganization, shall be fully and in all respects subject to and bound by the plan's provisions and the claims of all customers and other creditors shall be treated as if they had consented to the plan of reorganization.

Article 4. Liquidation of an Uninsured Licensee

670. Upon taking possession of the property and business of a licensee that does not have federal deposit or share insurance, the commissioner may sell, compromise, or compound any bad or doubtful debt owing the licensee for a principal sum not exceeding ten thousand dollars ($10,000), upon those terms as the commissioner may deem proper. If the principal sum thereof exceeds ten thousand dollars ($10,000), the commissioner may compromise, compound, or sell the debt upon those terms as the court may approve. If it appears improbable that a recovery on a debt can be had, and that the costs of an action to collect would be lost, and the principal sum thereof does not exceed five hundred dollars ($500), the commissioner may determine that no suit thereon shall be brought. If the principal sum of that debt exceeds ten thousand dollars ($10,000), the commissioner may determine that no suit thereon be brought after obtaining approval of the court.

671. The commissioner may sell any real or personal property of the licensee for cash or on credit and on any other terms and

conditions as the commissioner may deem proper, subject to the approval of the court.

672. (a) The commissioner may, with the approval of the court, sell any part or the whole of the business of a licensee to any other licensee. The purchase and sale shall be approved by the purchasing licensee, as follows:

(1) If the purchasing licensee is organized under the laws of this state, by two-thirds of all of its directors.

(2) If the licensee is any licensee other than a licensee organized under the laws of this state, in accordance with the laws of the jurisdiction under which the licensee is organized.

(b) (1) Subject to any applicable federal statutes and regulations, any bank or credit union organized under the laws of this state may, with the approval of two-thirds of all of its directors and of the commissioner, purchase from the receiver of a national banking association or a federal credit union the whole or any part of the business of the national banking association or federal credit union.

(2) Subject to any applicable federal statutes and regulations and any applicable laws of the jurisdiction under which a foreign corporation is organized, any foreign corporation or any office of a foreign corporation that is licensed by the commissioner to transact business in this state and that is authorized to accept shares or deposits in this state, may, with the approval of the commissioner, purchase from the receiver of a national banking association or federal credit union the whole or any part of the business of the national banking association or federal credit union.

(c) The provisions of Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code shall not apply to any purchase and sale of the type described in subdivision (a) or (b).

(d) When a purchase and sale of the type described in subdivision (a) or (b) becomes effective, the purchasing licensee shall, by operation of law and without further transfer, substitution, act, or deed, to the extent provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale and except as withheld or limited by the agreement or by the order:

(1) Succeed to the rights, obligations, properties, assets, investments, shares, deposits, demands, and agreements of the licensee whose business is sold, subject to the right of every

customer of the licensee whose shares or deposit is sold to withdraw his or her shares or deposit in full on demand after the sale, irrespective of the terms under which the deposit was made.

(2) Succeed to the rights, obligations, properties, assets, investments, shares, deposits, demands, and agreements of the whose business is sold under all trusts, executorships, administrations, guardianships, conservatorships, agencies, and other fiduciary or representative capacities, to the same extent as though the purchasing licensee had originally assumed, acquired, or owned the same, subject to the rights of trustors and beneficiaries under the trusts so sold to nominate another or succeeding trustee of the trust so sold after the sale.

(3) Succeed to and be entitled to take and execute the appointment to executorships, trusteeships, guardianships, conservatorships, and other fiduciary and representative capacities to which the licensee whose business is sold is or may be named in wills, whenever probated, or to which it is or may be named or appointed by any other instrument.

(e) For purposes of subdivision (d), any purchase and sale of the type referred to in subdivision (d) shall be deemed to be effective at the time provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale.

673. Within six months after taking possession of the property and business of any licensee that does not have federal deposit or share insurance, the commissioner may terminate or adopt any executory contract to which the licensee may be a party, including leases of real or personal property. Claims for damages resulting from the termination of any contract or lease may be filed and allowed, but no claim of a landlord for damages resulting from the rejection of an unexpired lease of real property or under any covenant of the lease shall be allowed in an amount exceeding the rent reserved by the lease, without acceleration, for the year succeeding the date of the surrender of the premises plus the amount of any unpaid accrued rent without acceleration. Any claim shall be filed within 30 days of the date of the termination or within the time that claims are to be filed under Section 680, whichever is longer.

674. The commissioner, in his or her own name or in the name of the licensee, may execute, acknowledge, and deliver any and

all conveyances and other instruments necessary or appropriate to effectuate the sale of any real or personal property or to effectuate any other transaction in connection with the liquidation of a licensee or the distribution of its assets. Any conveyance or other instrument executed by the commissioner pursuant to this authority shall be valid and effectual for all purposes as though the same had been executed by the officers of the licensee by authority of its board of directors. Whenever the commissioner sells any real property of the licensee a certified copy of the order of the court approving the sale shall be recorded in the county in which any part of the real property is located.

675. The commissioner, in the name of the delinquent licensee or in his or her own name, may prosecute and defend any and all actions and other legal proceedings appropriate or necessary to the liquidation of the licensee.

676. The commissioner from time to time shall deposit all moneys coming into his or her hands in the course of the liquidation of the licensee in one or more state banks or state credit unions and in the event of the suspension or insolvency of the depositary shall be preferred before all other deposits.

677. The commissioner shall make an inventory of the assets of the licensee in duplicate and file one in the office of the commissioner and one with the clerk of the county in which the head office of the licensee is located to be filed with the papers in the liquidation proceedings. The inventory shall be open for inspection at all reasonable times.

678. When the time fixed for the presentation of claims has expired, the commissioner shall make in duplicate a full and complete list of all claims presented, including and specifying claims that have been rejected by the commissioner, and a list of all claims of customers as shown by the books or records of the licensee for which claims have not yet been presented, and shall file one copy of the list in the commissioner's office and one with the clerk of the county in which the head office of the licensee is located to be filed with the papers in the liquidation proceedings. Before each application to the court for leave to declare a dividend, the commissioner shall file a supplemental list of claims presented since the last preceding list was filed, including and specifying any claims that have been rejected by him or her. The list of claims

and of claims of customers as shown by the books or records of the licensee shall be open for inspection at all reasonable times.

679. The commissioner shall cause notice to be given by advertisement in any newspapers of general circulation as he or she may select weekly for three consecutive months, calling on all persons who have claims against the licensee to present the same to the commissioner and make legal proof thereof at a place to be specified therein and within four months of the date of the first publication of the notice, which date shall be specified in the notice. The notice shall also state that all claims other than those of customers appearing upon the books or records of the licensee shall be forever barred if not filed within the four months' period and that all claims of customers appearing upon the books or records of the licensee will be forever barred, except as herein provided, if not filed prior to the filing of a petition for a final dividend. The commissioner shall also mail a similar notice to all persons, including customers whose names appear as creditors upon the books of the licensee and whose addresses appear upon the books or records of the licensee, and shall enclose therewith a printed form of notice of claim.

680. All claims of every kind against the licensee or against any property owned or held by the licensee shall be presented to the commissioner in writing verified by the claimant or someone on his or her behalf within four months of the date of the first publication of the notice to creditors. Any claim, other than the claim of a customer whose claim appears upon the books or records of the licensee, not presented within the four months' period shall be forever barred and any claim of a customer whose claim appears upon the books or records of the licensee that is not so presented prior to the date of the filing of the petition of the commissioner with the court for approval of the payment of the final dividend shall be forever barred except as to any moneys remaining after all debts for which claims were duly filed have been paid in full with interest. If the commissioner doubts the validity of any claim, he or she may reject the claim and serve notice of the rejection upon the claimant either by mail or personally. An affidavit of the mailing or personal service of the notice shall be prima facie evidence of the receipt thereof and shall be filed with the commissioner. Any action upon a rejected claim shall be brought

within three months after the date of mailing or personal service of the notice of rejection.

681. At any time and from time to time after the expiration of the time fixed for the presentation of claims, the commissioner, after obtaining approval of the court, may declare and pay one or more dividends upon all approved claims out of the funds remaining in his or her hands after the payment of expenses and after setting aside an amount sufficient to pay to all customers, who have not yet filed claims but whose claims appear upon the books or records of the licensee, their pro rata share of the funds then available for the payment of a dividend. At any time after the expiration of one year from the date of the first publication of notice to creditors and after obtaining the approval of the court, the commissioner may declare and pay a final dividend.

682. (a) Expenses and claims of unsecured creditors have priority in the following order:

(1) Expenses of liquidation and approved claims for fees and assessments due the department.

(2) Approved claims given priority under other provisions of state or federal law, including, but not limited to, Sections 676 and 710.

(3) Approved claims for "deposits," as that term is defined in 12 U.S.C. Section 1813(*l*), but including obligations of the type described in 12 U.S.C. Section 1813(*l*)(5)(A) and (B).

(4) Approved claims for other general liabilities.

(5) Approved claims for obligations subordinated to deposits and other general liabilities.

(b) Interest shall be given the same priority as the claim on which it is based, but no interest shall be paid on any claim until the principal of all claims within the same class has been paid or adequately provided for in full.

(c) Any funds remaining shall be paid to the members or shareholders, as appropriate.

683. Objections to any claim not rejected by the commissioner may be made by any person interested by filing a copy of the objection with the commissioner, who shall present the copy to the court at the time of the next application for approval of the declaration of a dividend. The court shall thereupon dispose of the objections or may order a reference for that purpose, and should the objections to any claim be sustained by the court or by the

referee, the claim shall not be allowed by the commissioner until the claimant has established the claim by judgment.

684. Dividends remaining unpaid and any sums available for payment of shares or deposits for which no claim was filed, which remain in the hands of the commissioner six months after the order for the payment of a final dividend, shall be deposited in the State Treasury. The shares or deposits shall be deemed to have been received under Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and shall be subject to claim or other disposition as provided in that chapter. The commissioner may pay over the moneys held by him or her to the persons respectively entitled thereto at any time prior to depositing the shares or deposits in the State Treasury, upon being furnished satisfactory evidence of the persons' right to the same.

685. Whenever, under the provisions of this article, the commissioner is required to transmit unclaimed money or other unclaimed property to any state officer for deposit in the State Treasury, the commissioner, upon request of the Controller, shall transmit to the Controller all signature cards and any other identifying information available from the records of the licensee, covering the money or other property. Upon receipt by the Controller of the signature cards or other identifying information, the licensee and the commissioner shall be relieved of all responsibility therefor. The signature cards and other identifying information may be destroyed or otherwise disposed of by the Controller whenever, in his or her discretion, their further retention by him or her is no longer required in the interest of the customers or the state.

686. All approved claims of customers and other creditors shall bear interest at the rate provided by law on judgments from the date that the commissioner takes possession of the property and business of the licensee.

687. If the licensee has in its possession for safekeeping or storage any jewelry, plate, money, specie, bullion, stocks, bonds, securities, valuable papers, or other valuable personal property, or has rented any vaults, safes, or safe-deposit boxes, the commissioner shall cause to be mailed, by registered mail, postage prepaid, to any known person claiming to be or appearing on the books of the licensee to be the owner of the property or to the person in whose name the safe, vault, or box stands a notice

notifying the person to remove all of the personal property within a specified fixed period of not less than 60 days.

688. On the last day fixed in the notice for the removal of the property or on the date when the property is removed or the box surrendered, any contract between the person owning the property or holding the box and the licensee shall cease and the amount of the unearned prepaid rent or charges, if any, shall become a debt of the licensee to the person.

689. If any property is not removed within the time fixed by the notice mailed by the commissioner, the commissioner may dispose of the property as the court, on application thereto, shall direct. The commissioner may cause any safe, vault, or box to be opened in his or her presence or in the presence of one of the special deputy commissioners and of a notary not an officer or employee of the licensee or of the commissioner. The contents thereof, if any, shall be sealed by the notary in a package upon which the notary shall distinctly mark the name and address of the person in whose name the safe or box stands upon the books of the licensee and shall attach thereon a list and a description of the property within the package. The package so sealed and addressed, together with the list and description may be kept by the commissioner in one or more of the safes or boxes of the licensee or elsewhere until delivered to the person whose name it bears or until otherwise disposed of as directed by the court.

690. (a) When the commissioner has completed the liquidation of the licensee, he or she shall petition the court for an order declaring the licensee duly wound up and dissolved.

(b) After any notice as the court may direct and a hearing, the court may make an order declaring the licensee duly wound up and dissolved. The order shall declare all of the following:

(1) The licensee has been duly wound up.

(2) A final franchise tax return, if any, as described by Section 23332 of the Revenue and Taxation Code, has been filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, and any tax or penalty due under the Corporation Tax Law has been paid, and the licensee's known debts and liabilities have been paid or adequately provided for, or any taxes, penalties, debts, and liabilities have been paid so far as the licensee's assets permitted, as the case may be. If there are known debts or liabilities

for the payment of which adequate provision has been made, the order shall describe the provision, setting forth any information necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(3) All known assets of the licensee have been distributed to its shareholders or wholly applied on account of the licensee's debts and liabilities.

(4) The licensee is dissolved.

(c) The court may make additional orders and grant further relief as it deems proper upon the evidence submitted.

(d) Upon the making of the order declaring the licensee dissolved, the corporate existence of the licensee shall cease, except for the purposes of any necessary further winding up.

(e) Upon the making of the order declaring the licensee dissolved, the commissioner shall file with the Secretary of State a copy of the order, certified by the clerk of the court.

691. Whenever this article requires court approval of any step in the liquidation proceedings, approval shall be given after a hearing upon notice as the court may direct. At the hearing, the court may by order approve the actions of the commissioner for which he or she has petitioned the court's approval or it may, by appropriate order, otherwise direct the commissioner in the matter in connection with which the petition was filed.

692. Whenever, in the opinion of the commissioner, the liquidation or reorganization of any licensee taken in charge by him or her would be facilitated, or the public interests and the interests of customers or stockholders would be served, the commissioner may borrow money on behalf of the licensee from any federal agency authorized to lend money to receivers, trustees, liquidating agents, or other agents or supervisory authorities in charge of licensees that are closed or in process of liquidation and, with approval of the court, the commissioner may secure any borrowings by the pledge of the assets of the licensee in any manner and amount the commissioner deems necessary, proper, or expedient.

Article 5. Disposal of Unclaimed Trust Property

700. Whenever any licensee is being liquidated or whenever the trust business of any licensee has been discontinued and the

licensee has in its possession money or other property held by it in trust or for safekeeping and the beneficiaries or persons entitled thereto are unknown or cannot be found, the commissioner or the licensee, upon obtaining approval of the superior court of the county in which the liquidation proceedings are pending or in which the head office of the licensee is situated, may do the following:

(a) In the case of money, deliver it to the Treasurer.

(b) In the case of other property, deliver it to the Controller for deposit in the State Treasury.

701. Upon the delivery of any money to the Treasurer or upon the delivery of any property to the Controller, a certified copy of the order of the court approving the delivery shall be given to the Controller, and upon the delivery of any money to the Treasurer a notice giving the amount delivered shall be filed with the Controller. Upon the receipt of any money or other properties, the Treasurer or the Controller, as the case may be, shall issue a receipt for the same and the receipt shall be deemed a voucher in favor of the licensee to the same extent as though executed by the beneficiary or other person entitled thereto.

702. All money or other property delivered to the Treasurer or Controller pursuant to this article shall be deemed to be delivered for deposit in the State Treasury under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter.

Article 6. Priorities

710. The holder or transferor of a negotiable instrument transferred to a licensee for collection has a preferred claim in the amount of the liability of the licensee on the instrument if the instrument was forwarded to the licensee by any person or by any other financial institution for collection and remittance, if payment therefor has not been made and if the same has been collected either in whole or in part by the licensee, unless the holder or transferor is a voluntary depositor in the licensee and the proceeds of the collection, at his or her request, have been credited by the licensee to his or her account.

Chapter ~~9.~~ *8.* Voluntary Liquidation

720. Any licensee that voluntarily has ceased to do the business for which it is licensed shall immediately notify the commissioner and proceed to liquidate its affairs. Any share or deposit or other sum that has not been paid to the person entitled thereto within six months after the licensee ceased to conduct a business shall be paid into the State Treasury. The deposits with the State Treasury shall be deemed to have been received under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter. If the commissioner has reason to conclude that the liquidation of the licensee is not being safely or expeditiously conducted, he or she may take possession of the business and property of the licensee in the same manner and with the same effect and subject to the same rights accorded the licensee as if he or she had taken possession pursuant to ~~Article 8 (commencing with Section 305)~~ *Chapter 7 (commencing with Section 600)*, and he or she may proceed to liquidate the licensee's affairs in the same manner as provided in that article. When the licensee has been completely liquidated, its corporate existence shall be dissolved in the manner provided by law.

721. If the licensee referred to in Section 720 is a state-chartered credit union and the commissioner has taken possession of the business and property of the credit union, the commissioner may appoint a liquidating agent or a liquidating committee of three members of the credit union to liquidate the business and assets of the credit union in the manner provided in Article 2 (commencing with Section 15250) of Chapter 9 of Division 5, except that, in lieu of the certificate required under Section 15252, the commissioner shall prepare and file in the office of the Secretary of State a certificate of commencement of liquidation proceedings upon taking possession of the business and assets, and the commissioner or his or her authorized deputy shall countersign the certificate referred to in Sections 15257 and 15258 whenever liquidation is involuntary. The commissioner may, however, prepare and file a final certificate whenever he or she retains possession of the assets of any credit union for the purpose of liquidation. The liquidating agent need not be a member

of the credit union to be liquidated and may be a person, firm, or corporation, as determined by the commissioner.

Chapter ~~10.~~ 9. Approval of Names of Nonbank Corporations

730. In this chapter:

(a) "Nonbank corporation" means any corporation incorporated or proposed to be incorporated under the laws of this state, other than (1) any bank or (2) any corporation incorporated or proposed to be incorporated under the laws of this state for the purpose of transacting business under Article 1 (commencing with Section 1850) of Chapter 21 of Division 1.1.

(b) "Subject name", means a name of a nonbank corporation which, as set forth, or as proposed to be set forth, in the articles of such nonbank corporation, includes "bank," "trust," "trustee," or related words.

731. An application for a certificate of approval of the subject name of a nonbank corporation shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

732. The fee for filing with the commissioner an application for a certificate of approval of the subject name of a nonbank corporation shall be twenty-five dollars ($25).

733. If the commissioner finds, with respect to an application for a certificate of approval of the subject name of a nonbank corporation, that the subject name does not indicate that the nonbank corporation is engaged in the banking, industrial banking, or trust business, the commissioner shall issue a certificate of approval of the subject name. If the commissioner finds otherwise, the commissioner shall deny the application.

734. Promptly after the articles of a nonbank corporation, with the certificate of approval of the subject name of such nonbank corporation attached thereto, are filed with the Secretary of State, such nonbank corporation shall file with the commissioner a copy of such articles certified by the Secretary of State.

Chapter ~~11.~~ *10.* Legal Investments for Nonbank Licensees

800. As used in this chapter, unless the context requires otherwise, the following terms have the following meanings:

(a) "Net direct debt" of any public corporation means all indebtedness of every kind after deducting from the indebtedness sinking funds available for the payment thereof, any indebtedness evidenced by tax anticipation notes for the payment of which nondelinquent taxes are pledged, obligations payable only from special assessments, revenue obligations payable only from special revenues pledged for their payment, and such proportion of any indebtedness issued for revenue producing works, properties, or utilities that have been in operation for at least one year as the amount of the annual net revenue therefrom bears to the amount of the annual debt service requirements of those bonds.

(b) "Net overlapping debt" of any public corporation means the proportion of the net direct debt as above defined of any other public corporation (herein called overlapping corporation) that lies wholly or partially within the boundaries of the public corporation as the assessed valuation of the taxable property of the overlapping public corporation lying within the boundaries of the public corporation as shown by the last official equalized county assessment roll bears to the assessed valuation of all taxable property of the overlapping public corporation as shown by the last official equalized county assessment roll.

(c) "Funded debt," as used in this chapter, means all interest-bearing indebtedness of a corporation not maturing within one year of the date the indebtedness was incurred.

801. Any securities or other assets that are described in Sections 803 to 819, inclusive, are legal investments for savings banks.

802. Where any laws of this state provide that the moneys of any pension fund, retirement plan, trust fund, or the moneys of any special fund the investment of which is governed by law, or the funds of any political subdivision or public corporation may or shall be invested in securities which are a legal investment for savings banks, that law shall be deemed to authorize or require, as the case may be, that those moneys be invested in securities in which savings banks were authorized to invest their funds by the provisions of the Bank Act as it read prior to January 1, 1949, other

than paragraph (f) of subdivision 5 of Section 61 of that act, or in bonds, debentures, and notes legal for investments for savings banks in the State of New York or the State of Massachusetts as of the time the investment is made or in securities in which commercial banks are authorized to invest their funds by the provisions of Sections 803 to 819, inclusive.

803. Gold and silver bullion and United States mint certificates of ascertained value.

804. Stock of a federal reserve bank or of a federal home loan bank to the extent authorized by Section 1325.

805. Bonds or other interest-bearing notes and obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

806. Bonds of the State of California and those for which the faith and credit of the State of California are pledged for the payment of principal and interest and in registered warrants of the State of California.

807. Bonds of any flood control and water conservation districts, or any zone thereof, having an assessed valuation on taxable real property of not less than one million dollars ($1,000,000), county, city and county, city, metropolitan water district, municipal utility district, special districts established by and within any municipal utility district, transit district, rapid transit district including sales tax revenue bonds of the district, metropolitan transit authority, flood control district, or school district of the State of California (herein referred to generally as public corporation) except the bonds of any particular such public corporation which may be declared ineligible for investment by savings banks by regulations of the commissioner.

808. Bonds of any other political subdivision, public corporation, or district of the State of California (herein referred to generally as public corporations) having the power, without limit as to rate or amount; to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by such public corporation, provided the net direct debt of such public corporation together with its net overlapping debt does not exceed 25 percent of the assessed valuation of the taxable property within its boundaries according to the last official equalized county assessment roll.

809. (a) Any of the following subject to the conditions set forth in subdivision (b) to (d), inclusive.

(1) Bonds or other evidences of indebtedness of, or which are unconditionally guaranteed by the Dominion of Canada, the State of Israel, the United States of Mexico, the Commonwealth of Puerto Rico, or any state of the United States other than California, for the payment of both principal and interest of which in United States dollars, the faith and credit of the entity is pledged.

(2) Limited obligations of any state of the United States, other than California, or the Commonwealth of Puerto Rico, payable only from special taxes that are pledged to the payment of principal and interest of the limited obligations.

(3) Bonds or other evidences of indebtedness of any city, county, political subdivision, public corporation, or district (herein referred to generally as public corporations) of any state of the United States, other than California, or of the Dominion of Canada, or of the State of Israel, or of the United States of Mexico or of the Commonwealth of Puerto Rico, having the power without limit as to rate or amount to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by the public corporation.

(b) In the case of bonds constituting general obligations of any such state, commonwealth, dominion, or country, such state, commonwealth, dominion, or country has not within 10 years prior to the investment defaulted for a period of more than 90 days in the payment of any part of either principal or interest of any of its debts.

(c) In the case of limited obligations of any state, or commonwealth, all of the following conditions are met:

(1) The state or commonwealth has not, within 10 years prior to the date of the investment, defaulted for a period of more than 90 days in the payment of either principal or interest of any of its debts.

(2) The special taxes pledged for the payment of the limited obligations shall have been collected for five years and shall have averaged at least one and one-half times the debt service requirements, including those for principal, interest, and sinking fund, on all special obligations existing at the time.

(3) The special taxes for each of the five fiscal years shall have equaled at least the amount of all the debt service requirements on the special obligations.

(d) In the case of bonds or other evidences of indebtedness of any public corporation of any state other than California, or of any commonwealth, all of the following conditions are met:

(1) The public corporation has had a corporate existence or been otherwise established and functioning for at least 10 years prior to the time of the investment.

(2) The public corporation has a population of at least 50,000 inhabitants according to the last federal or state census.

(3) The public corporation for a period of at least 10 years prior to the investment has not defaulted in the payment of any part of the principal or interest of any of its debts for a period of more than 90 days.

(4) The net direct debt together with the net overlapping debt of the public corporation does not exceed 10 percent of the assessed valuation of the property subject to taxation by the public corporation according to the last official equalized assessment roll or list upon the basis of which taxes for debt service are based.

810. Bonds of any irrigation district, water storage district, water conservation district, county water district, reclamation district, drainage district, and any district the primary function of which is the irrigation, reclamation or drainage of land within its boundaries, located in California, other than bonds referred to in Section 807, provided either of the following conditions are met:

(a) The bonds qualify under Section 808.

(b) The bonds have been certified as legal securities for savings banks pursuant to Chapter 1 (commencing with Section 20000) of Division 10 of the Water Code and the certification remains unrevoked and the total outstanding bonded indebtedness of the district including bonds authorized but not issued, but excluding bonds payable solely from revenues and not directly or indirectly from assessments, does not exceed 50 percent of the aggregate of the assessed value of the lands, exclusive of improvements, subject to assessment by the district, and the value of the property owned by the district or to be acquired or constructed with the proceeds of the bonds under consideration.

811. (a) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal

land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, and the Farm Credit Act of 1971.

(b) Debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, and the Farm Credit Act of 1971.

(c) Bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act.

(d) Bonds of any federal home loan bank established under the Federal Home Loan Bank Act.

(e) Stocks, bonds, debentures, participations and other obligations of or issued by the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association and the Federal Home Loan Mortgage Corporation.

812. Bonds, notes or other obligations issued by the Federal Financing Bank, the United States Postal Service, or issued or assumed by the International Bank for Reconstruction and Development, the Tennessee Valley Authority, the Inter-American Development Bank, the Government Development Bank for Puerto Rico, the Asian Development Bank, the International Finance Corporation, or the African Development Bank.

813. (a) Notes with a maturity not exceeding 15 months after the date of issue, issued in anticipation of uncollected taxes, income, revenue, cash receipts, and other moneys of the State of California or any city, county, city and county, or school district thereof; provided the notes and warrants and the interest thereon shall be a first lien and charge against, and shall be payable from, the first moneys received by the local agency from such pledged moneys; provided the total amount of the notes issued at any one time or during any specified period does not exceed 85 percent of the receipts or revenues.

(b) Grant anticipation notes issued by the agencies and payable not later than 36 months after the date of issue, provided that the total amount of the notes and interest payable thereon issued at any one time or during any specified period does not exceed 80 percent of the grant funds stated in writing by the granting authority as committed or appropriated, and shall be paid on a specified date or dates within a 36-month period from the dating of the notes.

814. Revenue securities of any state of the United States, or of the Commonwealth of Puerto Rico, and of any city, county, city and county, political subdivision, public corporation, or district (herein referred to generally as public corporations) of any state or commonwealth and of any department, board, agency, or authority of any state or commonwealth or of any public corporation, if the following conditions are met:

(a) The revenue securities constitute obligations payable out of the revenues from a revenue-producing property owned, controlled, or operated by a state, commonwealth, public corporation, or by a department, board, agency, or authority thereof and are secured by the revenues.

(b) Either of the following paragraphs apply:

(1) (A) The net income from the property available for the payment of the securities for the five fiscal years next preceding any such investment, shall have averaged at least one and one-tenth times all debt service requirements for principal, interest, and sinking fund of all revenue securities payable only out of the revenues from that property during each of those fiscal years, and for each of the five fiscal years shall have equaled at least all debt service requirements for principal, interest, and sinking fund of the securities, and for the last fiscal year shall have amounted to at least the maximum annual debt service requirement for any fiscal year thereafter on all such securities that were outstanding during such last fiscal year and which will be outstanding in any fiscal year thereafter.

(B) The gross income from the property, the net income from which is pledged for the payment of the securities, in the last fiscal year prior to the investment was not less than one million dollars ($1,000,000) if located in California, and was not less than five million dollars ($5,000,000) if located elsewhere.

(C) The issuer is obligated to maintain rates at least sufficient to meet debt service requirements and such obligation is legally enforceable.

(2) (A) The issuer of the securities is entitled to receive under a legally enforceable contract with a corporation any of the securities of which are a legal investment for savings banks under this chapter annual payments averaging not less than nine hundred thousand dollars ($900,000) a year commencing with the completion of a project or projects as fixed in the construction

contract therefor and continuing during the maximum term for which said revenue securities are to mature.

(B) The issuer of the securities is obligated to maintain rates to produce revenue, or will receive contract payments, either or both of which will be sufficient to meet debt service requirements and such obligation or contract is legally enforceable.

(c) The public corporation or any department, board, agency, or authority thereof which issues the securities, if existing elsewhere than in California, has not within 10 years prior to such investment defaulted for a period of more than 90 days in the payment of principal or interest on any of its debts.

815. Bonds of any local public housing agency (as defined in the United States Housing Act of 1937, as amended) that are secured by either of the following:

(a) An agreement between the public housing agency and the Public Housing Administration in which the public housing agency agrees to borrow from the Public Housing Administration, and the Public Housing Administration agrees to lend to the public housing agency, prior to the maturity of the obligations (which obligations shall have a maturity of not more than 18 months), moneys in an amount that (together with any other moneys irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of the obligations with interest to maturity thereon, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity.

(b) A pledge of annual contributions under an annual contributions contract between such public housing agency and the Public Housing Administration if the contract shall contain the covenant by the Public Housing Administration that is authorized by subsection (b) of Section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to that subsection 22(b) shall not be less than the annual amount and the period for payment that are requisite to provide for the payment when due of all installments of principal and interest on the obligations.

816. Bonds secured by an insurance commitment of the Federal Housing Administration.

817. Evidences of indebtedness of companies incorporated in the United States and, directly or indirectly, engaged in

manufacturing, extraction, merchandising, or commercial financing and in bonds of authorities established pursuant to the California Industrial Development Financing Act (Title 10 (commencing with Section 91500) of the Government Code), to which these companies are obligated with respect to payment subject to the following conditions:

(a) Any unsecured evidences of indebtedness shall be issued by a company substantially all of whose property is free of mortgage and shall carry a covenant by the obligor that they will be secured equally with any mortgage bond, except a purchase money mortgage, which may be later issued.

(b) The company is of a size as to attract at least statewide interest in its publicly held securities and its gross income shall have averaged not less than ten million dollars ($10,000,000) and its net income shall have averaged not less than one million dollars ($1,000,000) for the five fiscal years preceding the investment and its gross income was not less than ten million dollars ($10,000,000) and its net income not less than one million dollars ($1,000,000) for at least three of these five fiscal years.

(c) Working capital, as measured by consolidated current assets less consolidated current liabilities as shown in the latest published balance sheet, shall exceed 150 percent of the total of consolidated debt due in longer than one year and "minority interest." For that purpose, "minority interest" means any outstanding interest in a subsidiary having a prior claim on the earnings of the subsidiary. However, the foregoing ratio requirement shall not apply in the case of evidences of indebtedness of any corporation whose consolidated gross assets less any valuation reserves exceed five hundred million dollars ($500,000,000) and whose consolidated current assets exceed consolidated current liabilities by at least one hundred million dollars ($100,000,000) as shown by the latest published balance sheet. When new financing is involved, the changes in gross assets, capital structure and working capital shall be considered and reliance may be placed on the representations made in the official prospectus prepared under the rules of the Securities and Exchange Commission as to the application of the proceeds of the financing.

(d) The total consolidated debt of the company including current liabilities and "minority interest," as shown on the latest published

balance sheet, does not exceed 33 ⅓ percent of its gross assets less valuation reserves.

(e) The consolidated annual net income for the five fiscal years next preceding the investment, before deduction of state and federal taxes imposed on or measured by income or profits but after deducting all charges, including reserves, regularly recurring charges for amortization of discount, and expense allocable to funded debt (1) shall have averaged not less than six times the annual consolidated interest charges existing at the time the investment is made; (2) in at least three of the five fiscal years shall have been at least four times the annual consolidated interest charges for the same year; and (3) for the fiscal year next preceding the investment shall have been not less than six times the consolidated interest charges for that year and not less than six times the annual consolidated charges on the funded debt outstanding at the time of the investment.

818. Fixed interest railroad bonds meeting the requirements of subdivisions (a) and (b); bonds secured by a mortgage on jointly operated railroad facilities meeting the requirements of subdivision (c); and railroad equipment trust certificates meeting the requirements of subdivision (d).

(a) The railroad bonds are issued by or are assumed, guaranteed, or provision made unconditionally for the payment of principal and interest on specified dates, by a solvent railroad company that meets all of the following conditions:

(1) Operates at least 500 miles of standard gauge road within the continental United States and which has had average annual operating revenues of at least ten million dollars ($10,000,000) during the five years next preceding the investment.

(2) Has an average annual balance of income available for fixed charges for the last 15 years for which the necessary statistical data are available, when divided by an amount equal to its fixed charges for the last fiscal year, shall produce a quotient which is at least 15 percent higher than the quotient obtained by dividing the average annual balance of income available for fixed charges of all class 1 railroads for the same one 5-year period by an amount equal to the fixed charges of all class 1 railroads for the last year in the period.

(3) Has an average “balance of net income” (computed by deducting the sum of its fixed charges and contingent interest

charges for the latest fiscal year from the average annual balance available for fixed charges for the latest 15 years for which the necessary statistical data are available) when divided by its average annual railroad operating income for the same 15-year period, shall produce a quotient at least 15 percent greater than the quotient obtained by dividing the average balance of income of all class 1 railroads, computed in the same manner, by the average annual railway operating income of all class 1 railroads for the same 15-year period.

(4) Has an average balance of income available for fixed charges for the last three fiscal years preceding the investment that has not been less than one and one-half times its fixed charges for the last fiscal year.

(b) The railroad bonds are secured by any of the following:

(1) A mortgage, either direct or collateral, which shall be a first mortgage on not less than 75 percent of the mileage subject to the mortgage.

(2) A first mortgage on terminal properties comprising the company's principal freight or passenger terminal in a city of not less than 250,000 population according to the latest federal or state census.

(3) A refunding mortgage on not less than 75 percent of the railroad mileage owned or operated by the issuing company under which bonds may be issued for retirement or refunding of all debts secured by prior liens on all or any part of the property (other than liens on equipment) subject to the mortgage; provided, that the amount of debt senior to the refunding mortgage is not more than 50 percent of the sum of all senior debt and the refunding mortgage, or that underlying mortgage bonds in an amount equal to at least 50 percent of the debt outstanding under the refunding mortgage are pledged as security under the refunding mortgage.

(4) A first mortgage on railroad property leased to and operated by the company where the lease extends beyond the maturity date of the bonds and the company has guaranteed, assumed, or committed itself under the terms of the lease to pay principal and interest on the bonds.

(c) Bonds secured by a mortgage on jointly operated railroad facilities must be secured by a first mortgage on a terminal, depot, tunnel, or bridge used by or leased to two or more railroads which have jointly and severally agreed unconditionally to pay the interest

and principal of the bonds or have unconditionally guaranteed or assumed such payment, one of which railroads must meet the requirements set forth in subdivision (a).

(d) Railroad equipment trust certificates must be issued by a solvent class 1 railroad whose average balance of income available for fixed charges for the last three fiscal years preceding the investment shall be not less than one and one-half times its fixed charges for the last fiscal year. The certificates must be issued to provide funds for the construction or acquisition of new standard gauge railroad equipment made with the approval of the Interstate Commerce Commission and be secured by equipment trust, lease, conditional sales contract, or first lien on such equipment. The aggregate principal amount of such obligations shall not exceed 80 percent of the purchase price of the equipment and the certificates shall mature within 15 years from date of issuance in equal annual, semiannual, or monthly installments, beginning not later than one year after the date of issuance.

(e) As used in this section, the terms "balance of income available for fixed charges," "fixed charges," "contingent interest," and "railway operating income" shall have the same meaning as in the accounting reports filed by common carriers by rail pursuant to regulations of the Interstate Commerce Commission except that "balance of income available for payment of fixed charges" shall be computed before deduction of federal income or excess profits taxes, and "fixed charges" and "contingent interest" of the railroad shall be such charges existing as of the time the computation is made excluding charges with respect to debt which has been retired or will be retired within six months and for the payment of which funds have been or are contemporaneously being set aside in trust but including charges with respect to new debt issued or in the process of being issued.

819. Bonds and debentures of gas, electric, or gas and electric companies meeting the requirements of subdivision (a); bonds and debentures of telephone companies meeting the requirements of subdivision (b); and bonds and debentures of water companies meeting the requirements of subdivision (c).

(a) Bonds or debentures of a gas, electric, or gas and electric company shall be of an issue that originally amounted to not less than one million dollars ($1,000,000) and, if bonds, be secured by a mortgage on substantially all of its physical property, and, if

debentures, shall be issued by a company substantially all of whose physical property is free of mortgage and must carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a public utility corporation that meets all of the following conditions:

(1) Derives more than 50 percent of its gross operating revenue from the business of supplying electricity, artificial gas, or natural gas or all or any of them, and at least 80 percent of its gross operating revenue from all or any of the public utility businesses enumerated in this section.

(2) Shall have had a gross operating revenue of not less than seven million five hundred thousand dollars ($7,500,000) for its most recent fiscal year.

(3) Has a funded debt not exceeding two-thirds of the value of its physical property as shown by the books of the corporation or by a statement of a certified public accountant issued within one year, which statement may be based upon the books of the corporation, less the amount of any reserves for depreciation, retirement, or amortization of that physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(4) Shall have had earnings including earnings of subsidiaries mentioned in paragraph (3), available for interest payments, before deduction of state and federal taxes imposed on or measured by income or profits, during four of the five most recent fiscal years and during the most recent fiscal year equal to at least twice the existing annual interest charges on the corporation's total funded debt during those respective fiscal years.

(b) Bonds or debentures of telephone companies shall be of an issue originally amounting to at least one million dollars ($1,000,000) and, if bonds, be secured by a mortgage on substantially all of the physical property of the company, and if debentures shall be issued by a company substantially all of whose physical property is free of mortgage and shall carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds

and debentures shall be issued by a company that meets all of the following conditions:

(1) During its last fiscal year had gross revenues of at least seven million five hundred thousand dollars ($7,500,000), more than 50 percent of which was derived from owned properties used in furnishing telephone and other communication services and at least 80 percent of its gross revenues from all or any of the public utility businesses enumerated in this section.

(2) Whose funded debt does not exceed two-thirds of the value of its physical property as shown by the books of the corporation or by a statement of a certified public accountant issued within one year, which statement may be based upon the books of the corporation, less the amount of any reserves shown on the statement for depreciation, retirement or amortization of such physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(3) Which for four of the five most recent fiscal years and for the last fiscal year had earnings including earnings of subsidiaries mentioned in paragraph (2) available for the payment of interest charges, before deduction of state and federal taxes imposed on or measured by income or profits, at least equal to twice the interest charges on the company's total funded debt during such respective fiscal years.

(c) Water company bonds or debentures shall be of an issue originally amounting to at least one million dollars ($1,000,000) and if bonds, be secured by a first mortgage on the company's property, and if debentures, shall be issued by a company substantially all of whose property is free of mortgage and shall carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a company that meets all of the following conditions:

(1) Is the supplier of substantially all water for domestic use in a community or communities having a population of not less than 25,000.

(2) Whose funded debt does not exceed two-thirds of the value of its physical property as shown by the published statement of the company for its next preceding fiscal period, less the amount

of any reserves shown for depreciation, retirement or amortization of such physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(3) Which for four out of the five most recent fiscal years and for the most recent fiscal year shall have had earnings including those of subsidiaries mentioned in paragraph (2) available for the payment of interest charges, before deduction of state and federal taxes imposed on or measured by income or profits, of at least one and one-half times the interest charges on the company's total funded debt during the respective fiscal years.

SEC. 3. Division 1.1 (commencing with Section 1000) is added to the Financial Code, to read:

DIVISION 1.1. BANKING

Chapter 1. General Provisions

1000. When authorized by the commissioner as provided in Chapter 3 (commencing with Section 1040) a corporation may be formed by one or more persons in accordance with the laws of this state for the purpose of conducting a commercial banking business or a trust business, or both of them. The qualification requirements of the Corporate Securities Law of 1968 shall not apply to the offer and sale of securities issued by and representing an interest in or a direct obligation of a bank or trust company incorporated under the laws of this state if the securities are offered and sold pursuant to the commissioner's authorization described in Section 1201 or the securities are exempt from authorization pursuant to Section 1202, or by a regulation or order of the commissioner.

1002. No bank shall be a close corporation (as defined in Section 158 of the Corporations Code).

1003. Except where explicitly stated or the context provides otherwise, this division is applicable to the following:

(a) All corporations engaging in commercial banking, industrial banking, or the trust business.

(b) All national banking associations authorized to transact business in this state to the extent that the provisions of this division

are not inconsistent with and do not infringe paramount federal laws governing national banking associations.

(c) All other corporations that subject themselves to the special provisions and sections of this division.

(d) All other persons, associations, copartnerships, or corporations who, by violating any of its provisions, become subject to the penalties provided for in this division.

1004. (a) A California state bank is a corporation incorporated under Division 1 (commencing with Section 100) of Title 1 of the Corporations Code that is, with the approval of the commissioner, incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, the commercial or industrial banking business.

(b) All provisions of law applicable to corporations generally, including, but not limited to, the General Corporation Law (Division 1 (commencing with Section 100), Title 1 of the Corporations Code) shall apply to banks. However, whenever any provision of this division or any regulation or order issued under any provision (other than this section) of this division applicable to banks is inconsistent with any provision of law applicable to corporations generally, that provision of this division or that regulation or order shall apply and the provision of law applicable to corporations generally shall not apply.

1005. It shall be unlawful for any person, corporation, limited liability company, partnership, firm, or any other form of business entity allowed by law, to engage in or transact commercial banking business, industrial banking business, or trust business within this state except by means of a corporation duly organized for that purpose.

1006. No corporation shall hereafter be organized under the laws of this state to transact the business of a commercial bank, industrial bank, or trust company, except as provided in this chapter.

1007. Neither the enactment of this code nor the amendment or repeal thereof, nor the repeal of any statute affected thereby, shall take away or impair any liability or cause of action existing or incurred against any bank or trust company, or the shareholders, directors, or officers thereof.

1008. The amount of funds of a bank or trust company that are deposited in any other financial institution (other than a Federal

Reserve Bank) shall not at any time exceed 10 percent of the sum of shareholders' equity, allowance for loan and lease losses, capital notes, and debentures of the depositing bank or trust company unless the financial institution has been designated as a depositary for the funds of the depositing bank or trust company by a vote of the majority of the directors of the depositing bank or trust company, and unless the financial institution has been approved by the commissioner as a depositary for the purposes of this section. The commissioner may, in his or her discretion, revoke his or her approval of any such depositary and may, in his or her discretion, limit the amount of funds that may be deposited by any bank or trust company with any other financial institution. A deposit by one bank or trust company with another financial institution shall not be regarded as a loan.

Chapter 2. Application

1020. The request for authority to organize and establish a corporation to engage in the banking or trust business shall be set forth in an application in such form and containing such information as the commissioner may require and shall be accompanied by a fee of five thousand dollars ($5,000).

1021. Upon receiving a request for an application, the commissioner shall inform the prospective applicant in writing that the commissioner is available to confer with such prospective applicant in advance of the filing of an application for the purpose of discussing questions relating to such application. However, no application shall be decided in advance of filing.

1022. Upon the filing of an application the commissioner shall make or cause to be made a careful investigation and examination relative to the following:

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

(b) The need for banking or trust facilities or additional banking or trust facilities, as the case may be, giving particular consideration to the adequacy of existing banking or trust facilities and the need for further banking or trust facilities.

(c) The character, financial responsibility, banking or trust experience, and business qualifications of the proposed officers of the bank or trust company.

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

(e) Other facts and circumstances bearing on the proposed bank or trust company and its relation to the locality as in the opinion of the commissioner may be relevant.

1023. The commissioner may give or withhold his or her approval of the application in his or her discretion, but he or she shall not approve the application until he or she has ascertained to his or her satisfaction:

(a) That the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company.

(b) That the proposed bank or trust company will have a reasonable promise of successful operation.

(c) That the bank is being formed for no other purpose than the legitimate objects contemplated by this division.

(d) That the proposed capital structure is adequate.

(e) That the proposed officers and directors have sufficient banking or trust experience, ability, and standing to afford reasonable promise of successful operation.

(f) That the name of the proposed bank or trust company does not resemble, so closely as to be likely to cause confusion, the name of any other bank or trust company transacting business in this state or which had previously transacted business in this state.

(g) That the applicant has complied with all of the applicable provisions of this division.

1024. (a) In this section:

(1) "Control" has the meaning set forth in Section 1250.

(2) "Officer" has the meaning set forth in Section 33057.

(b) For purposes of Section 1023, the commissioner may find:

(1) That a proposed officer or director of a proposed bank or trust company does not have sufficient standing to afford reasonable promise of successful operation if such person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(2) That the establishment of a proposed bank or trust company will not promote the public convenience and advantage if any person who is proposed to control the proposed bank or trust

company or any director or officer of such person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(c) Subdivision (b) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 1023, that a proposed officer or director of a proposed bank or trust company does not have sufficient standing to afford reasonable promise of successful operation or that the establishment of a proposed bank or trust company will not promote the public convenience and advantage.

1025. At least 30 days before denying an application, the commissioner shall by mail or other method of service give written notice of the intended denial of an application and of the right of the applicant to meet with the commissioner regarding the reasons for such denial. The request for such meeting shall be in writing and delivered to the commissioner within 20 calendar days of the date of giving of the notice of intended denial. If a request is made for such meeting, the application may not be denied until after the meeting.

1026. The commissioner may, in approving an application to organize and establish a corporation to engage in the banking or trust business pursuant to Section 362, impose any conditions the commissioner deems reasonable or necessary or advisable in the public interest.

1027. (a) With the approval of the commissioner, a bank may be formed to facilitate a merger or an acquisition of control. The new bank may survive the merger or acquisition of control.

(b) Sections 1020, 1021, 1022, 1023, and 1024 shall not apply to the formation of a bank pursuant to subdivision (a).

(c) Article 4 (commencing with Section 370) *of Chapter 3 of Division 1* shall apply to a bank formed pursuant to subdivision (a).

(d) A request for approval to form a bank in accordance with subdivision (a) shall be accompanied by a fee of two thousand five hundred dollars ($2,500).

Chapter 3. Authorization to Engage in Banking

1040. In this article:

(a) "Preopening expenditure" means any obligation incurred, or sum disbursed, by a bank prior to the time when it commences to transact banking business, for the purpose of organizing such bank.

(b) "Preopening noncapital expenditure" means any preopening expenditure other than such preopening expenditures as may be capitalized.

1041. The articles of incorporation of the proposed bank or trust company shall be submitted to the commissioner for his or her approval before they are filed with the Secretary of State pursuant to the Corporations Code. After the articles have been filed with the Secretary of State the proposed bank or trust company shall:

(a) File with the commissioner a copy of its articles of incorporation, certified by the Secretary of State.

(b) File with the commissioner a statement in the form and with any supporting data as the commissioner may require showing that the entire contributed capital has been fully paid in lawful money, unconditionally, and that the funds representing the contributed capital, less sums spent as authorized by this article for preopening expenditures are on deposit in a state or national bank in this state, subject to withdrawal on demand.

(c) Pay to the commissioner a fee of two thousand five hundred dollars ($2,500).

1042. If the commissioner finds that the proposed bank or trust company has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this code or by regulation, the commissioner shall, within 30 days after the statement and supporting data specified in Section 1041 have been filed with him or her, issue in duplicate a certificate of authorization to transact business as a bank or trust company, as the case may be, and shall transmit one copy to the bank or trust company and place one copy on file in the department. The certificate of authorization shall state that the corporation named therein has complied with all the provisions of this code governing organization of banks or trust companies and that it is authorized to transact the business specified therein.

1043. It shall be unlawful to accept payment of subscriptions for shares of any corporation proposing to engage in the banking

or trust business unless authority to organize such corporation has been granted by the commissioner.

1044. No corporation organized to transact a commercial banking or trust business shall transact any business until the commissioner has issued his or her certificate authorizing it to transact such business. No bank or trust company shall incur any indebtedness except that which is incidental to its organization until the amount of its contributed capital has been fully paid in lawful money to the cashier or chief financial officer thereof.

1045. If the proposed bank or trust company fails to file evidence of incorporation and organization with the commissioner pursuant to Section 1041 within one year after the approval of the application for authority to organize the bank or trust company, the right to organize the bank or trust company automatically terminates. The commissioner, however, for good cause on written application filed before the expiration of the original period or any additional period, as the case may be, and payment of a fee of one hundred dollars ($100), may extend for additional periods not in excess of six months each the time within which the bank or trust company may be organized.

1046. If the proposed bank or trust company fails to open for business within 90 days after the issuance of the certificate of authorization, the right to transact business automatically terminates. The commissioner, however, for good cause on written application filed before the end of said 90-day period, may extend for one additional period of not to exceed 90 days the time within which the bank or trust company may open for business.

1047. It is unlawful to apply any part of the funds collected from subscribers or shareholders to the payment of commissions or fees for obtaining subscriptions or selling shares or, except with the prior approval of the commissioner, to the payment of preopening noncapital expenditures.

1048. Every bank and trust company shall keep posted in a conspicuous place in its banking room at its head office the certificate of authority to transact a banking or trust business issued by the commissioner.

Chapter 4. Bank Offices

1070. For purposes of this chapter, the following definitions apply:

(a) "Automated teller machine" means any electronic information processing device used by a financial institution and its customers for the primary purpose of executing transactions solely between the financial institution and its customers, if the transactions are not incidental to sales between the customer and a business entity other than a financial institution.

(b) "Branch office" means any office at which core banking business is conducted other than an automated teller machine, a device used to facilitate check guarantee or check authorization, or a remote service facility as defined in subsection (d) of Section 345.12 of Title 12 of the Code of Federal Regulations.

(c) "Core banking business" means the business of receiving deposits, paying checks, making loans, and other activities that the commissioner may specify by order or regulation. "Core banking business," when used to describe the trust business, includes receiving fiduciary assets and administering fiduciary accounts.

(d) "Facility," means an office in this state at which a bank engages in noncore banking business but at which it does not engage in core banking business.

(e) "Head office" means the office designated by the bank as its headquarters.

(f) "Noncore banking business" means all activities permissible for banks, except core banking business, and except those activities prohibited by law or determined by the commissioner by regulation or order not to be noncore banking business.

(g) "Office" means the head office, any branch office, and any facility office of a bank.

(h) "Redesignate offices" means (1) the relocation by a bank of its head office to the site of a branch or facility office in this state and the concurrent establishment by the bank of an office at the former site of the head office, or (2) the relocation by a bank of a branch office to the site of a facility office and the concurrent establishment by the bank of a branch or facility office at the former site of the branch office.

1071. The commissioner shall issue a certificate in duplicate authorizing a bank to establish and maintain an office. A bank shall pay a fee of twenty-five dollars ($25) for every certificate the commissioner issues pursuant to this section.

1072. Every bank shall establish and maintain a head office which shall be located in this state.

1073. A bank, with the approval of its board, may establish and maintain one or more offices.

1074. A bank, with the approval of its board, may relocate an office.

1075. A bank, with the approval of its board, may redesignate offices.

1076. Each time a bank establishes an office, relocates an office, or redesignates an office, the bank shall, within 10 days of the establishment, relocation, or redesignation of the offices, file a notice with the commissioner. The notice shall include:

(a) The type of office or offices to be established, relocated, or redesignated.

(b) The complete address of the office or offices to be established, relocated, or redesignated. If an office is being relocated, the old address of the office and the address at which the office will be relocated.

(c) The date the office or offices were established, relocated, or redesignated.

(d) The appropriate fee for the certificate or certificates to be issued by the commissioner.

1077. On or before January 1 of each year, every bank shall file with the commissioner a list of all offices that are currently maintained and operated by the bank. The report shall designate the type of each office that is being maintained and operated, and the complete address of each office.

1078. (a) A bank may close or discontinue the operation of any branch office if, before the closing or discontinuance, (1) the bank files with the commissioner a notice containing the information in subdivision (b), and (2) the commissioner within 60 days after the filing of the notice or any longer period to which the bank consents, filing of the notice or any longer period to which the bank consents, either (A) issues a written statement not objecting to the notice, or (B) does not issue a written objection to the notice.

(b) (1) A notice filed under subdivision (a) shall contain all of the following information:

(A) The name of the California state bank.

(B) The location of the branch office proposed to be closed or discontinued.

(C) The location of the office to which the business of the branch office proposed to be closed or discontinued is proposed to be transferred.

(D) The proposed date of closing or discontinuance.

(E) A detailed statement of the reasons for the decision to close the branch office.

(F) Statistical or other information in support of the reasons consistent with the institution's written policy for branch office closings.

(G) Any other information that the commissioner may require.

(2) A notice filed under subdivision (a) shall be in the form, shall be signed in the manner, and shall, if the commissioner requires, be verified in the manner that the commissioner may require.

(c) For purposes of subdivision (a), a notice is deemed to be filed with the commissioner at the time when the complete notice, including any amendments or supplements, containing all the information required by the commissioner, and otherwise complying with subdivision (b), is received by the commissioner.

(d) In determining whether or not to object to a notice filed under subdivision (a), except if the commissioner finds that it is necessary in the interests of safety and soundness that the branch office be closed or discontinued, the commissioner shall consider whether the closing or discontinuance of the branch office will have a seriously adverse effect on the public convenience or advantage.

1079. If the commissioner finds for any reason that the establishment, relocation, or redesignation of office would be unsafe or unsound for a bank, the commissioner may order the bank not to establish, relocate, or redesignate offices without the prior approval of the commissioner. The order may contain any other restrictions and conditions as the commissioner deems necessary.

1080. If a bank violates any provision of this chapter or fails to comply with any order, the commissioner may levy a penalty against the bank pursuant to Section 216.3.

1081. A bank, with the approval of its board, may discontinue a facility office. Within 10 days of the date of the closure of the facility office, the bank shall file a notice of that discontinuance with the commissioner. The notice shall contain the information required by Section 1076. There shall be no fee associated with the discontinuance of a facility office.

1082. Any bank that establishes a branch office in this state in accordance with Section 36(g)(1)(A) of the National Bank Act (12 U.S.C. Sec. 36(g)(1)(A)), or Section 18(d)(4)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1828(d)(4)(A)(i)), as those sections were amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, shall, within 10 days of the establishment, relocation, or redesignation of the offices, file a notice with the commissioner that includes all of the following:

(a) The name of the bank establishing the branch office or offices.

(b) The home state or state of incorporation of the bank establishing the branch office or offices.

(c) The complete address of the office or offices established or to be established.

(d) The date the branch office or offices were or will be opened.

(e) Any other information, if any, that the commissioner deems necessary.

Chapter 4.5. Bank Extraordinary Situation Closing

1090. This chapter is known and may be cited as the "Bank Extraordinary Situation Closing Act."

1091. "Extraordinary situation" means any condition or occurrence, other than as set forth in Section 592, that may interfere or is inconsistent with the conduct of normal business operations at one or more offices of a bank or which poses a threat to the safety or security of persons or property, or both.

1092. Whenever the commissioner determines that an extraordinary situation exists anywhere in this state the commissioner may, by proclamation, authorize banks located in the affected area or areas to close any or all of their offices. The

office or offices so closed shall remain closed until the commissioner proclaims that the extraordinary situation has ended or until such earlier time as the officers of the bank determine that one or more closed offices should reopen and in either event for such further time thereafter as may reasonably be required to reopen.

1093. (a) Whenever the officers of a bank are of the opinion that an extraordinary situation exists which affects or may affect one or more of a bank's offices, they shall have the authority in the reasonable and proper exercise of their discretion to determine not to open such offices on any business or banking day, or, if such offices have opened to close one or more of them during the continuation of such extraordinary situation even if the commissioner has not issued and does not issue a proclamation of extraordinary situation. The office or offices so closed shall remain closed until such time as the officers determine with respect to each such office that the extraordinary situation has ended and for such further time thereafter as may reasonably be required to be reopened; however, in no case shall such office or offices remain closed for more than 48 consecutive hours excluding other legal holidays without requesting the approval of the commissioner nor, in case such request is denied by the commissioner, for more than 24 consecutive hours excluding other legal holidays after such denial.

(b) The officers of a bank may close one or more of the bank's offices on any day or days designated for mourning, rejoicing, or other special observance by proclamation of the Governor or the President of the United States.

1094. A bank closing an office or offices pursuant to the authority granted under subdivision (a) of Section 1093 shall give prompt notice of its action to the commissioner, by any means available.

1095. Any day on which a bank or any one or more of its offices is closed pursuant to the authorization granted by this chapter shall be, with respect to such bank or any of its offices which are closed, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by this chapter.

1096. Provisions of this chapter shall be construed and applied as being in addition to, and not a substitution for, or limitation of, any other law of this state or the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of extraordinary situations or conditions beyond the bank's control or otherwise.

Chapter 5. Corporate Requirements

Article 1. Articles, Bylaws, and Names

1100. The articles of each bank shall contain the applicable one of the following statements:

(a) In case the bank is, or is proposed to be, a commercial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank.

(b) In case the bank is, or is proposed to be, a commercial bank authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank authorized to engage in trust business.

(c) In case the bank is, or is proposed to be, an industrial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in industrial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank.

(d) In case the bank is, or is proposed to be, an industrial bank authorized to engage in trust business, that the purpose of the corporation is to engage in industrial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank authorized to engage in trust business.

(e) In case the bank is, or is proposed to be, a trust company (other than a commercial bank authorized to engage in trust business), that the purpose of the corporation is to engage in trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a trust company.

1101. (a) In this section:

(1) "Assessment provision" means the provision in the articles of a bank that complies with the requirements of Section 600.2, as in effect immediately before the effective date of this section, or any predecessor statute.

(2) "Bank" means any (A) California state bank or (B) corporation organized under the laws of this state for the purpose of transacting business pursuant to Article 1 (commencing with Section 1850) of Chapter 21.

(b) On and after the effective date of this section, the assessment provision in the articles of a bank shall no longer be of any force or effect.

(c) Notwithstanding Sections 902 and 903 of the Corporations Code, a bank may, on or after the effective date of this section, amend its articles by deleting the assessment provision with the approval of its board alone and without any approval of its outstanding shares.

(d) (1) Any order issued before the effective date of this section by the commissioner pursuant to Section 662, as in effect immediately before the effective date of this section or any predecessor statute, shall, if and to the extent that the bank has not before that date levied and collected through sale of shares or otherwise, an assessment on its common shares, be deemed rescinded.

(2) Any proceeding commenced before the effective date of this section by a bank to assess its common shares in accordance with an order issued by the commissioner pursuant to Section 662, as in effect immediately before the effective date of this section or any predecessor statute, shall be terminated on the effective date of this section. On and after the effective date of this section, the bank shall take no further action to levy or collect the assessment on its common shares, and any lien on the common shares created by the assessment shall be deemed extinguished.

1102. (a) No amendment of the articles of a bank (other than an amendment set forth in an agreement of merger or in a certificate of ownership executed pursuant to Section 1110 of the Corporations Code that requires the approval of the commissioner pursuant to Chapter 4 (commencing with Section 4880) of Division 1.6) shall become effective unless the certificate of amendment or other instrument setting forth the amendment is filed with the

Secretary of State with the commissioner's approval endorsed thereon. Promptly after the amendment becomes effective, the bank shall file with the commissioner a copy of the certificate of amendment or other instrument certified by the Secretary of State.

(b) Any amendment of the articles of a bank set forth in an agreement of merger or in a certificate of ownership executed pursuant to Section 1110 of the Corporations Code that requires the approval of the commissioner pursuant to Chapter 4 (commencing with Section 4880) of Division 1.6, shall become effective at the time when the merger becomes effective pursuant to this division.

1103. No restated articles of a bank shall become effective unless the certificate setting forth such restated articles is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the restated articles become effective, such bank shall file with the commissioner a copy of such certificate certified by the Secretary of State.

1104. No certificate of determination of a bank shall become effective unless such certificate of determination is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the certificate of determination becomes effective, such bank shall file with the commissioner a copy of the certificate of determination certified by the Secretary of State.

1105. No certificate of correction of a bank shall become effective unless such certificate of correction is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the certificate of correction becomes effective, such bank shall file with the commissioner a copy of the certificate of correction certified by the Secretary of State.

1106. No certificate of revocation of a bank shall become effective unless such certificate of revocation is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the certificate of revocation becomes effective, such bank shall file with the commissioner a copy of the certificate of revocation certified by the Secretary of State.

1107. (a) A bank may change its name if it files with the commissioner a report on the proposed change not less than 30 days before the change. The report shall be in the form, shall contain the information, shall be signed in the manner, and shall,

if the commissioner so requires, be verified in the manner the commissioner may require.

(b) Whenever a bank changes its name, the bank shall surrender to the commissioner for cancellation the certificates of authority under its old name for its head office, any branch offices, and any places of business. The commissioner shall issue to the bank replacement certificates under the bank's new name and the bank shall pay to the commissioner a fee of twenty-five dollars ($25) for each replacement certificate.

(c) The commissioner may not deny an application for approval of an amendment of the articles of incorporation of a bank which changes the name of the bank or any other application of a bank relating to a change in the name of the bank because the new name of the bank resembles so closely, as to be likely to cause confusion, the name of any other bank.

Article 2. Shares

1120. A bank may, with the approval of its board, determine and from time to time redetermine the par value of any class or series of its shares unless its articles provide that such shares shall have par value and specify the par value of such shares.

1121. No bank or trust company after October 1, 1949, shall issue any shares before they are fully paid for.

1122. No bank shall issue any shares in consideration of:

(a) Services rendered in the organization of such bank; or

(b) Any note (whether or not negotiable and whether or not secured) made by the purchaser of such shares.

Article 3. Distributions to Shareholders

1130. This article does not apply to any distribution made to the shareholders of a bank in any proceeding to wind up and dissolve or to liquidate such bank.

1131. Section 500 of the Corporations Code does not apply to the making by a bank or by any majority-owned subsidiary of a bank of any distribution to the shareholders of such bank.

1132. Neither a bank nor any majority-owned subsidiary of a bank shall make any distribution to the shareholders of such bank in an amount which exceeds the lesser of:

(a) The retained earnings of the bank; or

(b) The net income of the bank for its last three fiscal years, less the amount of any distributions made by the bank or by any majority-owned subsidiary of the bank to the shareholders of the bank during such period.

1133. Notwithstanding the provisions of Section 1132, a bank or a majority-owned subsidiary of a bank may, with the prior approval of the commissioner, make a distribution to the shareholders of such bank in an amount not exceeding the greatest of:

(a) The retained earnings of the bank;

(b) The net income of the bank for its last fiscal year; or

(c) The net income of the bank for its current fiscal year.

1134. Notwithstanding the provisions of Section ~~642~~ *1132*, a bank may:

(a) With the prior approval of the commissioner, make a distribution to its shareholders by means of redeeming its redeemable shares; and

(b) With the prior approval of its outstanding shares and of the commissioner, otherwise make a distribution to its shareholders in connection with a reduction of its contributed capital.

1135. If the commissioner finds that the shareholders' equity of a bank is not adequate or that the making by a bank or by any majority-owned subsidiary of a bank of a distribution to the shareholders of the bank would be unsafe or unsound for the bank, the commissioner may order the bank and its majority-owned subsidiaries not to make any distribution to the shareholders of the bank. In addition to the order authorized by this section, the commissioner may levy a civil penalty against the bank pursuant to Section 329.

Article 4. Shareholders' Equity

1150. In determining for purposes of this division whether the shareholders' equity of a bank or of a proposed bank is adequate, the commissioner shall consider:

(a) The nature and volume of the business of the bank;

(b) The amount, nature, quality, and liquidity of the assets of the bank;

(c) The amount and nature of the liabilities (including, but not limited to, any capital notes or debentures and any contingent liabilities) of the bank;

(d) The amount and nature of the fixed charges of the bank;

(e) The history of, and prospects for, the bank to earn and retain income;

(f) The quality of the operations of the bank;

(g) The quality of the management of the bank;

(h) The nature and quality of the ownership of the bank; and

(i) Such other factors as are in the opinion of the commissioner relevant.

1151. For purposes of any statute, regulation, or requirement of any governmental official or agency which refers to the capital (including, without limitation, stated capital, paid-in capital, and paid-up capital, but excluding contributed capital), surplus, or undivided profits of a bank, a bank, with the approval of its board, may establish and maintain capital, surplus, and undivided profits accounts and may from time to time allocate and reallocate its shareholders' equity among such accounts; provided, however:

(a) That no part of the contributed capital of the bank shall be allocated to the undivided profits account of the bank;

(b) That the undivided profits account of the bank shall at no time exceed the retained earnings of the bank; and

(c) That, in case the articles of the bank provide that any of the bank's shares shall have par value and specify the par value of such shares or in case the bank has determined the par value of any of its shares pursuant to Section ~~620~~ *1120*, the capital account of the bank shall be not less than the aggregate par value of such shares which are outstanding.

1152. A bank which has deficit retained earnings may, with the prior approval of its outstanding shares and of the commissioner, readjust its accounts in a quasi-reorganization. Such readjustment may include, without limitation, eliminating such deficit retained earnings.

Article 5. Directors

1170. Any reference in this article to the time a notice is given or sent shall be construed in accordance with Section 118 of the Corporations Code.

1171. The board of a bank or trust company hereafter organized shall consist of not less than five nor more than 25 directors, and no bank or trust company shall amend its articles or bylaws so as to reduce the number of directors below five.

1172. The board of each bank and of each trust company shall hold a meeting not less than once each calendar quarter. Regular meetings of the board shall be held within this state. Any regular or special meeting is valid wherever held if held upon written consent of all members of the board given either before or after the meeting and filed with the secretary of the corporation. Special meetings of the board may be held upon four days' notice by mail, unless the articles or bylaws provide otherwise, or 24 hours' notice delivered personally or by telephone or by telegraph, unless the articles or bylaws provide for a shorter period.

1173. The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 709 of the Corporations Code to determine the validity of any election or appointment of any director of a bank to the same extent as a shareholder of such bank might bring such an action.

1174. (a) The commissioner shall be deemed to be a party in interest within the meaning of Section 306 of the Corporations Code with respect to a bank and may, in the name of the people of this state, bring or intervene in an action under Section 306 of the Corporations Code for the appointment of directors of a bank.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 308 of the Corporations Code for the appointment of a provisional director or directors of a bank to the same extent as a shareholder who held 50 percent of the voting power of such bank might bring such an action.

1175. (a) For purposes of Section 316 of the Corporations Code, to the extent that the making by a bank or by any majority-owned subsidiary of a bank of a distribution to any shareholder of the bank is contrary to any provision of Article 3 (commencing with Section 1130), the making of the distribution shall, to that extent, be deemed to be contrary to the provisions of Section 500 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 316 of the Corporations Code for the benefit of a bank against any or all of

the directors of the bank or of any majority-owned subsidiary of the bank on account of the making of a distribution to any shareholder of the bank contrary to any provision of Article 3 (commencing with Section 1130) or any provision of Sections 501, 502, and 503 of the Corporations Code, to the same extent as a creditor of the bank who did not consent to the illegal distribution and who had a valid claim against the bank that arose prior to the time of the illegal distribution and exceeded the amount of the illegal distribution, may bring the action in the name of the bank.

(c) As an alternative to the action provided for in subdivision (b), the commissioner may levy a civil penalty against the bank pursuant to Section 329.

1176. (a) For purposes of Section 316 of the Corporations Code, the making of a loan or guarantee by a bank or any other extending of credit by a bank contrary to any provision of this division shall be deemed to be contrary to Section 315 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 316 of the Corporations Code for the benefit of a bank against any or all of the directors of the bank on account of the making of a loan or guarantee or any other extending of credit contrary to any provision of this division, to the same extent as a creditor of the bank who did not consent to the illegal making of the loan or guarantee or the other illegal extending of credit and who had a valid claim against the bank which arose prior to the time of the illegal making of the loan or guarantee or the other illegal extending of credit and which exceeded the amount of loss suffered by the bank as a result of the illegal making of the loan or guarantee or the other illegal extending of credit, might bring the action in the name of the bank.

(c) As an alternative to the action provided for in subdivision (b), the commissioner may levy a civil penalty against the bank pursuant to Section 329.

Article 6. Shareholders

1190. (a) Paragraph (1) of subdivision (b) of Section 1501 of the Corporations Code does not apply to the annual report of any bank with respect to any transaction consisting of an extension of credit by such bank or by any of its majority-owned subsidiaries.

(b) The annual report of a bank which would, but for the provisions of subdivision (a), be subject to paragraph (1) of subdivision (b) of Section 1501 of the Corporations Code, shall disclose such information regarding debts owing to such bank or to any of its majority-owned subsidiaries and transactions consisting of extensions of credit by the bank or by any of its majority-owned subsidiaries, as the commissioner may by regulation require. In issuing any such regulation, the commissioner shall give due consideration to regulations regarding such matters issued by federal bank regulatory agencies under the Securities Exchange Act of 1934.

Chapter 6. Securities

1200. Unless the context otherwise requires, in this chapter:

(a) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security for value.

(b) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security for value. "Sale" or "sell" includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(c) "Security" means any stock, capital note, or debenture, or any warrant, right, or option to subscribe to or purchase any of the foregoing.

(d) The terms defined in subdivisions (a) and (b) do not include any stock dividend payable with respect to common stock of a bank solely (except for any cash or scrip paid for fractional shares) in shares of such common stock, if such bank has no other class of voting stock outstanding, provided that shares issued in any such dividend shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.

1201. No bank organized under the laws of this state shall offer or sell any security issued by it unless the commissioner has issued a permit authorizing such sale.

1202. The following transactions are exempt from Section 1201:

(a) (1) Any offer (but not a sale) not involving a public offering by a bank organized under the laws of this state of its securities

and the execution and delivery of any agreement for the sale of the securities pursuant to the offer if no part of the consideration for the securities is paid to or received by the bank and none of the securities are issued until the sale of the securities is authorized by the commissioner or exempted from authorization.

(2) For purposes of paragraph (1), an offer does not involve any public offering if the offers are not made to more than 25 persons and any agreement for the sale of the securities is not entered into with more than 10 of those 25 persons, and if all of the offerees either have a preexisting personal or business relationship with the bank or its officers, directors, or controlling persons, or by reason of their business or financial experience the offerees could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.

(b) Any stock split by a bank organized under the laws of this state that is effected pursuant to an amendment to its articles, an agreement of merger, or a certificate of ownership that has been approved by the commissioner, unless this exemption is withheld by order of the commissioner.

(c) Any offer or sale of securities by a bank organized under the laws of this state that is either (1) to a person actually approved by the commissioner pursuant to Section 1253 to acquire control of the bank if all of the material terms and conditions of the offer and sale of securities are disclosed in the application for approval specified in Section 1253 and the offer and sale of securities is in accordance with the terms and subject to the conditions of the approval to acquire control or (2) in a transaction exempted from the approval requirement of Section 1251 by a regulation or an order of the commissioner, unless this exemption is withheld by order of the commissioner.

1203. An application for a permit shall be in such form and contain such information as the commissioner may prescribe.

1204. The commissioner shall charge and collect fees for applications filed under this chapter as fixed in this section.

(a) The fee for a negotiating permit shall be fifty dollars ($50).

(b) The fee for a permit to exchange a security or to make any change in the rights, preferences, privileges, or restrictions of or on outstanding securities shall be fifty dollars ($50).

(c) The fee for any permit to sell securities other than as specified in subdivision (b) shall be one hundred dollars ($100)

plus one-tenth of one percent (0.1%) of the aggregate value of the securities sought to be sold, up to a maximum aggregate fee of one thousand seven hundred fifty dollars ($1,750).

1205. If the commissioner finds that the proposed sale of securities is fair, just, and equitable, he or she shall issue to the applicant a permit authorizing it to offer and sell the securities in such amount and upon such terms and conditions as he or she may provide in the permit. If the commissioner finds otherwise, he or she shall deny the application.

1206. The commissioner may impose conditions in any permit issued under Section 1205, requiring the deposit in escrow of securities, imposing a legend condition restricting the transferability thereof, impounding the proceeds from the sale thereof, limiting the expense in connection with the sale thereof, or such other conditions as he or she deems reasonable and necessary or advisable in the public interest.

1207. Every permit issued pursuant to Section 1205 shall recite that it is permissive only and does not constitute a recommendation or endorsement of the securities permitted to be sold.

1208. The commissioner may amend, alter, suspend, or revoke any permit issued pursuant to Section 1205.

1209. Whenever a bank applies for a permit to issue any security or to deliver any other consideration (whether or not such security or such transaction is exempt from, or not subject to, the provisions of Section 1202) in exchange for one or more bona fide outstanding securities (as defined in Section 25019 of the Corporations Code), claims, or property interests, or partly in such exchange and partly for cash, the commissioner is authorized to approve the terms and conditions of such issuance and exchange or such delivery and exchange and the fairness of such terms and conditions and is authorized to hold a hearing on the fairness of such terms and conditions, at which all persons to whom it is proposed to issue any security or to deliver any other consideration in such exchange shall have the right to appear.

1210. There shall be exempted from the provisions of Section 1201 any transaction or security, including, without limitation, any type or class of transactions or securities, which the commissioner by regulation or order exempts as not being comprehended within the purposes of this chapter and the

regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of investors.

1211. A bank at any time may, with the approval of its board, issue, sell or hypothecate its capital notes or debentures which may be payable upon such terms and may bear such rate of interest, if any, as may be provided therein or which may be convertible into shares. Such capital notes and debentures shall be subordinate to the claims of creditors and depositors and it shall be provided in any such capital notes or debentures that in the event of liquidation all depositors and other creditors of the bank shall be entitled to be paid in full with such interest as may be provided by law before any payment shall be made on account of principal of or interest on such capital notes or debentures and it may be provided in any such capital notes or debentures that after payment in full of all sums owing to such depositors and creditors the holders of such capital notes or debentures shall be entitled to be paid from the remaining assets of the bank the unpaid principal amount of the capital notes or debentures plus accrued and unpaid interest thereon before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any shares of the bank. It shall be provided in such capital notes or debentures that no payment shall at any time be made on account of the principal thereof, unless following such payment the aggregate of the shareholders' equity and capital notes or debentures thereafter outstanding shall be the equal of such aggregate at the date of the original issue of such capital notes or debentures, or as may be otherwise authorized by the commissioner.

1212. Nothing contained in this chapter shall affect the Corporate Securities Law of 1968, Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code.

Chapter 7. Acquisition of Control

1250. Unless the context otherwise requires, in this chapter:

(a) "Bank" means a bank organized under the laws of this state.

(b) "Control" means possession, direct or indirect, of the power:

(1) To vote 25 percent or more of any class of the voting securities issued by a person; or

(2) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting

securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise; provided, however, that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person.

For purposes of paragraph (2) of this subdivision, a person who, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the then outstanding voting securities issued by another person is presumed to control such other person.

For purposes of this chapter, the commissioner may determine whether a person in fact controls another person.

(c) "Controlling person" means a person who, directly or indirectly, controls a bank.

(d) "Person" means an individual, a corporation, an association, a syndicate, a partnership, a limited liability company, a business trust, an estate, a trust, or an organization of any kind, or any combination of any of the foregoing acting in concert.

(e) "Shareholder" means:

(1) In the case of a corporation, a holder of a share of any class or series.

(2) In the case of a nonprofit or charitable corporation, an unincorporated association, or a syndicate, a member.

(3) In the case of a partnership, a partner.

(4) In the case of a business trust, an estate, or a trust, a holder of a beneficial interest.

(5) In the case of an organization of any other kind, a holder of an ownership interest.

1251. No person shall, directly or indirectly, unless the commissioner has approved such acquisition of control, do any of the following:

(a) Make a tender offer for, a request or invitation for tenders of, or an offer to exchange securities for, any voting security or any security convertible into a voting security of a bank or a controlling person if the person making such tender offer, request or invitation for tenders, or offer to exchange securities would, by consummation thereof, directly or indirectly, acquire control of such bank or such controlling person.

(b) Solicit approval of any shareholder of a controlling person for a merger, consolidation, sale of assets, or other transaction by

which any person other than such controlling person would acquire control of the bank controlled by such controlling person.

(c) Acquire control of a bank or a controlling person; provided, however, that nothing in this subdivision shall be deemed to prohibit any person from negotiating to acquire (but not acquiring) control of a bank or a controlling person.

1252. Notwithstanding any other provision of this chapter, except for those persons approved by the commissioner prior to September 1, 2002, and for those persons who control industrial banks as of September 1, 2002, no person may directly or indirectly, including through any merger, consolidation, or any other type of business combination, acquire control of an industrial bank, as defined in Section 111, unless the person is engaged only in the activities permitted for financial holding companies, as provided in Section 103 of the federal Gramm-Leach-Bliley Act (12 U.S.C. Sec. 1843(k)(1)), or is a credit union, as defined in Section 165, when the industrial bank is a credit union service organization, as defined in Section 14651. Nothing in this section shall be construed to exempt a person seeking to acquire control of a bank that otherwise qualifies to do so pursuant to this section, from the requirements of Sections 1250 to 1263, inclusive. For the purposes of this section, the term "control" has the same meaning as in subdivision (b) of Section 1250.

1253. An application for approval to acquire control of a bank or a controlling person shall be in such form and contain such information as the commissioner may require by regulation or order and shall be accompanied by the following fee:

(a) In case the applicant has been a director or officer of the bank for not less than two years (or, if the bank has been in business for less than two years, for such lesser period), a fee of five hundred dollars ($500); and

(b) In any other case, a fee of one thousand five hundred dollars ($1,500).

1254. If the commissioner finds, with respect to the proposed acquisition of control of a bank or a controlling person, that any of the factors set forth in subdivisions (a) to (g), inclusive, is true, he or she shall deny the application. If the commissioner finds that none of such factors is true, he or she shall approve the application.

(a) That the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or

conspiracy to monopolize or to attempt to monopolize the business of banking in any part of this state;

(b) That the effect of the proposed acquisition of control in any section of the state may be substantially to lessen competition or to tend to create a monopoly or that the proposed acquisition of control would in any other manner be in restraint of trade, and that the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) That the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or the controlling person, or prejudice the interests of the depositors, creditors, or shareholders of the bank or the controlling person;

(d) That plans or proposals to liquidate the bank or the controlling person, to sell the assets of the bank or the controlling person, to merge or consolidate the bank or the controlling person, or to make any other major change in the business, corporation structure or management of the bank or the controlling person are not fair and reasonable to the depositors, creditors, and shareholders of the bank or the controlling person;

(e) That the competence, experience, or integrity of any acquiring person indicates that it would not be in the interest of the depositors, creditors, or shareholders of the bank or the controlling person or in the interest of the public to permit such person to control the bank or the controlling person;

(f) That the proposed acquisition is unfair, unjust, or inequitable to the bank or the controlling person or to the depositors, creditors, or shareholders of the bank or the controlling person; or

(g) That the applicant neglects, fails, or refuses to furnish to the commissioner all the information required by the commissioner.

1255. (a) In this section, “officer” has the meaning set forth in Section 33057.

(b) For purposes of Section 1254, the commissioner may find:

(1) That the integrity of an acquiring person indicates that it would not be in the interest of the depositors, creditors, or shareholders of a bank or controlling person or in the interest of the public to permit the acquiring person to control the bank or controlling person if the acquiring person or any director or officer

of the acquiring person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(2) That a plan to make a major change in the management of a bank or controlling person is not fair and reasonable to the depositors, creditors, or shareholders of the bank or controlling person if the plan provides for a person who has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty to become a director or officer of the bank or controlling person.

(c) Subdivision (b) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 1254, that the integrity of an acquiring person indicates that it would not be in the interest of the depositors, creditors, or shareholders of a bank or controlling person or in the interest of the public to permit the acquiring person to control the bank or controlling person or that a plan to make a major change in the management of a bank or controlling person is not fair and reasonable to the depositors, creditors, or shareholders of the bank or controlling person.

1256. The commissioner may, in approving a proposal to acquire control of a bank or a controlling person pursuant to Section 1254, impose such conditions as the commissioner deems reasonable or necessary or advisable in the public interest.

1257. The commissioner may, for good cause, amend, alter, suspend, or revoke any approval of a proposal to acquire control of a bank or a controlling person issued pursuant to Section 1254.

1258. Notwithstanding any other provision of this chapter, any application for approval to acquire control of a bank or a controlling person which is not denied or approved by the commissioner within a period of 60 days after such application is filed with the commissioner or, if the applicant consents to an extension of the period within which the commissioner may act, within such extended period, shall be deemed to be approved by the commissioner as of the first day after such period of 60 days or such extended period, as the case may be.

For purposes of this section, an application for approval to acquire control of a bank or a controlling person is deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing

all the information in the form required by the commissioner, is received by him or her.

1259. (a) The commissioner, before determining whether, for purposes of this chapter, a person controls another person or before denying or approving an application for approval to acquire control of a bank or controlling person, may hold a hearing.

(b) After determining whether, for purposes of this chapter, a person controls another person or after denying or approving an application for approval to acquire control of a bank or controlling person, the commissioner, upon the filing of a written request for a hearing by any person prejudiced by the commissioner's decision, shall hold a hearing and upon such hearing shall affirm, modify, or reverse his or her decision. Any such hearing shall commence within a period of 30 days after the written request for the hearing is filed with the commissioner or, if the person filing the written request for the hearing consents to an extension of the period within which the hearing is to commence, within such extended period.

1260. There shall be exempted from the provisions of Section 1251 any transaction, including, without limitation, any type or class of transactions, which the commissioner by regulation or order exempts as not being comprehended within the purposes of this chapter and the regulation of which the commissioner finds is not necessary or appropriate in the public interest or for the protection of a bank, a controlling person, or the depositors, creditors, or shareholders of a bank or a controlling person.

1261. Whenever it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this chapter or of any regulation or order of the commissioner issued pursuant to this chapter, the commissioner may apply to the superior court for an order enjoining such person from violating or continuing to violate this chapter or any such regulation or order and for other equitable relief as the nature of the case or the interests of the bank, the controlling person, the depositors, creditors, or shareholders of such bank or such controlling person, or the public may require.

1262. No person shall be entitled to vote or to give a written consent with respect to any security acquired in contravention of any provision of this chapter or of any regulation or order of the commissioner issued pursuant to this chapter for a period of three years after such acquisition. If a security of a bank or a controlling

person is acquired in contravention of this chapter or any such regulation or order, such bank, such controlling person, any shareholder of such bank or such controlling person, or the commissioner may apply to the superior court for equitable relief, including costs and (except with respect to the commissioner) attorney fees, to enjoin prospectively any person from voting or giving any written consent with respect to such security for a period of three years after such acquisition, and the commissioner may apply to the superior court for equitable relief, including costs, to void any voting or any giving of a written consent with respect to such security which has occurred since such acquisition.

1263. If any provision or clause of this chapter or the application thereof to any person or circumstance is held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other provisions or applications of this article which can be given effect without the invalid, illegal, or unenforceable provision or application, and to this end, the provisions of this chapter are declared to be severable.

Chapter 8. Bank Holding Companies

1280. "Bank holding company" means:

(a) Any person or company which:

(1) Directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding stock of any domestic bank, or 10 percent or more of the outstanding stock of any domestic bank together with 10 percent or more of the shares or proxy of shares of any national bank located in California.

(2) Controls in any manner whether by the holding of proxy, or otherwise, the election of a majority of the directors of any domestic bank, or of both any domestic bank and any national bank located in California.

(3) The commissioner determines, after reasonable notice and opportunity for hearing, directly or indirectly exercises, or has power to exercise, a controlling influence over the management and policies of any domestic bank, or of both any domestic bank and any national bank located in California.

(b) Any company which controls in any manner any company which is or becomes a bank holding company by virtue of this chapter.

(c) Bank holding company does not include a trust company controlled by or under common control with a title insurance company.

1281. "Company" means any domestic or foreign corporation, voting trust, business trust, limited partnership, partnership fund, joint stock company, association, syndicate, organized group of persons, or similar organization or group, whether incorporated or not.

1282. ~~"Subsidiaries",~~ "*Subsidiaries,*" with respect to a specified bank holding company, means:

~~(1)~~

(a) Any company 10 percent or more of whose voting securities are directly or indirectly owned or controlled by such bank holding company;

~~(2)~~

(b) Any company a majority of whose directors are controlled in any manner by such holding company;

~~(3)~~

(c) Any company 10 percent or more of whose voting securities are held by trustees or nontrustees for the benefit of the stockholders, shareholders, or members of such holding company; or

~~(4)~~

(d) Any company 10 percent or more of the legal or beneficial ownership of which is directly or indirectly owned or controlled by such holding company.

1283. The commissioner may from time to time require, under oath or otherwise, reports from any bank holding company and its subsidiaries in such form and as to such matters as the commissioner may deem necessary and appropriate, and which are relevant to the jurisdiction and responsibilities of the commissioner under this division.

1284. Each bank holding company and its subsidiaries shall be subject to examination by the commissioner. The commissioner may use, for this purpose, his or her own examiners or independent public accountants who are disinterested persons. In lieu of making an examination, the commissioner may accept the examination of any holding company made by any federal agency, any other agency of this state, or any agency of any other state of the United States and may examine any such holding company in conjunction

with these agencies. If the commissioner examines a bank holding company or any of its subsidiaries, other than a domestic bank, using the commissioner's own examiners, the bank holding company shall pay, within 10 days after receipt of a statement from the commissioner, a fee of two hundred dollars ($200) per day for each examiner engaged in the examination plus, in the event it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner. If the commissioner examines a bank holding company or any of its subsidiaries, other than a domestic bank, using independent public accountants, the bank holding company shall pay, within 10 days after receipt of a statement from the commissioner, the fee of the independent public accountants.

1285. With respect to a trust company controlled by or under common control with a title insurance company, the commissioner in cooperation with the Insurance Commissioner shall adopt reasonable rules and regulations for the conduct of the inspection and examination authorized by Sections 1282 and 1284. Any such examination or inspection shall be conducted pursuant to the provisions of Article 4.7 (commencing with Section 1215) of Chapter 2 of Part 2 of Division 1 of the Insurance Code.

1286. Nothing in this chapter shall be construed to authorize the commissioner to require reports from a national bank or to examine a national bank contrary to federal law.

1287. Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligations of, loans made or arranged by, or forbearances of or arranged by, a bank holding company or a subsidiary of a bank holding company which is not a bank. As used in this section, the terms "bank holding company" and "subsidiary" mean a bank holding company or subsidiary as defined in Chapter 17 (commencing with Section 1841) of Title 12 of the United States Code.

This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the Constitution. This section does not exempt a bank holding company or a subsidiary of a bank holding company from complying with all other applicable provisions of law regulating the business of these companies.

This section does not exempt a bank holding company or a subsidiary thereof from complying with all other laws or regulations governing the business in which the bank holding company or subsidiary is engaged.

Chapter 9. Authorizations for Banks

1300. (a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, a bank or any affiliate thereof, licensed under the laws of any state or of the United States, or any officer or employee thereof, may deliver fingerprints taken of a director, an officer, an employee, or an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the person fingerprinted relating to convictions, and to any arrest for which that person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 13300 of the Penal Code, furnish to the officer of the bank or affiliate responsible for the final decision regarding employment of the person fingerprinted, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the bank or affiliate, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the bank or affiliate determines that employment of the person fingerprinted would constitute an unreasonable risk to that bank or affiliate or its customers, the person may be denied employment.

(c) Banks and their affiliates shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all directors, officers, employees, or an applicant for employment for the purpose of obtaining information regarding the existence and content of a record of state and federal

convictions and also information regarding the existence and content of a record of state and federal arrests for which the Department of Justice establishes that the person is free on bail, or on his or her own recognizance, pending trial or appeal.

(d) When the Department of Justice receives a request under this section for federal summary criminal history information, it shall forward the request to the Federal Bureau of Investigation. Once the information is received from the Federal Bureau of Investigation, the Department of Justice shall review, compile, and disseminate the information to the federally chartered bank or affiliate pursuant to paragraph (1) of subdivision (o) of Section 11105 of the Penal Code.

(e) When the Department of Justice receives a request for federal summary criminal history information from a nonchartered bank, it shall forward the request to the Federal Bureau of Investigation. Once the information is received from the Federal Bureau of Investigation, the Department of Justice shall review and provide a fitness determination on an applicant for employment based on criminal convictions or on arrests for which the person is released on bail or on his or her own recognizance pending trial for the commission or attempted commission of crimes specified in subdivision (a).

(f) A bank or affiliate may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a).

(g) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(i) "Affiliate," as used in this section, means any corporation controlling, controlled by, or under common control with, a bank, whether directly, indirectly, or through one or more intermediaries.

1301. (a) Notwithstanding Section 726 of the Code of Civil Procedure or any other provision of law to the contrary, a state or nationally chartered bank, its subsidiaries or affiliates transacting business in this state, or any successor in interest thereto, that originates, acquires, or purchases, in whole or in part, any loan secured directly or collaterally, in whole or in part, by a mortgage

or deed of trust on real property, or any interest therein, may bring an action for recovery of damages, including exemplary damages not to exceed 50 percent of the actual damages, against a borrower where the action is based on fraud under Section 1572 of the Civil Code and the fraudulent conduct by the borrower induced the original lender to make that loan.

(b) The provisions of this section shall not apply to loans secured by single-family, owner-occupied residential real property, when the property is actually occupied by the borrower as represented to the lender in order to obtain the loan and the loan is for an amount of one hundred fifty thousand dollars ($150,000) or less, as adjusted annually, commencing on January 1, 1987, to the Consumer Price Index as published by the United States Department of Labor.

(c) Any action maintained under this section for damages shall not constitute a money judgment for deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d of the Code of Civil Procedure.

Chapter 10. Restrictions and Prohibited Practices

Article 1. General Provisions

1320. A bank or trust company may purchase, acquire, hold, or lease real property or an interest therein only as follows:

(a) Such as may be necessary or convenient for the use, operation or housing of its head office and branch offices, or for the storage of records or other personal property, or for office space for use by its officers or employees, or which may be reasonably necessary for future expansion of its business, or which is otherwise reasonably related to the conduct of its business. Real property used by a bank as its banking premises may include in addition to the space required for the transaction of its business other space which may be let as a source of income.

(b) Such as may be conveyed to it in satisfaction in whole or in part of debts previously contracted in the course of its business.

(c) Such as it may purchase or acquire at foreclosure sales under mortgages or deeds of trust held by it, or under judgments or decrees in its favor.

(d) Such as it may purchase or otherwise acquire when necessary to minimize or prevent the loss or destruction of any lien or interest therein.

(e) Such as it may purchase or otherwise acquire pursuant to Section 1322.

A bank or trust company may sell, lease, or encumber real property or any interest therein owned by it, or, with the written approval of the commissioner, exchange the same for other real property.

1321. Any real property not held for any purpose permitted by subdivisions (a) and (e) of Section 1320 shall be sold whenever the same can be sold for an amount sufficient to reimburse the bank or trust company for all loss arising out of the loan for which such real property was security or arising out of the original investment. A bank or trust company shall not by the retention of any real property acquired pursuant to this section engage in any business not authorized by this division except to the extent necessary in the orderly liquidation of an indebtedness owing to the bank.

1322. (a) The Legislature finds and declares:

(1) That it is necessary to increase job opportunities in real estate development and construction and to provide additional housing and commercial facilities in this state.

(2) That within the commercial banking community there exists the expertise and ability to promote and assist in expansion of real estate development projects in this state.

(3) That it is proper and appropriate to utilize that expertise and ability by authorizing commercial banks to engage in real estate development and management on an entrepreneurial basis.

(b) As used in this section, “real property investment” means all forms of investing in real property, whether direct or in the form of partnerships, joint ventures, or other methods of investment. It includes, but is not limited to, the purchasing, subdividing, and developing of real property or any interest therein, the building of residential housing or commercial improvements, and the owning, renting, leasing, managing, operating for income, or selling of that property.

(c) A commercial bank may acquire and hold stock of one or more corporations the primary activities of which are engaging in real property investment, in which event the sum of (1) investments

made by a commercial bank pursuant to the authority of this subdivision, (2) any loans and guarantees extended by a commercial bank to, or for the benefit of, corporations whose stock it holds pursuant to the authority of this subdivision, and (3) real property investments made pursuant to the authority of subdivision (d), unless a higher percentage is approved by the commissioner in writing, shall not exceed 10 percent of the total assets of the bank.

(d) A commercial bank may engage in real property investment. The total of all real property investments made pursuant to the authority of this subdivision, unless a higher percentage is approved by the commissioner in writing, shall not exceed the total shareholders' equity of the bank.

(e) Prior to initially engaging in real property investment activities authorized by this section, a commercial bank shall make application with the commissioner for approval of its general plan of real property investment. The application for approval shall be in letter form, shall contain a copy of the general plan for real property investment as approved or adopted by the board of directors of the bank, which shall include a brief description of either the activities of the corporations the bank will invest in or the activities the bank will engage in, or both, the approximate amount to be invested, the extent, if any, of diversification of those activities or investment, and the approximate date of the initial investment, and shall be signed by the chief executive officer of the bank. Unless the commissioner finds (1) that the capital, assets, management, earnings, and liquidity of the commercial bank are, on a composite basis, not satisfactory, or (2) that the plan for the commercial bank to engage in real property investment or to acquire and hold the stock of one or more real property investment corporations is unsafe or unsound, the commissioner shall approve the application. An application for approval shall be deemed approved on the 46th day after the application is filed with the commissioner, unless the commissioner earlier makes a final decision on the application or extends the period for approving or denying the application. For purposes of this subdivision, an application for approval shall be deemed to be filed with the commissioner on the date when the application, substantially in compliance with the requirements of this subdivision, is received by the commissioner. Upon the filing of the application for

approval, the applicant shall pay to the commissioner a filing fee of five hundred dollars ($500).

(f) The legality of any investment lawfully made pursuant to this section as it read prior to the amendment of this section shall not be affected by the existing form of this section, nor shall this section be construed to require the changing of any investments heretofore lawfully made.

1323. Any director, officer, or employee of a bank or of a foreign banking corporation who asks for or receives, or consents or agrees to receive, any commission, emolument, or gratuity or any money, property, or thing of value for his own personal benefit or of personal advantage for procuring or endeavoring to procure for any person any loan from such bank, or the purchase or discount of any note, draft, check, bill of exchange, or other obligation by such bank, or for permitting any person to overdraw any account with such bank, is guilty of a felony.

1324. Any director, officer, agent, or employee of any bank who knowingly receives or possesses himself or herself of any of its property otherwise than in payment of a just demand, and with intent to defraud, omits to make or cause to be made a full and true entry thereof in its books and accounts or concurs in omitting to make any material entry thereof is guilty of a felony.

1325. Any director, officer, agent, or employee of a bank who knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or having the custody of its books willfully refuses or neglects to make any proper entry in such books as required by law, or to exhibit or allow the same to be inspected or extracts to be taken therefrom by the commissioner or his or her deputies or examiners, is guilty of a felony.

1326. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately.

1327. (a) Any person who willfully and knowingly makes, circulates, or transmits to another or others, any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank doing business in this state, or who knowingly counsels, aids, procures,

or induces another to start, transmit, or circulate any such statement or rumor, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment for not more than one year, or both.

(b) The provisions of Section 329 shall not apply to this section.

1328. (a) A bank or trust company may engage in the business of renting safe deposit boxes and may receive personal property for safekeeping and storage on its banking premises.

(b) A copy of any safe deposit rental agreement, or personal property safekeeping and storage agreement, which is prepared by the bank or trust company and signed by the customer shall be delivered to the customer at the time the agreement is signed if the agreement is signed at a place of business of the bank or trust company. If the agreement is not signed at a place of business of the bank or trust company, the bank or trust company shall mail or deliver a copy of the agreement to the customer within 10 calendar days after the bank or trust company receives it. The contract shall not contain any blank spaces to be filled in after the customer signs the contract. If more than one customer has signed the agreement, the bank or trust company may comply with this section by mailing or delivering the copy to any one of the customers who reside at the same address. A copy shall also be mailed or delivered to any other customer who has signed the agreement and who does not reside at the same address. As used in this section, "copy" means a reproduction, facsimile, or duplicate. A bank or trust company which fails to comply with this section is liable to its customer for any actual damages suffered by the customer as a result of that failure. The remedy provided by this section is nonexclusive and is in addition to any remedies or penalties available under other laws of this state.

1329. (a) In this section, "subject person," when used with respect to a bank, means any director or officer of the bank, any controlling person of the bank, or any director or officer of a controlling person of the bank. For purposes of this subdivision, "controlling person" has the meaning set forth in subdivision (c) of Section 1250.

(b) No bank shall purchase any real or personal property or any interest in real or personal property, including, but not limited to, a leasehold, or any contract arising from the sale of real or personal property or any note or bond in which any subject person of such

bank is personally or financially interested, directly or indirectly, for such person's own account, for such person, or as the partner or agent of others, without the prior approval by the board of directors of the bank and for not more than the current market value of the property purchased.

1330. (a) In this section, "subject person" has the meaning set forth in subdivision (a) of Section 1329.

(b) No subject person of a bank shall purchase, directly or indirectly, or be interested in the purchase of, any of the bank's obligations or assets without the prior approval of the board of the directors of the bank and for an amount less than the then current market value. Every person violating this section shall be liable to the people of this state, for each offense, for twice the market value of the assets so purchased.

1331. (a) For purposes of this section, the following terms have the following meanings:

(1) "Carrying a security" means maintaining, reducing, or retiring indebtedness originally incurred to acquire a security.

(2) "Controlling person" has the same meaning specified in Section 1250.

(3) "Security" has the following meanings:

(A) When used with respect to a bank, "security" has the same meaning set forth in subdivision (c) of Section 1200.

(B) When used with respect to any other person, "security" has the same meaning set forth in Section 25019 of the Corporations Code.

(b) No bank shall acquire, hold, extend credit on the security of, or extend credit for the purpose of acquiring or carrying, any security of the bank or of any controlling person of the bank.

(c) (1) Any bank which acquires or holds securities in violation of this section shall be liable to the people of this state for twice the market, book, or face value of the securities, whichever is greatest.

(2) Any bank which extends credit in violation of this section shall be liable to the people of this state for twice the amount of the credit so extended.

(d) This section does not apply to any of the following transactions:

(1) Any acquisition or extension of credit by a bank which is necessary to reduce or prevent loss to the bank on debts previously contracted in good faith.

(2) Any redemption by a bank of any of its redeemable shares in accordance with applicable provisions of this division and of Division 1 (commencing with Section 100) of Title 1 of the Corporations Code.

(3) Any acquisition by a bank of any of its shares, other than an acquisition of the type described in paragraph (1) or (2), if the acquisition is approved in advance by the commissioner.

(e) The provisions of Section 329 shall not apply to this section.

1332. Any officer, director, trustee, employee, or agent of any bank in this state, who abstracts or willfully misapplies any of the money, funds, or property of the bank, or willfully misapplies its credit, is guilty of a felony. Upon conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the bank. Nothing in this section shall be deemed or construed to repeal, amend or impair any existing provision of law prescribing a punishment for such an offense.

1333. (a) Every director of a bank in this state who does either of the following is guilty of a misdemeanor:

(1) In case of the fraudulent insolvency of such bank, the director participated in the fraud.

(2) Wilfully does any act as the director that is expressly forbidden by law or wilfully omits to perform any duty imposed by law upon him or her as the director.

(b) The insolvency of a bank is deemed fraudulent for the purposes of this section, unless its affairs appear upon investigation to have been administered clearly, legally, and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.

1334. An officer or agent of any bank in this state, who makes or delivers any guaranty or endorsement on behalf of such bank, whereby it may become liable upon any of its discounted notes, bills or obligations, in a sum beyond the amount of loans and discounts which such bank may legally make, is guilty of a misdemeanor.

1335. A director of a bank, organized under the laws of this state, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended to make a loan

or discount to any director of such corporation, or upon paper upon which any such director is liable or responsible to an amount exceeding the amount allowed by the statutes is guilty of a misdemeanor.

1336. Any director, trustee, officer, or employee of any bank organized under the laws of this state, who makes or maintains, or attempts to make or maintain, a deposit of such bank's funds with any other corporation on condition, or with the understanding, express or implied, that the corporation receiving such deposit make a loan or advance, directly or indirectly, to any director, trustee, officer, or employee of the corporation so making or maintaining or attempting to make or maintain such deposit is guilty of a felony.

1337. Any officer or employee of any bank organized under the laws of this state, who intentionally conceals from the directors of the bank any discounts or loans made by it between the regular meetings of its board, or the purchase of any securities or the sale of its securities during that period, or knowingly fails to report to the board when required to do so by law, all discounts or loans made by it and all securities purchased or sold by it between the regular meetings of its board, is guilty of a misdemeanor.

1338. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker, who receives any deposits, knowing that the bank, association, or banker is insolvent, is guilty of a misdemeanor.

1339. Any officer, director, trustee, employee, or agent of any bank, who willfully makes a false or untrue entry in any book or record or in any report, tag, or statement of the business, affairs, or condition or in connection with any transaction of the bank, with intent to deceive any officer, director or trustee thereof, or any agent or examiner, private or official, employed or lawfully appointed to examine into its condition or into any of its affairs or transactions, or any public officer, office, or board to which the bank is required by law to report, or which has authority by law to examine into its affairs or transactions, or into any of its affairs or transactions, or who, with like intent, willfully omits to make a new entry of any matter particularly pertaining to the business, property, condition, affairs, transactions, assets, or accounts of the bank in any book, record, report, statement, or tag of the bank, or who with like intent alters, abstracts, conceals, or destroys any

book, record, report, statement, or tag of the bank made, written, or kept, or required to be made, written, or kept by him or her or under his or her direction, is guilty of a felony.

1340. Unless specifically authorized by law or by the commissioner, a bank shall not become, act as, or in any other manner assume the duties or liabilities of, a general partner. For purposes of this section, "general partner" has the meaning set forth in subdivision (m) of Section 15901.02 of the Corporations Code.

1341. A bank, or the agent of a bank, that has received a notice pursuant to Section 7507.6 of the Business and Professions Code, shall not make a subsequent assignment to skip trace, locate, or repossess a vehicle without simultaneously, and in the same manner by which the assignment is given, advising the assignee of the assignment of the information contained in the notice. As used in this section, "assignment" has the same meaning set forth in Section 7500.1 of the Business and Professions Code.

Article 2. Loans to Insiders

1360. It is the intent of the Legislature that the provisions of this article, insofar as they are contained in Regulation O (12 C.F.R. Part 215) of the Federal Reserve Board, conform, and be interpreted by anyone construing the provisions of this article to so conform, to Regulation O, to any rule or interpretation promulgated thereunder by the Board of Governors of the Federal Reserve System, and to any interpretation issued by an official or employee of the Federal Reserve System duly authorized to issue the interpretation.

1361. As used in this article:

(a) "Bank" means:

(1) Any commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(2) Any foreign (other nation) bank that is licensed by the commissioner under Article 3 (commencing with Section 1800) of Chapter 20 to maintain a depositary agency or branch office, as defined in Section 1750, in this state, with respect to any office of that type.

(3) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is

authorized by the commissioner to engage in, business under Article 1 (commencing with Section 1850) of Chapter 21.

(4) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 1850) of Chapter 21 to maintain an office in this state and to transact at the office business under that article, with respect to any office of that type.

(5) When used to designate a person that extends credit, any subsidiary of a bank, as defined in paragraph (1), (2), (3), or (4).

(b) "Company" has the meaning set forth in subdivision (b) of Section 215.2 of Regulation O.

(c) "Executive officer" has the meaning set forth in paragraph (1) of subdivision (e) of Section 215.2 of Regulation O. Also, "executive officer," when used with respect to any bank of the type described in paragraph (2) or (4) of subdivision (a), includes the manager of each office of the type referred to in paragraph (2) or (4) of subdivision (a) that the bank maintains in this state.

(d) "Extension of credit" has the meaning set forth in Section 215.3 of Regulation O. However, for purposes of this subdivision, the term "member bank," as used in Section 215.3, means a bank.

(e) "Regulation O" means Regulation O (Part 215 (commencing with Section 215.1) of Title 12 of the Code of Federal Regulations) of the Board of Governors of the Federal Reserve System.

(f) "Subsidiary" has the meaning set forth in Section 1841(d) of Title 12 of the United States Code. However, for purposes of this subdivision, the term "bank holding company," as used in Section 1841(d) of Title 12 of the United States Code, means a bank holding company, as defined in Section 1841(a) of Title 12 of the United States Code, or a bank, and the term "board," as used in Section 1841(d) of Title 12 of the United States Code, means the commissioner.

1362. Sections 215.2, 215.3, 215.4, 215.5, 215.8, and 215.9 of Regulation O in all of their particulars, including footnotes, are hereby referred to, incorporated by reference into this article, and adopted, subject to the following:

(a) The term "this Subpart," as used in the referenced sections of Regulation O, means this article.

(b) Subdivision (j) of Section 215.2 of Regulation O is not applicable. Instead, the term "member bank," as used in the referenced sections of Regulation O, means a bank.

(c) The term "executive officer," as used in the referenced sections of Regulation O, includes, in the case of a bank of the type described in paragraph (2) or (4) of subdivision (a) of Section 1361, the manager of each office of the type referred to in paragraph (2) or (4) of subdivision (a) of Section 1361 that the bank maintains in this state.

(d) The definition of "lending limit" in subdivision (i) of Section 215.2 of Regulation O is not applicable; instead, the term "lending limit," as used in the referenced sections of Regulation O, means an amount equal to the limit on obligations of a single obligor set forth in Section 1481, and any reference in the referenced sections of Regulation O to the lending limit specified in subdivision (i) of Section 215.2 is considered to be a reference to the limit specified in Section 1481.

(e) (1) Any company which is majority owned by one or more executive officers or directors of a bank, individually or collectively, is deemed to be a related interest of each of those executive officers or directors for purposes of the referenced sections of Regulation O.

(2) In case an individual who is an executive officer of a bank is also a director or executive officer of a company, the company is deemed to be a related interest of the individual for purposes of the referenced sections of Regulation O except subdivision (c) of Section 215.4. However, this paragraph shall not apply to an extension of credit by a bank to any of the following companies:

(A) A bank holding company of which the bank is a subsidiary.

(B) Any subsidiary of the bank holding company.

(C) Any nonprofit company engaged in religious, charitable, educational, scientific, literary, social, or recreational purposes, provided that the individual whose position as a director or executive officer of the company at issue does not receive compensation in excess of one thousand dollars ($1,000) per year for serving as a director or executive officer of the company.

(3) In case a bank in making an extension of credit becomes subject to the requirements set forth in subdivision (b)(1)(i) of Section 215.4 of Regulation O because of paragraph (1) or (2), the bank shall be deemed to fulfill the requirement if the extension of credit is promptly reported to the board of the bank.

1363. No bank shall extend credit in an aggregate amount greater than the amount permitted in paragraph (4) of subdivision

(c) of Section 215.5 of Regulation O to any company that is majority owned by one or more executive officers of the bank, individually or collectively. For purposes of paragraph (4) of subdivision (c) of Section 215.5 of Regulation O, the total amount of credit extended by the bank to the company is considered to be extended to each of those executive officers.

1364. In making any extension of credit that is subject to this article, a bank shall comply with all other applicable provisions of this division relating to extensions of credit by banks.

1365. No provision of this article or of Article 3 (commencing with Section 1480) of Chapter 14 shall apply to an advance of money made by a bank pursuant to Section 317 of the Corporations Code.

1366. A bank may make a loan, otherwise complying with the provisions of this division, for the benefit of a trust, notwithstanding that the bank or any one or more executive officers or directors of the bank are trustees of the trust.

1367. Any bank that makes an extension of credit in violation of this article is subject to a civil penalty pursuant to Section 329. Any person, other than the bank making the extension of credit, who knowingly makes or procures an extension of credit in violation of this article is guilty of a felony.

Chapter 11. Agency Activities

Article 1. General Provisions

1380. In this chapter, unless the context otherwise requires:

(a) "Authorized agency activities" means receiving deposits, renewing time deposits, closing loans, servicing loans, and receiving payments on loans and other obligations. "Authorized agency activities" includes ministerial functions such as providing loan applications, assembling documents, providing a location for returning documents necessary for making a loan, providing loan account information, receiving payments, disbursing loan funds, evaluating loan applications, and other activities that the commissioner may specify by order or regulation. However, "authorized agency activities" does not include any other activities that the commissioner may specify by order or regulation.

(b) "Insured depository institution" means any bank, savings and loan association, savings association, savings bank, or industrial loan company the deposits of which are insured by the Federal Deposit Insurance Corporation. "Insured depository institution" includes any depository institution affiliate within the meaning of Section 18(r) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1828(r)).

1381. This chapter does not apply to a California state bank having an insured depository institution engage in authorized agency activities as its agent or to a California state bank engaging in authorized agency activities as agent for an insured depository institution in any case other than a case where, but for the provisions of Sections 1389 and 1396, an office of the agent would for regulatory purposes be considered to be an office of the principal.

1382. (a) In this section, "affiliated," when used with respect to a California state bank and an insured depository institution, means that the California state bank controls the insured depository institution, the insured depository institution controls the California state bank, or the California state bank and the insured depository institution are under common control, directly or indirectly through one or more intermediaries. For purposes of this subdivision, "control" has the meaning set forth in Section 1250.

(b) In case a California state bank and an insured depository institution are affiliated, the prior approval requirement set forth in Section 1384 or 1391 is deemed to be satisfied if the California state bank files a notice with the commissioner and, within 30 days or any longer period to which the California state bank consents, the commissioner either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(c) (1) A notice filed by a California state bank under subdivision (b) shall contain the following information:

(A) The name of the California state bank.

(B) The name and location of the main or head office of the affiliated insured depository institution.

(C) A description of the proposed agency, including identification of the institution that is to be the principal, identification of the institution that is to be the agent, and specification of the activities in which the agent is to engage on behalf of the principal.

(D) Any other information that the commissioner may require.

(2) A notice filed by a California state bank under subdivision (b) shall be in the form, shall be signed in the manner, and shall, if the commissioner requires by regulation or order, be verified in the manner that the commissioner may by regulation or order require.

(3) A notice filed by a California state bank under subdivision (b) shall be accompanied by a filing fee of two hundred fifty dollars ($250).

(d) For purposes of subdivision (b), a notice by a California state bank is deemed to be filed with the commissioner at the time when the complete notice, including any amendments or supplements, containing all the information required by the commissioner, and otherwise complying with subdivision (c) is received by the commissioner.

(e) In determining whether or not to object to a notice by a California state bank, the commissioner shall consider the factors set forth in Section 1387 or 1394, as the case may be.

Article 2. California State Bank as Principal

1384. Notwithstanding the provisions of Chapter 4 (commencing with Section 1070), a California state bank may, with the prior approval of the commissioner and subject to any regulations that the commissioner may prescribe, have an insured depository institution engage in authorized agency activities as its agent.

1385. An application by a California state bank for approval to have an insured depository institution engage in authorized agency activities as its agent shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner so requires by regulation or order, be verified in the manner that the commissioner may, by regulation or order, require.

1386. An application by a California state bank for approval to have an insured depository institution engage in authorized agency activities as its agent shall be accompanied by a filing fee of two hundred fifty dollars ($250).

1387. In determining whether to approve or deny an application by a California state bank for approval to have an insured

depository institution engage in authorized agency activities as its agent, the commissioner shall consider both of the following:

(a) Whether the proposed agency arrangement is consistent with the safe and sound operation of the California state bank.

(b) Any other factors that the commissioner deems relevant.

1388. No California state bank may have an insured depository institution conduct as its agent any activity that the California state bank is prohibited from conducting itself.

1389. No office of an insured depository institution that is performing authorized agency activities as agent for a California state bank in accordance with this article shall, on that account, be deemed to be an office of the California state bank.

1390. If the commissioner finds that any activity performed by an insured depository institution as agent for a California state bank is not an authorized agency activity or that the agency arrangement is inconsistent with safe and sound banking practices, the commissioner may order the California state bank to terminate the agency arrangement.

Article 3. California State Bank as Agent

1391. Notwithstanding the provisions of Chapter 4 (commencing with Section 1070), a California state bank may, with the prior approval of the commissioner and subject to any regulations that the commissioner may prescribe, engage in authorized agency activities as agent for an insured depository institution.

1392. An application by a California state bank for approval to engage in authorized agency activities as agent for an insured depository institution shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner so requires by regulation or order, be verified in the manner that the commissioner may, by regulation or order, require.

1393. An application by a California state bank for approval to engage in authorized agency activities as agent for an insured depository institution shall be accompanied by a filing fee of two hundred fifty dollars ($250).

1394. In determining whether to approve or deny an application by a California state bank for approval to engage in authorized

agency activities as agent for an insured depository institution, the commissioner shall consider both of the following factors:

(a) Whether the proposed agency arrangement is consistent with the safe and sound operation of the California state bank.

(b) Any other factors that the commissioner deems relevant.

1395. No California state bank may conduct any activity as an agent for an insured depository institution that the California state bank would be prohibited from conducting as a principal.

1396. (a) No office of a California state bank that conducts authorized agency activities as agent for an insured depository institution in accordance with this article shall, on that account, be deemed to be an office of the insured depository institution.

(b) For purposes of this division, no insured depository institution that has a California state bank engaged in authorized agency activities as its agent shall on that account be deemed to be transacting business in this state.

1397. If the commissioner finds that any activities performed by a California state bank as agent for an insured depository institution are not authorized agency activities or that the agency arrangement is inconsistent with safe and sound banking practices, the commissioner may order the California state bank to terminate the agency arrangement.

Chapter 12. Deposits

Article 1. Depositors

1400. A bank account by or in the name of a minor shall be held for the exclusive right and benefit of such minor and shall be paid to such minor or to his order and payment so made is a valid release and discharge to the bank for such deposit or any part thereof.

1401. A bank account by or in the name of a married person shall be held for the exclusive right and benefit of the person, shall be free from the control or lien of any other person except a creditor, and shall be paid to the person or to the order of the person, and payment so made is a valid and sufficient release and discharge to the bank for the deposit or any part thereof.

1402. A bank account that is a multiple-party account as defined in Section 5132 of the Probate Code is governed by Part

2 (commencing with Section 5100) of Division 5 of the Probate Code.

1403. No bank, directly or indirectly, by any device whatever, shall pay any interest on any demand deposit except to the extent that the payment of interest on demand deposits is permitted to member banks of the Federal Reserve System or to banks whose deposits are insured by the Federal Deposit Insurance Corporation or any successor federal agency insuring bank deposits. This section shall not apply to any deposit which is payable only at an office of the bank located outside of the states of the United States and the District of Columbia.

1404. Notwithstanding Section 10145 of the Business and Professions Code or any other provision of law, but subject to the limitations of Section 854, benefits accruing from the placement in a noninterest bearing account of a financial institution of funds received by a real estate broker who collects payments or provides services in connection with a loan secured by a lien on real property under subdivision (d) of Section 10131 or Section 10131.1 of the Business and Professions Code shall inure to the broker, unless otherwise agreed in writing by the broker and the lender or note owner on the loan. A borrower shall receive at least 2 percent simple interest per annum on impound account payments covered by Section 2954.8 of the Civil Code. For purposes of this section "financial institution" means any institution the business of which is engaging in financial activities as described in Section 1843 (k) of Title 12 of the United States Code.

1405. (a) Notwithstanding Section 10145 of the Business and Professions Code or any other provision of law, benefits accruing from the placement in an interest bearing account of a financial institution of funds received by a real estate broker, as defined in Section 10131 of the Business and Professions Code, who collects payments or provides services for an institutional investor in connection with a loan secured by commercial real property may inure to the real estate broker, if agreed to in writing by the real estate broker and that institutional investor as to that loan.

(b) For purposes of this section, the following definitions shall apply:

(1) "Commercial real property" means real estate improved with other than a one-to-four family residence.

(2) "Financial institution" means any institution the business of which is engaging in financial activities as described in Section 1843(k) of Title 12 of the United States Code.

(3) "Institutional investor" has the meaning set forth in subdivision (i) of Section 50003.

1406. (a) In this section:

(1) "Creditor" includes, but is not limited to, a depositor.

(2) "Insolvency," when used with respect to a bank, means that the bank is unable to pay its debts as they come due.

(b) This section does not apply to any of the following:

(1) Any transaction authorized under Section 1463 or 1465.

(2) Any transaction made by a bank in the ordinary course of its business.

(c) No bank may pay or secure a creditor if the bank does so (1) after committing an act of insolvency or in contemplation of insolvency and (2) with a view to preventing the application of its assets in the manner prescribed in Chapter ~~8~~ *7* (commencing with Section 600) of Division 1 or with a view to the preference of one creditor to another.

(d) Any transaction made by a bank in violation of this section is void.

1407. An overdraft of more than 90 days standing shall not be allowed as an asset of any bank.

1408. A bank may act as a depositary, paying agent, trustee, or fiscal agent for the holding or handling of public funds or securities notwithstanding the fact that a member of the legislative body or an officer or employee of the depositor is an officer, employee, or stockholder of such bank, or of a holding company that owns any of the stock of such bank. Such member of a legislative body, or such officer or employee thereof, shall not be deemed "interested in any contract" as that phrase is used in Section 1090 of the Government Code, if his sole interest is the fact that he is an officer, employee, or stockholder of the bank selected to act as such depositary, paying agent or fiscal agent.

An officer or employee of a local public agency shall be deemed to have only a "remote interest" in a contract, as that phrase is used in Section 1091 of the Government Code, where such contract is entered into without competitive bidding under a procedure established by law, if his sole interest is that of an officer, director, or employee, of a bank, bank holding company, or savings and

loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor, and if the conditions of subdivision (a) of Section 1091 of the Government Code are met.

1409. When a statement of account has been rendered by a bank to a depositor accompanied by vouchers, if any, which are the basis for debit entries in such account, such account shall, after the period of four years from the date of its rendition, in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed and such depositor shall thereafter be barred from questioning the correctness of such account for any cause.

A statement of account within the meaning of this section shall be deemed to have been rendered on a savings or time account when the bank, by making a notation in the depositor's bank book or in some other manner reasonably calculated to give notice thereof to the depositor indicates that a certain sum is the correct balance of the account.

Nothing herein shall be construed to relieve the depositor from the duty now imposed by law of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank and of immediate notification to the bank upon discovery of any error therein, nor from the legal consequences of neglect of such duty; nor to prevent the application of subsection (3) of Section 340 of the Code of Civil Procedure to cases governed thereby.

1410. (a) No bank shall impose any charge on a savings account or on a depositor for the failure of a depositor to deposit, or for the late deposit of, any agreed periodic installment deposit into that account. A bank shall pay interest on savings accounts as to which a depositor has agreed to make periodic installment deposits at a rate of interest per annum that is not less than the lowest rate paid on other types of savings deposits.

(b) As used in this section "savings account" means a Christmas club account, a vacation club account, or other similar periodic installment deposit account maintained by a natural person, irrespective of its classification as a savings deposit or time deposit open account for purposes of state or federal law or regulations.

1411. (a) For the purposes of this section:

(1) "Customer" means one or more natural persons.

(2) "Debt" means an interest-bearing obligation or an obligation which by its terms is payable in installments, which has not been reduced to judgment, arising from an extension of credit to a natural person primarily for personal, family, or household purposes, and does not mean a charge for bank services or a debit for uncollected funds or for an overdraft of an account imposed by a bank on a deposit account.

(b) A bank is limited in exercising any setoff for a debt claimed to be owed to the bank by a customer in that a setoff shall not result in an aggregate balance of less than one thousand dollars ($1,000) as shown on the records of the bank for all demand deposit accounts maintained by a customer with the bank or any branch thereof.

(c) Not later than the day following the exercise of any setoff with respect to a deposit account for any debt claimed to be owed to the bank by a customer, the bank shall deliver to each customer personally or send by first-class mail postage prepaid to the address of each customer as shown on the records of the bank a written notice in at least 10-point type containing the following:

(1) A statement that the bank has set off a debt or a portion thereof against the customer's deposit account, identifying the account, and giving the respective balances before and after the setoff.

(2) A statement identifying the debt set off against the account and giving the respective balances due before and after the setoff.

(3) A statement that if the customer claims that the debt has been paid or is not now owing, or that the funds in the deposit account consist of moneys expressly exempt pursuant to Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, and listed in the notice, the customer may execute and return the notice to the bank by mail at the address shown or personally to the bank branch where the customer's account is maintained not later than 20 days after the date of mailing or personal delivery.

(4) A statement that if the notice is executed and returned, the bank may file an action in court to collect the debt; that if a lawsuit is filed, the customer will be notified and have an opportunity to appear and defend; and that if the bank is successful, the customer will be liable for court costs, and attorney's fees, if the debt so provides.

(5) A response form in at least 10-point type containing substantially the following:

"The debt described in the Notice of Setoff received from the bank is ____ is not ____ my debt or the debt of another person in whose name the account is maintained.

"I claim that the debt:

_____ has been paid.

_____ is not now owing.

_____ is not subject to setoff because the money in the account is:

_____ Paid earnings (CCP 704.070)

_____ Proceeds from execution sale of or insurance for loss of a motor vehicle (CCP 704.010)

_____Proceeds from execution sale of household furnishings or other personal effects (CCP 704.020)

_____ Relocation benefits (CCP 704.180)

_____ Life insurance proceeds (CCP 704.100)

_____ Disability and health insurance benefits (CCP 704.130)

_____ Workers' compensation benefits (CCP 704.160)

_____ Unemployment or strike benefits (CCP 704.120)

_____ Retirement benefits including, but not limited to, social security benefits (CCP 704.080, 704.110, 704.115)

_____ Public assistance benefits including welfare payments and supplemental security income (SSI) or charitable aid (CCP 704.170)

_____ Proceeds from sale of or insurance for damage or destruction of a dwelling (CCP 704.720, CCP 704.960)

_____ Proceeds from execution sale of or insurance for loss of tools of a trade (CCP 704.060)

_____ Award of damages for personal injury (CCP 704.140) or wrongful death (CCP 704.150)

_____ Financial aid paid by an institution of higher education to a student for expenses while attending school (CCP 704.190)

"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ Signed: _____"
(Customer)

(d) If the response form described in subdivision (c) executed by the customer is received by the bank not later than 20 days after the date of mailing or personal delivery of the written notice, the amount of the setoff for any debt claimed to be owed to the bank by a customer, and any bank service charges resulting from the setoff, shall be reversed and such amount shall be credited to the deposit account not later than the end of the business day following receipt of such executed response form.

(e) The limitations provided in this section do not apply to a deposit account, other than a demand deposit account, in which the bank has a security interest expressed by a written contract as collateral for the debt owing to the bank by the customer.

(f) The limitations provided in this section do not apply when a customer previously has authorized a bank in writing to periodically debit a deposit account as the agreed method of payment of the debt.

(g) The limitations provided in this section shall apply only to the exercise by a bank a setoff with respect to debts claimed to be owing to it by customers on or after July 1, 1976.

(h) Nothing in this section shall prejudice a person's right to assert exemptions under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, or to assert a claim or defense as to the validity of the debt, in a judicial proceeding.

Article 2. Disclosure of Delayed Availability Policy

1420. As used in this article:

(a) "Depository institution" means any of the following:

(1) Any insured bank as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.) or any bank which is eligible to make application to become an insured bank under Section 5 of the act.

(2) A mutual savings bank as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.) or any bank which is eligible to make application to become an insured bank under Section 5 of the act.

(3) A savings bank as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.) or any bank which is eligible to make application to become an insured bank under Section 5 of the act.

(4) An insured credit union as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1751 et seq.) or any credit union which is eligible to make application to become an insured credit union pursuant to Section 201 of that act.

(5) Any member as defined in Section 2 of the Federal Home Loan Bank Act (12 U. S.C. Sec. 1421 et seq.).

(6) Any insured institution as defined in Section 401 of the National Housing Act (12 U.S.C. Sec. 1701 et seq.) or any institution which is eligible to make application to become an insured institution under Section 403 of that act.

(b) "Deposit account" means an account in a depository institution on which the account holder is permitted to make withdrawals from time to time in person by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. The term includes demand deposits, negotiable order of withdrawal draft accounts, savings deposits subject to automatic transfers, share draft accounts, and all savings deposits and share accounts, other than time deposits.

1421. (a) Prior to opening a deposit account a depository institution shall provide a written disclosure to the potential customer of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account.

(b) A depository institution shall furnish its customers preprinted deposit slips, envelopes for automatic teller machine deposits, or other individual notice bearing a conspicuous summary statement of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account; and, in the case of a particular deposit by check or similar instrument into a deposit account for which funds may not be immediately available for withdrawal, provide specific notice of the time the customer may withdraw such funds.

1422. For the purposes of computing the amount of interest or dividends payable with respect to an interest-bearing deposit account, a depository institution shall not delay beginning to

compute interest on funds deposited by check or similar instrument to such an account beyond the date on which that depository institution receives provisional credit for the check or similar instrument. However, the payment of interest with respect to funds deposited by check or similar instrument which is returned unpaid shall not be required.

1423. Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed pursuant to this article shall be liable to the aggrieved party in an amount equal to the sum of any actual damage sustained by the person as a result of the failure; and, in the case of an individual action an additional amount as the court may allow, except that the amount shall not be less than fifty dollars ($50) or greater than five hundred dollars ($500); or, in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of five hundred thousand dollars ($500,000) or 1 percentum of the net worth of the depository institution; and, in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance, the resources of the depository institution, the number of persons adversely affected, and the extent to which the failure of compliance was intentional.

A depository institution may not be held liable in any action brought under this section for a violation of this article if the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this article shall not constitute a bona fide error.

Any action under this section may be brought in any court of competent jurisdiction, within one year from the date of the occurrence of the violation.

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Federal Reserve Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the board to issue interpretations or approvals under such procedures as the board may prescribe therefor, notwithstanding that after any act or omission has occurred, the rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

1424. The commissioner shall issue administrative regulations to define a reasonable time for permitting customers to draw on items received for deposit in the customer's account. It is the public policy of this state to provide retail banking customers with the right to withdraw against items deposited with any depository institution located in this state within a reasonable period of time.

1425. Pursuant to Section 1424, the commissioner shall promulgate regulations which shall be reviewed annually to establish a reasonable period of time within which a depository institution must permit a customer to draw as a matter of right on an item which has been received for deposit in the customer's account.

In determining what constitutes a reasonable period of time the commissioner shall consider the following factors:

(a) The actual time for processing and transport between the depository and payer institutions.

(b) The fastest air transport time between depository and payer institutions to be used for purposes of setting the reasonable time for transport.

(c) The most expeditious route and means for processing of returned items.

1426. The commissioner is authorized to gather from depository institutions such information as may be necessary for the formulation and promulgation of the regulations required by Section 1424.

1427. The first regulations issued pursuant to this article shall be issued on or before July 1, 1984.

1428. The commissioner is authorized to issue regulations which provide for a different period of time for withdrawal as a matter of right against deposited items, if there has been a determination that the application of the regulations adopted pursuant to this article would result in unsafe or unsound practices by a depository institution subject to the regulatory jurisdiction of the commissioner.

1429. (a) Funds deposited in an account at a depository institution shall be available on the second business day after the business day on which those funds are deposited in the case of a cashier's check, certified check, teller's check, or depository check subject to the following:

(1) The check is endorsed only by the person to whom it was issued.

(2) The check is deposited in a receiving depository institution that is staffed by individuals employed by that institution.

(3) The check is deposited with a special deposit slip that indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be.

(4) The check is deposited into an account in the name of a customer that has maintained any account with the receiving depository institution for a period of 60 days or more.

(5) The face amount of the check is for five thousand dollars ($5,000) or less.

In the case of funds deposited on any business day in an account at a depository institution by depository checks, the aggregate amount of which exceeds five thousand dollars ($5,000), this subdivision shall apply only with respect to the first five thousand dollars ($5,000) of the aggregate amount.

(b) Subdivision (a) does not apply to a depository check if the receiving depository institution reasonably believes that the check is uncollectible from the originating depository institution. For purposes of this subdivision, "reasonable cause to believe" requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. These reasons shall include, but not be limited to, a belief that (1) the drawer or drawee of the depository check has been, or will imminently be, the subject of an order for relief in bankruptcy or placed in receivership or (2) the depository check may be involved in a fraud or in a scheme commonly known as "kiting." In these situations, the depository

institution electing to proceed under this subdivision shall so notify the drawer and drawee no later than the close of the next business day following deposit of the depository check.

(c) For purposes of this section, the following terms have the following meanings:

(1) "Account" means any demand deposit account and any other similar transaction account at a depository institution.

(2) "Business day" means any day other than a Saturday, Sunday, or legal holiday.

(3) "Cashier's check" means any check that is subject to the following:

(A) The check is drawn on a depository institution.

(B) The check is signed by an officer or employee of the depository institution.

(C) The check is a direct obligation of the depository institution.

(4) "Certified check" means any check with respect to which a depository institution certifies the following:

(A) That the signature on the check is genuine.

(B) The depository institution has set aside funds that are equal to the amount of the check and will be used only to pay that check.

(5) "Depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument, as determined by the Board of Governors of the Federal Reserve System or the commissioner.

(6) "Depository institution" has the meaning given in clauses (i) to (vi), inclusive, of Section 19(b)(1)(A) of the Federal Reserve Act.

(7) "Teller's check" means any check issued by a depository institution and drawn on another depository institution.

(d) Except for the specific circumstances and checks described in this section, this section is not intended to restrict or preempt the regulatory authority of the commissioner.

(e) In the event of a suspension or modification of any similar provisions in the federal Expedited Funds Availability Act, the effect of this section shall be similarly suspended or modified.

Article 3. Dormant Accounts

1440. Any bank which delivers or has heretofore delivered to the State Treasurer pursuant to law any unclaimed or abandoned

deposit shall not thereafter be liable to any person for the same and any action which may be brought by any person against a bank for money so delivered to the State Treasurer shall be defended by the Attorney General without cost to the bank.

Chapter 13. Withdrawals and Collections

Article 1. General

1450. Notice to any bank of an adverse claim (the person making the adverse claim being hereinafter called "adverse claimant") to a deposit standing on its books to the credit of or to personal property held for the account of any person shall be disregarded, and the bank, notwithstanding the notice, shall honor the checks, notes, or other instruments requiring payment of money by or for the account of the person to whose credit the account stands and on demand shall deliver that property to, or on the order of, the person for whose account the property is held, without any liability on the part of the bank; subject, however, to the exceptions provided in subdivisions (a) and (b):

(a) If an adverse claimant delivers to the bank at the office at which the deposit is carried or at which the property is held an affidavit of the adverse claimant stating that of the adverse claimant's own knowledge the person to whose credit the deposit stands or for whose account the property is held is a fiduciary for the adverse claimant and that the adverse claimant has reason to believe the fiduciary is about to misappropriate the deposit or the property, and stating the facts on which the claim of fiduciary relationship and the belief are founded, the bank shall refuse payment of the deposit and shall refuse to deliver the property for a period of not more than three court days (including the day of delivery) from the date that the bank received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the bank at the office at which the deposit is carried or at which the property is held a restraining order, injunction, or other appropriate order against the bank from a court

of competent jurisdiction in an action in which the adverse claimant and all persons in whose names the deposit stands or for whose account the property is held are parties, the bank shall comply with the order or injunction, without liability on its part.

(c) This section shall be applicable even though the name of the person appearing on the bank's books to whose credit the deposit stands or for whose account the property is held is modified by a qualifying or descriptive term such as "agent," "trustee," or other word or phrase indicating that the person may not be the owner in his or her own right of the deposit or property.

(d) Nothing in the California Multiple-Party Accounts Law contained in Part 2 (commencing with Section 5100) of Division 5 of the Probate Code limits the applicability of this section.

1451. When the depositor of a commercial or savings account has authorized any person to make withdrawals from the account, the bank, in the absence of written notice otherwise, may assume that any check, receipt, or order of withdrawal drawn by such person in the authorized form or manner, including checks drawn to his personal order and withdrawal orders payable to him personally, was drawn for a purpose authorized by the depositor and within the scope of the authority conferred upon such person.

1452. A bank need not recognize or give any effect to (1) any claim to a deposit of cash or securities standing on its books to the credit of, or held by it for the account of, any corporation, firm or association in occupied territory or (2) any advice, statute, rule or regulation purporting to cancel or to give notice of the cancellation of the authority of any person at the time appearing on the books of such bank as authorized to withdraw or otherwise dispose of cash or securities of such corporation, firm or association, unless such bank is required so to do by appropriate process procured against it in a court of competent jurisdiction in the United States in a cause therein instituted by or in the name of such corporation, firm or association, or unless the person making such claim or giving such advice or invoking such statute, rule or regulation, as the case may be, shall execute to such bank, in form and with sureties acceptable to it, a bond indemnifying it from any and all liability, loss, damage, costs and expenses for and on account of recognizing or giving any effect to such claim, advice, statute, rule or regulation.

For the purposes of this section (1) the term "occupied territory" shall mean territory occupied by a dominant authority asserting governmental, military or police powers of any kind in such territory, but not recognized by the United States as the de jure government of such territory, and (2) the term "corporation, firm or association in occupied territory" shall mean a corporation, firm or association which has, or at any time has had, a place of business in territory which has at any time been occupied territory.

The provisions of this section shall be effective only in cases where (1) such claim or advice purports or appears to have been sent from or is reasonably believed to have been sent pursuant to orders originating in, such occupied territory during the period of occupation, or (2) such statute, rule or regulation appears to have emanated from such dominant authority and purports to be or to have been in force in such occupied territory during the period of occupation.

This section applies to claims, advices, statutes, rules or regulations given or invoked either before or after the effective date of this section.

Article 2. Certified Checks

1455. Whenever a bank certifies a check, the amount thereof shall be immediately charged against the account of the drawer.

1456. It shall be unlawful for any officer or employee of a bank to certify any check drawn upon such bank, unless the drawer has on deposit with the bank, at the time such check is certified, an amount to his credit on the books of the bank not less than the amount specified therein.

Any bank officer or employee who wilfully violates the provisions of this section or who resorts to any device or receives any fictitious obligations directly or indirectly in order to evade the provisions of this section is guilty of a felony.

Chapter 14. Loans and Investments

Article 1. General Provisions

1460. A commercial bank shall not rediscount, borrow money, or hypothecate its assets as security for money borrowed except to the extent and upon the conditions set forth in this division.

1461. Assets hypothecated by a commercial bank as security for moneys borrowed shall not exceed in value the amount borrowed by more than 50 percent except with the prior written consent of the commissioner.

1462. A commercial bank may borrow money by discounting or otherwise, and may borrow money secured by real property owned by the bank, to an amount not in excess of its shareholders' equity, but shall not borrow money except as provided in Sections 1464 and 1465 in excess of such amount without the prior written approval of the commissioner.

The amounts of moneys so borrowed by a commercial bank together with the amount of any of its deposits secured by surety bonds shall not at any one time exceed the amount of its shareholders' equity without the prior written approval of the commissioner.

1463. A commercial bank may hypothecate its assets in any manner provided by law to secure the deposits of moneys of the United States, of postal savings funds, of estates in bankruptcy cases, of the State of California, or of any political subdivision, public corporation, or district of the State of California. With the prior approval of the commissioner a bank may hypothecate its assets to secure moneys payable to other states.

1464. A commercial bank may borrow for the purpose of buying from the United States, United States bonds, United States Treasury certificates, or notes or other obligations of the United States.

1465. A commercial bank may rediscount with, borrow money from, or hypothecate its assets as security for money borrowed from a Federal Reserve bank, the Federal Deposit Insurance Corporation, or the Federal Home Loan Bank.

1466. A commercial bank may issue negotiable certificates of deposit transferable by endorsement and delivery and

nonnegotiable certificates transferable only on the books of the bank.

1467. A commercial bank located in a place the population of which does not exceed 5,000 persons according to the most recent official federal or state census may act as agent for any fire, life, or other insurance company authorized to do business in California by soliciting and selling insurance and collecting premiums and may receive for such services such fees and commissions as may be agreed upon with the insurance company if the bank is engaged in such business on October 1, 1949, and is duly licensed under the Insurance Code, and may act also as the broker or agent for others in making or procuring loans on real property located within 100 miles of the place in which the bank is located and may receive for such services a fee or a commission if it is engaged in such business on October 1, 1949, and is duly licensed. In engaging in either of such businesses the bank shall comply with all rules and regulations of the commissioner relating thereto and shall not guarantee either the principal or interest of any loan procured by it as broker or agent or assume or guarantee the payment of any premium on insurance policies written through it as agent or broker or guarantee the truth of any statement made by an insured in filing an application for insurance.

Article 2. Loan and Investment Limitations

1470. (a) In this article and in Article 4 (commencing with Section 1710) of Chapter 19, "affiliate," when used with respect to a specified person, means any person controlling, controlled by, or under common control with, the specified person, directly or indirectly, through one or more intermediaries.

(b) "Control" has the meaning set forth in Section 1250.

(c) "Regulated corporation" means any corporation or limited liability company or similar entity in which a bank makes an equity investment and which the bank controls.

(d) "Securities issued by a person" means any debt, equity, or other security issued by a person, and any and all affiliates of that person, issued for the benefit of that person or for the benefit of an affiliate of that person.

1471. (a) Subject to the limitations and exceptions in Sections 1481 and 1510, a bank may hold both obligations made by a person, and securities issued by that same person.

(b) The total amount of obligations and securities held by a bank pursuant to subdivision (a) shall not exceed 25 percent of the sum of the shareholders' equity, allowance for loan and lease losses, capital notes and debentures of the bank.

1472. Subject to prior approval by the commissioner and to any limitations the commissioner may impose, the limitations in Sections 1471, 1481, and 1510 shall not apply to loans made by a bank to, and the bank's investments in securities of, its regulated corporations.

1473. Sections 1481 and 1510 shall not apply to investments held by a bank prior to the operative date of this section. All authorizations regarding investments by a bank issued by the commissioner prior to the operative date of this section are terminated.

Article 3. Loan Limits

1480. For the purpose of this article:

(a) "Obligations" means the total sums for the payment of which a person is obligated, primarily or secondarily, to a commercial bank.

(b) Obligations of a person include obligations of others to a commercial bank arising out of loans made by the bank for the benefit of the person.

(c) Obligations of an individual include the obligations of a partnership or association for which obligations the individual is liable.

(d) Obligations of a partnership include the obligations of its members who are liable for its obligations.

(e) Obligations of a corporation include the obligations of all subsidiaries in which it owns or controls a majority interest, except to the extent and under such restrictions as the commissioner may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

(f) Obligations of a sovereign government or agency include the obligations of instrumentalities or political subdivisions of the government or agency, except to the extent and under such

restrictions as the commissioner may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

(g) Obligations of a limited liability company include the obligations of all subsidiaries in which it owns or controls a majority interest, except to the extent and under any restrictions the commissioner may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

1481. The obligations, as defined in Section 1480, excepting the obligations described in Section 1485 and the obligations described in Section 1483, of any one person owing to a commercial bank at any one time shall not exceed the following limitations:

(a) Obligations which are unsecured shall not exceed 15 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the bank.

(b) Obligations, secured and unsecured, in all shall not exceed 25 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the bank.

Obligations arising out of the discount of commercial or business paper actually owned by the person negotiating the same and endorsed by such person without limitation, together with the secured and unsecured obligations, if any, of such person, shall not exceed 40 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the bank.

No commercial bank shall be required, solely by reason of the amendments of this article, to dispose of or reduce any loan which complied with the applicable limitations of this division at the time such loan was made, nor shall any such bank be prevented solely by reason of the provisions of this article from renewing any such loan from time to time.

1482. An obligation shall not be deemed secured by personal property or collateral unless the personal property or collateral held as security is of a kind which has not been declared ineligible by the commissioner and unless it has a market value at least 15 percent greater than the amount of the obligations secured thereby or, if the security is a bank deposit, it shall have a face value at least equal to the amount of the obligations secured thereby. The

commissioner may by general regulation declare any particular kinds or classes of personal property ineligible as security. An obligation shall not be deemed secured by real property unless the obligation and the lien securing the same conform to the provisions of Section 1486, 1489, 1494, 1495, or 1496 or the first sentence of Section 1493. Secured and unsecured loans shall be represented by separate notes and shall not be combined in any way within one note or notes.

1483. (a) In addition to the limitations contained in Section 1481 a commercial bank may issue letters of credit and a commercial bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. A commercial bank shall not accept such drafts or bills in the aggregate to an amount exceeding 150 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures or, when authorized by the commissioner, to an amount exceeding 200 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures. A commercial bank shall not accept such drafts or bills for any one person to an amount exceeding 10 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures, unless the bank is and remains secured by either attached documents or some other actual security growing out of the same transaction as the acceptance.

(b) With respect to a bank which issues an acceptance, the limitations contained in this section shall not apply to that portion of an acceptance which is issued by such bank and which is covered by a participation agreement sold to another institution.

1484. With the approval of the commissioner a commercial bank may accept drafts or bills of exchange drawn upon it having not more than three months' sight to run, exclusive of days of grace, drawn by banks or bankers in foreign countries for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries; provided, no commercial bank shall accept such drafts or bills of exchange for any one bank to

any amount exceeding 10 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or unless the bank is secured by some other adequate security. A commercial bank shall not accept such drafts or bills, whether secured or unsecured, in the aggregate to an amount exceeding 50 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures.

1485. The limitations of Section 1481 shall not apply to the following and the following shall not be included among the obligations of a person for the purpose of applying these limitations:

(a) Loans secured by obligations of the United States or by obligations unconditionally guaranteed both as to principal and interest by the United States, having a market value at least 10 percent in excess of the loans secured thereby.

(b) Loans in an amount and of a type or class previously approved in writing by the commissioner that are secured by not less than a like amount of obligations of the United States or by obligations unconditionally guaranteed both as to principal and interest by the United States.

(c) Loans to the extent that they are covered by guarantees or by commitments to take over or to purchase without recourse made by (1) any Federal Reserve bank, (2) the United States, (3) any department, bureau, board, commission, agency, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States, or (4) any small business development corporation, urban development corporation, or rural development corporation incorporated pursuant to the California Job Creation Law (Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code).

(d) Drafts or bills of exchange drawn in good faith against actual existing values with negotiable bills of lading attached, whether or not accepted by the drawee.

(e) Bankers' acceptances of other banks which are eligible for rediscount with a Federal Reserve bank.

(f) Obligations resulting from daily clearances through any clearinghouse association.

(g) Obligations that are fully guaranteed or fully insured or covered by a commitment to fully guarantee or fully insure by the Federal Housing Administrator.

(h) Obligations, including portions thereof, to the extent secured by a segregated deposit account in the lending bank, provided a security interest in the deposit has been perfected under applicable law, and subject to all of the following conditions:

(1) Where the deposit is eligible for withdrawal before the secured obligation matures, the lending bank shall establish internal procedures to prevent release of the security without the lending bank's prior consent.

(2) A deposit that is denominated and payable in a currency other than that of the obligation that it secures may be eligible for this exception if the currency is freely convertible to United States dollars.

(A) This exception applies only to that portion of the obligation that is covered by the United States dollar value of the deposit.

(B) The lending bank shall establish procedures to periodically revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times.

1486. A commercial bank may lend on the security of a first lien on real property or a first lien on a leasehold under a lease which does not expire, or which has been extended or renewed so that it does not expire, for at least 10 years beyond the maturity date of the loan, if:

(a) The term of the loan does not exceed 10 years and the amount does not exceed 60 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(b) The term of the loan does not exceed 30 years, is repayable in substantially equal installments not less often than monthly (or a variation therefrom as may be authorized under a loan executed pursuant to Section 1916.5 or 1916.8 of the Civil Code), with payments commencing not later than 60 days from the date of the loan or, in the case of a construction loan, commencing not later than one year from the date of the loan, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper

appraisal, provided, however, the loan may exceed 90 percent of the sound market value of the property or leasehold if that portion of the loan which is in excess of 90 percent is guaranteed or insured by a private insurer licensed by the Insurance Commissioner.

(c) The loan is made pursuant to and in conformance with regulations adopted under Section 1916.12 of the Civil Code.

(d) The loan is on a farm or productive agricultural lands, the term does not exceed 30 years, is repayable in substantially equal installments not less often than annually, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(e) The term of the loan does not exceed six months and the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(f) The term of the loan does not exceed 60 months, the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, and the loan is for the purpose of financing building operations under a plan providing for payment of the loan or providing for refinancing by loans otherwise permitted by this chapter.

A commercial bank may make a loan without regard to the above restrictions when necessary to facilitate the sale of real property owned by the bank.

1487. (a) The provisions of any deed of trust or mortgage on real property which authorize any state or nationally chartered bank to accelerate the maturity date of the principal and interest on any loan secured thereby or to exercise any power of sale or other remedy contained in the deed of trust or mortgage, upon the failure of the trustor or mortgagor to pay, at the times provided under the terms of the deed of trust or mortgage, any taxes, rents, assessments, or insurance premiums with respect to the real property securing the loan, or upon the failure to pay any advances made with respect to the deed of trust or mortgage by the state or nationally chartered bank, shall be enforceable whether or not an

impairment of the security interest in the real property has resulted from the failure of the trustor or mortgagor to pay the taxes, rents, assessments, insurance premiums, or advances.

(b) "State or nationally chartered bank," as used in this section and Section ~~1227.3~~ *1488*, includes any person authorized by this state to make or arrange loans secured by real property, or a holding company of a state or nationally chartered bank or any successor in interest.

1488. The provisions of any deed of trust or mortgage on real property which authorize any state or nationally chartered bank to receive and control the disbursement of the proceeds of any policy of fire, flood, or other hazard insurance respecting the real property shall be enforceable whether or not an impairment of the security interest in the property has resulted from the event that caused the proceeds of the insurance policy to become payable.

1489. A commercial bank may lend on the security of a first lien on real property or a first lien on a leasehold under a lease which does not expire, or which has been extended or renewed so that it does not expire, for at least 10 years beyond the maturity date of the loan, if the criteria of any of the following subdivisions are satisfied:

(a) The loan is fully guaranteed or insured or covered by a commitment to guarantee or insure by the United States, the Federal Housing Administrator, or by any other agency of the United States which the commissioner shall have approved for the purposes of this subdivision as an issuer of insurance or guarantees of loans on real property, whether the proceeds of the guarantee or insurance is payable in cash or in obligations of the United States.

(b) The loan is fully guaranteed by the United States or any agency thereof pursuant to the "Servicemen's Readjustment Act of 1944" or any act of Congress supplementary or amendatory thereof, or, if a portion of the loan is so guaranteed, then if the unguaranteed portion of the loan does not exceed 80 percent of the sound market value of the property or leasehold for loan purposes as determined by proper appraisal.

(c) The loan is one in which the Small Business Administration cooperates through agreements to participate on an immediate or deferred basis under the Small Business Act, as amended.

1490. A commercial bank shall not lend in the aggregate more than 5 percent of its assets upon the security of the stock of any one corporation or upon the security of the bonds of any one obligor except bonds of the United States or for the payment of which the credit of the United States is pledged, bonds of the State of California or for the payment of which the credit of the State of California is pledged, and bonds of any county, city and county, city, metropolitan water district, school district, or irrigation district of the State of California which qualify as investments for savings banks.

1491. No loan shall be made by any commercial bank upon the securities of one or more corporations, the payment of which loan is undertaken, in whole or in part, severally, but not jointly, by two or more persons in any of the following circumstances:

(a) If the borrowers or underwriters are obligated absolutely or contingently to purchase the securities, or any of them, collateral to the loan, unless the borrowers or underwriters have paid on account of the purchase of the securities an amount in cash, or its equivalent, equal to at least 25 percent of the several amounts for which they remain obligated in completing the purchase of the securities.

(b) If the commercial bank making the loan is liable, directly or indirectly, or contingently, for the repayment of the loan or any part thereof.

(c) If its term, including any renewal thereof by agreement, express or implied, exceeds the period of one year.

(d) Or to an amount under any circumstances in excess of 25 percent of the sum of the commercial bank's shareholders' equity, allowance for loan losses, capital notes, and debentures.

1492. Nothing in this chapter restricts a commercial bank in taking any lien on or pledge of any property as additional security for a loan already made in good faith.

1493. A commercial bank holding a first lien on real property may take, or purchase and hold, or loan upon another and immediately junior lien but all such loans shall not exceed in the aggregate 90 percent of the sound market value of the property as determined by proper appraisal. A commercial bank may loan not to exceed the face value of a deed of trust or mortgage which constitutes a first lien upon real property, but in no event shall any such loan exceed 90 percent of the sound market value of the

property covered by said mortgage or deed of trust as determined by proper appraisal.

1494. A commercial bank may lend on the security of a first security interest on stock or a membership certificate issued to a tenant-stockholder or resident-member by a completed fee simple cooperative housing corporation, as defined in Section 216 of the U.S. Internal Revenue Code, and the assignment by way of security of the borrower's interest in the proprietary lease or right of tenancy in property issued by such cooperative housing corporation, provided all of the real property owned by such corporation is located within the state, and further provided, that:

(a) The term of the loan does not exceed 30 years, is repayable in substantially equal installments (or such variation therefrom as may be authorized under a loan executed pursuant to Section 1916.5 or 1916.8 of the Civil Code), not less often than monthly, with payments commencing not later than 60 days from the date of the loan, and the amount does not exceed 80 percent of the sound market value of such certificates of stock or membership certificates; and

(b) The proprietary lease or right of tenancy in the property provides:

(1) That no sublease in excess of one year, amendment or modification to such proprietary lease or right of tenancy in the property shall be permitted or created without the lender's prior written consent, and

(2) That in the event of the borrower's default under such loan, the lender shall have the right, without the prior consent or approval of the cooperative housing corporation, to sell such shares or membership certificates at public or private sale following at least 30 days prior written notice to the borrower and to the cooperative housing corporation, at the address of the premises subject to the proprietary lease or right of tenancy in the property, and assign such proprietary lease or right of tenancy in the property to the purchaser who shall agree as a condition of such assignment to cure any defaults thereunder.

For all purposes of this division, such loan shall be considered a secured residential real estate loan and shall be subject to rules and regulations implementing the provisions of this section issued by the commissioner.

1495. (a) A commercial bank may make amortized loans upon the security of residential real property to finance the purchase and installation of material or equipment designed to promote energy conservation or the efficient use of energy in the residential real property securing the loan, if,

(1) The residential real property securing the loan consists of not more than four dwelling units;

(2) The loan is made in connection with a concurrent loan authorized under Section 1486; and

(3) The loan is in an amount not to exceed 10 percent of the loan made under the authority of Section 1486.

(b) A commercial bank may make additional advances, or additional loans, to an existing borrower in order to finance the purchase and installation of material and equipment designed to promote energy conservation or the efficient use of energy in the residential real property securing the loan, if,

(1) The residential real property securing the loan consists of not more than four dwelling units; and

(2) The aggregate of the additional loan or advance and the unpaid balance of the existing loan will not exceed that percent of the appraised value of the residential real property securing the loan permitted by Section 1227 immediately after the purchase and installation of such material and equipment.

1496. For the purpose of determining whether any loan or investment is secured by a first lien on real property as required by any provision of this division, none of the following shall be deemed a prior encumbrance unless any installment or payment thereunder, other than a rental or royalty under a lease, is due and delinquent:

(a) The lien of any tax, assessment, or bond levied or issued by any state or territory of the United States or by any district, political subdivision, or municipal corporation thereof, except the lien of an assessment levied against a particular parcel of real property and of any bond given or issued pursuant to law in lieu of the payment of the assessment.

(b) A lien created by a contract and given to secure the payment for water to be furnished under the contract for the irrigation of the real property or any part thereof.

(c) A lease of the real property under which all rents or royalties are reserved to the owner.

(d) The lien of a bond given or issued pursuant to law in lieu of the payment of an assessment levied against a particular parcel of real property and the lien of any assessment levied to pay that bond, if the unpaid balance of the bond and the amount of the loan or investment combined do not exceed the percentage of the sound market value of the real property permitted to be so loaned or invested by any provision of this division.

(e) A lien given to secure the payment of any assessment or subscription to meet the requirements of any law of the United States in respect to any irrigation project of the United States in any state or territory of the United States which may be levied, made, or received by any corporation or association formed to carry out the provisions of that law, if the unpaid balance of the assessment or subscription and the amount of the loan or investment combined do not exceed the percentage of the sound market value of the real property permitted to be so loaned or invested by any provision of this division.

1497. No loan made by any bank in excess of any limitations contained in this division or which is made in violation of any of the provisions of this division shall be invalid or illegal as to the lender for that reason, nor shall any loan made to any bank in excess of the amounts permitted by this division be invalid or illegal as to the lender for that reason.

1498. (a) Any state-chartered bank that makes a refund anticipation loan to a covered borrower, as defined in Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, in Volume 72 of the Federal Register, shall comply with the provisions of Section 670 of Public Law 109-364 and Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, in Volume 72 of the Federal Register pertaining to refund anticipation loans.

(b) With respect to any refund anticipation loan covered by Section 670 of Public Law 109-364 and Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, in Volume 72 of the Federal Register, a person that does not market or extend those loans to covered borrowers shall not be in violation of Section 394 of the Military and Veterans Code.

Article 4. Investments

1510. The total amount invested by a bank in the securities issued by a person shall not exceed 15 percent of the sum of the shareholders' equity, allowance for loan and lease losses, capital notes and debentures of the bank, except:

(a) Obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds, consolidated bonds, collateral trust debentures, or other obligations issued by the Federal Financing Bank, the United States Postal Service, federal land banks, or federal intermediate credit banks established under the Federal Farm Loan Act; in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933; in consolidated notes, bonds, debentures, and other obligations issued by federal land banks, federal intermediate credit banks, and banks for cooperatives under the Farm Credit Act of 1971; in the bonds of any federal home loan bank established under the Federal Home Loan Bank Act; and in stock, bonds, debentures, participations, and other obligations of or issued by the Student Loan Marketing Association, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(c) Obligations of the State of California and those for which the credit of the State of California is pledged for the payment of principal and interest.

(d) Obligations of a local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by the local agency or district.

(e) Capital stock of the Federal Reserve Bank serving the district in which the bank is located.

(f) Capital stock of a federal home loan bank in the manner provided in the Federal Home Loan Bank Act.

(g) Capital stock of the Federal Deposit Insurance Corporation.

1511. Section 1510 shall not apply to investments made pursuant to this section. A bank may invest in shares of an

investment company (1) registered with the Securities and Exchange Commission pursuant to the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) and for which the shares are registered under the federal Securities Act of 1933 (15 U.S.C. Sec. 77a et seq.), and (2) the portfolio of which consists solely of the following:

(a) Debt obligations in which a bank is permitted to invest without limitation pursuant to subdivision (a), (b), (c), or (d) of Section 1510 and repurchase agreements fully collateralized by those obligations.

(b) Loans of federal funds and similar loans of unsecured day(s) funds, maturing in six months or less to institutions insured by the Federal Deposit Insurance Corporation Federal Funds. Loans under this subdivision are limited to transactions described in subsection (a) or (b) of Section 32.102 of Title 12 of the Code of Federal Regulations involving investment companies in which the entire beneficial interest is held exclusively by depository institutions, as permitted by Section 204.123 of Title 12 of the Code of Federal Regulations.

(c) Cash or its equivalent.

1512. Notwithstanding Section 1510, a bank may purchase, acquire, or hold the stock of any corporation pursuant to a plan of reorganization approved by the commissioner by which all of the stock of one or more banks organized under the laws of this state shall be acquired and immediately reissued proportionately to the stockholders of the acquiring bank

1513. If any commercial bank has made investments which it was authorized to make at the time they were made it shall not be required to dispose of such investments by reason of adoption of the Banking Code, this code, or any amendments to this article.

1514. A commercial bank may organize, sponsor, operate, control, or render investment advice to, an investment company, or underwrite, distribute, or sell securities of any investment company which has qualified to sell its securities in this state pursuant to Part 2 (commencing with Section 25100) of Division 1 of Title 4 of the Corporations Code, if the officers and employees of the bank who sell these securities meet such standards with respect to training, experience, and sales practices as established by the Secretary of the Business, Transportation and Housing Agency or the secretary's designee. For the purpose of this section,

"investment company" means an investment company as defined in the Investment Company Act of 1940 (15 U.S.C., Sec. 80a-1 et seq.).

1515. A bank or trust company may acquire stock in settlement or reduction of a loan or in exchange for an investment previously made in good faith where the acquisition of the stock is necessary in order to minimize or avoid loss arising out of the loan or investment. The limitation in Section 1510 shall not apply to the stock acquired in accordance with this section. Whenever any stock that is acquired in accordance with this section can be sold for an amount sufficient to reimburse the bank or trust company for all loss arising out of the loan for which the stock was security or arising out of the original investment by the bank or trust company, the bank or trust company shall sell the same or shall convert the stock to an investment subject to Section 1330.

Article 5. Miscellaneous

1520. Whenever the public administrator becomes the administrator of the estate of a decedent who at the time of his death left money on deposit with a commercial bank, the public administrator may allow such deposit to remain in the commercial bank and may deposit therein to the account of the decedent any moneys of said estate not required for current expenses of administration, and in such cases the public administrator need not deposit the same with the county treasurer. Moneys so deposited, whether by the decedent or by the public administrator, may be withdrawn upon the order of the public administrator countersigned by a judge of the superior court when required for the purpose of administration or otherwise.

1521. A commercial bank accepting savings deposits shall provide by its bylaws or by contract with its savings depositors the time and condition on which repayment is to be made to such depositors. The bank shall not waive any requirement of notice before payment of any savings deposit except as to all savings deposits.

Whenever there is any call by savings depositors for repayment of a greater amount than the bank may have disposable for that purpose, the bank must not make any new loan or investment until such excess call has ceased.

1522. For the purposes of any law authorizing or providing for the deposit of funds with a savings bank, a commercial bank accepting savings deposits shall be deemed a savings bank.

Chapter 15. Industrial Banks

Article 1. General Provisions

1530. Chapter 15 (commencing with Section 1530) is a restatement of Division 7 (commencing with Section 18000) as that division pertains to the licensing and regulation of industrial banks and to the insurance of deposits of industrial banks. Chapter ~~11~~ *15* is a continuation, simplification, and recodification of the licensing and regulation of deposit-taking industrial banks.

1531. (a) Any reference in a provision of any statute or regulation of this state to banks or commercial banks includes industrial banks.

(b) Subdivision (a) does not apply in any of the following cases:

(1) In case the provision or a related provision expressly provides otherwise.

(2) In the case of any provision of Division 1.6 (commencing with Section 4800) or this division.

1532. The Industrial Loan Account of the Financial Institutions Fund is renamed to be the Industrial Bank Account.

1533. (a) The commissioner shall annually levy on and collect from industrial banks authorized to transact industrial banking business in this state, pro rata on the basis of total assets, an assessment in a total amount that is sufficient in the commissioner's judgment to (1) meet the expenses of the department in administering laws relating to industrial banks or to the industrial banking business that are not otherwise provided for and (2) provide a reasonable reserve for contingencies.

(b) The amount of the annual assessment on any industrial bank authorized to transact the industrial banking business shall be the greater (1) five thousand dollars ($5,000) or (2) the sum of the products determined by multiplying (A) increments of the bank's or trust company's total assets by (B) percentages of the base assessment rate according to the following table:

Total Assets (In Percentage of Base Millions)	Assessment Rate
First $2	100.0
Next $18	50.0
Next $80	12.0
Next $100	6.25
Next $800	6.0
Next $1,000	4.0
Next $4,000	3.5
Next $14,000	3.0
Next $20,000	2.5
Excess over $40,000	1.5

(c) (1) For purposes of the annual assessment, the total assets of an industrial bank authorized to transact industrial banking business shall be determined as of a date fixed by the commissioner. However, if an industrial loan company is not authorized to transact industrial banking business as of that date but is so authorized as of the date when the annual assessment is levied, its total assets for purposes of the annual assessment shall be determined as of the date of the levy.

(2) (A) In determining for purposes of the annual assessment on the total assets of industrial banks that are authorized to transact industrial banking business and that have one or more foreign (other state) branch offices or facilities, the assets of the foreign (other state) branch offices and facilities shall be excluded from total assets. However, the commissioner may order the assets of foreign (other state) branch offices and facilities to be included in total assets if and to the extent that it is necessary or advisable in the commissioner's judgment to (i) meet the expenses of the department on account of foreign (other state) branch offices and facilities that are not otherwise provided for and (ii) provide a reasonable reserve for contingencies.

(B) If the commissioner finds that an industrial bank authorized to transact industrial banking business allocated any asset to a foreign (other state) branch office or facility for the purpose, in whole or in part, of reducing its annual assessment, the commissioner may, for purposes of calculating the annual assessment on the industrial bank, reallocate the asset to the industrial bank's head office.

(d) The base assessment rate for each annual assessment shall be fixed by the commissioner but shall not exceed two dollars and twenty cents ($2.20) per one thousand dollars ($1,000) of total assets.

Article 2. Industrial Bank Business

1540. Each industrial bank shall be an insured bank at all times while it is engaged in the industrial banking business.

1541. Subject to any order or regulation of the commissioner, an industrial bank may accept deposits evidenced by a deposit account or by certificates, that are redeemable prior to their stated maturity, but may not accept demand deposits.

1542. In addition to other provisions of this division that are otherwise applicable to an industrial bank, the following provisions of this division apply to the industrial bank as if it were a California state commercial bank:

(a) Chapter 4 (commencing with Section 1070).

(b) Chapter 4.5 (commencing with Section 1090).

~~(b)~~

(c) Chapter 5 (commencing with Section 1100).

(d) Chapter 8 (commencing with Section 1280).

~~(c)~~

(e) Chapter 10 (commencing with Section 1320).

~~(d)~~

(f) Chapter 11 (commencing with Section 1380).

~~(e)~~

(g) Chapter 12 (commencing with Section 1400).

~~(f)~~

(h) Chapter 13 (commencing with Section 1450).

~~(g)~~

(i) Chapter 14 (commencing with Section 1460).

~~(h)~~

(j) Chapter 16 (commencing with Section 1550).

~~(i)~~

(k) Chapter 17 (commencing with Section 1620).

(l) Chapter 18 (commencing with Section 1660).

(m) Chapter 19 (commencing with Section 1670).

~~(j)~~

(n) Chapter 5 (commencing with Section 500) of Division 1.

~~(k) Chapter 6 (commencing with Section 530) of Division 1.~~
~~(*l*) Chapter 7~~
(o) Chapter 6 (commencing with Section 550) of Division 1.
~~(m) Chapter 8 (commencing with Section 1280) of Division 1.~~
~~(n) Chapter 18 (commencing with Section 1660) of Division 1.~~
~~(o) Chapter 19 (commencing with Section 1670) of Division 1.~~
(p) Division 1.6 (commencing with Section 4800).

Chapter 16. Trust Companies

Article 1. General Provisions

1550. No corporation shall engage in the trust business unless:
(a) Its articles comply with the requirements of subdivision (b), (d), or (e) of Section 1100; and
(b) It has received from the commissioner a certificate of authority pursuant to Section 1042 to engage in the trust business, or, if it is a bank, has received the authorization of the commissioner to engage in the trust business; and
(c) It has deposited with the State Treasurer money or securities in compliance with Article 3 (commencing with Section 1570) of this chapter.

1551. Any commercial bank or industrial bank, with the prior authorization of the commissioner, may engage in the trust business, if its articles comply with the requirements of subdivision (b) of Section 1100. Any bank so authorized shall, in the conduct of its trust business, comply with and be governed by all of the provisions of this chapter, except the provisions of Section 1580. An application for such authorization shall be in such form and contain such information as the commissioner may require, and be accompanied by a fee of one thousand dollars ($1,000).

1552. No California state bank may engage in trust business at a place unless the place is its head office, an authorized branch office, or an authorized place of business.

1553. The following persons are exempt from Section 1550:
(a) Any natural person serving as trustee of one or more trusts where at least one trustor is a family member of that trustee. For purposes of this section, “family member” means any lineal ancestor, lineal descendant, person having a common lineal ancestor of not more than four generations distant, spouse,

father-in-law, mother-in-law, sister-in-law, brother-in-law, stepparent, or stepchild.

(b) Any member of the State Bar, as specified in Section 6002 of the Business and Professions Code, any certified public accountant, as defined in Section 5033 of the Business and Professions Code, and any professional corporation of one or more members of the State Bar or certified public accountants, where these professionals are acting as trustee of a trust established by them for their respective clients, provided that the member of the State Bar, certified public accountant, or professional corporation engages in no advertising for trust business in this state.

(c) Subject to all applicable limitations and restrictions in law for nonprofit corporations, any nonprofit corporation acting as trustee incidental to the purposes for which it was organized.

(d) Any person appointed as receiver, trustee, or other fiduciary by a court of competent jurisdiction acting pursuant to that authority.

(e) Any person licensed as a professional fiduciary pursuant to Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.

1554. In this section, "subject national banking association" means a national banking association that (a) maintains its main office or a branch office in this state, (b) is authorized to transact a trust business, and (c) has complied with the requirements of Article 3 (commencing with Section 1570) of this chapter and of all other laws of this state relating to the deposit of securities for the protection of court and private trusts. A subject national banking association may engage in and conduct a trust business and may be appointed by any court to act in any fiduciary capacity in which a trust company is authorized to act. All acts provided in this code to be performed by the commissioner, the State Treasurer, or other public officials for or in respect to the deposit of securities by trust companies, shall be performed for subject national banking associations equally with trust companies. Every subject national banking association shall be permitted to use the word "trust" in its corporate name and to advertise its authority to engage in and conduct a trust business and to advertise for and solicit trust business in this state, notwithstanding any contrary provision in this division or in any other law. The commissioner shall have access to reports of examination made by the Comptroller of the

Currency insofar as they relate to the trust department of a subject national banking association. For purposes of Article 3 (commencing with Section 1570), the principal place of business of a national banking association that maintains its main office in another state of the United States and maintains a California branch office shall be deemed to be situated in the city where the California branch office is located or, if the national banking association maintains California branch offices in two or more cities, in the city with the largest population.

1555. No foreign corporation, other than a national banking association or a foreign (other state) state bank that is authorized to conduct a trust business in this state, shall have or exercise the powers of a trust company nor directly or indirectly transact or conduct in this state a trust business as defined in Section 115. However, a foreign corporation that is authorized by its articles to exercise trust powers may act as trustee for the following purposes:

(a) To deliver bonds and receive payments therefor.

(b) To deliver permanent bonds in exchange for temporary bonds of the same issue.

(c) To deliver refunding bonds in exchange for those of a prior issue or issues.

(d) To register bonds or to exchange registered bonds for coupon bonds or coupon bonds for registered bonds.

(e) To pay interest on the bonds, and take up and cancel coupons representing the interest payment.

(f) To redeem and cancel bonds when called for redemption or to pay and cancel bonds when due.

(g) To certify registered bonds for the purpose of exchanging registered bonds for coupon bonds.

A foreign corporation that is authorized by its articles to exercise trust powers may be appointed and may accept appointment and act as trustee under any mortgage, deed of trust, or other instrument securing bonds or other obligations issued or to be issued by any railroad corporation that owns a railroad operating in the State of California and extending into another state.

A foreign corporation exercising in this state the powers conferred by this section shall not establish or maintain directly or indirectly any branch office or agency in this state unless it has complied with all of the applicable provisions of Chapter 20

(commencing with Section 1750) or of Chapter 19 (commencing with Section 1670).

1556. Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligations of, loans made or arranged by, or forbearances of, any of the following that is authorized to engage in the trust business, when acting in its fiduciary capacity:

(a) Any California state bank.

(b) Any national bank that maintains its main office or a branch office in this state.

(c) Any foreign (other state) state bank that maintains a branch office in this state.

This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the Constitution.

This section does not exempt a bank authorized to transact a trust business or a subsidiary thereof from complying with all other laws and regulations governing the business in which the bank or subsidiary is engaged.

1557. The Legislature finds and declares that it is important to inform taxpayers that they may make voluntary contributions to certain funds or programs, as provided on the state income tax return. The Legislature further finds and declares that many taxpayers remain unaware of the voluntary contribution check-offs on the state income tax return. Therefore, it is the intent of the Legislature to encourage all persons who prepare state income tax returns to inform their clients in writing, prior to the completion of any tax return, that they may make a contribution to any voluntary contribution check-off on the state income tax return if they so choose.

Article 2. Fiduciary Activities

1560. It is the intent of the Legislature that the provisions of this article, insofar as they are contained in the regulations regarding fiduciary activities of national banks (Part 9 (commencing with Section 9.1) of Title 12 of the Code of Federal Regulations) of the Office of the Comptroller of the Currency, conform, and be interpreted by anyone construing the provisions

of this article to so conform, to those regulations, any rule or interpretation promulgated thereunder by the Office of the Comptroller of the Currency, and to any interpretation issued by an official or employee of the Office of the Comptroller of the Currency duly authorized to issue the interpretation.

1561. For purposes of Section 1562, the following terms have the following meanings:

(a) "Bank" means any of the following:

(1) A commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(2) A foreign (other state) bank that may establish a branch office in this state in accordance with Article 2 (commencing with Section 1680) of Chapter 19.

(b) "Fiduciary Regulations" means the regulations regarding fiduciary activities of national banks promulgated by the Office of the Comptroller of the Currency (Part 9 (commencing with Section 9.1) of Title 12 of the Code of Federal Regulations), as amended from time to time.

(c) "Affiliate" has the meaning set forth in Section 150 of the Corporations Code.

(d) "Applicable law" means the law of the state, another state, or other jurisdiction governing a bank's fiduciary relationships, any applicable federal laws governing those relationships, or any court order pertaining to those relationships.

(e) "Custodian under a uniform gifts to minors act" means a fiduciary relationship established pursuant to the California Uniform Transfers to Minors Act (Part 9 (commencing with 3900) of Division 4 of the Probate Code).

(f) "Fiduciary account" means an account administered by a bank acting in a fiduciary capacity.

(g) "Fiduciary capacity" means trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another; or any other similar capacity.

(h) "Fiduciary powers" means the powers granted a bank by virtue of its receipt of the authority to engage in trust business from the commissioner.

(i) "Guardian" means the guardian or conservator, by whatever name used by law, of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

(j) "Investment discretion" means, with respect to an account, the sole or shared authority, whether or not that authority is exercised, to determine what securities or other assets to purchase or sell on behalf of that account. A bank that delegates its authority over investments and a bank that receives delegated authority over investments shall both be deemed to have investment discretion.

(k) "Trust office" means an office of a bank, other than a main office, at which the bank engages in the trust business. A trust office that engages in core banking business, as defined in subdivision (b) of Section 1670, is considered a branch office of the bank.

(*l*) "Trust representative office" means a facility as defined in subdivision (c) of Section 1670.

1562. (a) Sections 9.4 to 9.6, inclusive, Sections 9.8 to 9.15, inclusive, and Sections 9.18 to 9.101, inclusive, of the Fiduciary Regulations in all of their particular, including footnotes, are hereby referred to, incorporated by reference into this article, and adopted.

(b) All references to the term "national bank" or "national banks" used in the Fiduciary Regulations shall mean "bank" or "banks" for purposes of this article.

Article 3. Deposits with State Treasurer

1570. Every trust company shall deposit with the State Treasurer money or securities of the character described in Section 1572 as security for its court and private trusts as follows:

(a) If the trust company's principal place of business is situated in a city the population of which does not exceed 100,000 persons, it shall deposit with the State Treasurer money or securities having a market value of at least fifty thousand dollars ($50,000) as security for the faithful performance and execution of all court trusts accepted by it, and money or securities having a market value of at least fifty thousand dollars ($50,000) as security for the faithful performance and execution of all private trusts accepted by it.

Whenever any such trust company receives trust funds or property, other than real property, from court trusts accepted by it to the amount of five hundred thousand dollars ($500,000), it shall forthwith give the commissioner written notice thereof, and within 30 days thereafter shall make an additional deposit with the State Treasurer of money or securities having a market value of fifty thousand dollars ($50,000) as security for its court trusts, and money or securities having a market value of fifty thousand dollars ($50,000) as additional security for its private trusts.

(b) If the trust company's principal place of business is situated in a city the population of which exceeds 100,000 persons, it shall deposit with the State Treasurer money or securities having a market value of at least one hundred thousand dollars ($100,000) as security for the faithful performance and execution of all court trusts accepted by it, and money or securities having a market value of at least one hundred thousand dollars ($100,000) as security for the faithful performance and execution of all private trusts accepted by it.

1571. Whenever any trust company receives trust funds or property, other than real property, from court trusts accepted by it to the amount of one million dollars ($1,000,000), it shall forthwith give the commissioner written notice thereof, and within 30 days thereafter shall make an additional deposit with the State Treasurer of money or securities having a market value of fifty thousand dollars ($50,000). For each additional five hundred thousand dollars ($500,000) of such trust funds thereafter received by any trust company from court trusts a similar notification in writing shall forthwith be given to the commissioner and a further deposit of money or securities having a market value of twenty-five thousand dollars ($25,000) shall be made within 30 days thereafter by such trust company with the State Treasurer until money or securities having a market value of five hundred thousand dollars ($500,000) have been so deposited.

1572. Security deposited with the Treasurer by trust companies pursuant to Section 1570 or 1571 shall consist of the following:

(a) Bonds or other interest-bearing notes or obligations of the United States or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds of the State of California or those for which the faith and credit of the State of California are pledged for the payment

of principal and interest or in registered warrants of the State of California.

(c) Obligations and securities of the type described in subdivisions (a) to (g), inclusive, of Section 1510.

(d) Obligations and assets of the type described in subdivisions (a) to (c), inclusive, of Section 1511.

(e) Loans secured by a first lien on real property and otherwise complying with the provisions of subdivision (a) of Section 1486.

(f) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the International Finance Corporation, or the African Development Bank.

1573. Such money or securities shall be approved by the commissioner and be deposited with the Treasurer upon the written order of the commissioner. Upon receiving any such deposit the Treasurer shall give his or her receipt therefor and thereafter subject to the provisions of this chapter shall hold such deposits for the sole benefit of the beneficiaries of the class of trust business for the security and protection of which the same were deposited. The state is responsible for the custody and safe return of any money or securities so deposited. The Treasurer shall deposit any such moneys under the provisions of Sections 16370 to 16375 of the Government Code.

1574. Securities deposited pursuant to this article may be exchanged from time to time, with the approval of the commissioner, for other like securities of equal market value. Upon written request to the commissioner, any trust company shall be entitled to withdraw from the Treasurer, from time to time, any amount of its securities so deposited in excess of the amount it is required to maintain on deposit in order to conform with the requirements of this article. Upon receiving a written request for such withdrawal or exchange, and satisfactory proof of the facts warranting the same, the commissioner shall forthwith deliver to the Treasurer a written order directing the withdrawal or exchange of such securities so as to conform with the provisions of this section. The Treasurer shall comply with such written order. So long as the trust company so depositing such securities shall continue solvent, it shall have the right and shall be permitted by

the Treasurer to receive the interest and dividends on any securities deposited by it.

1575. Should any security deposited pursuant to this article so depreciate in value as to reduce the deposit below the amount required by this article, additional money or securities shall be deposited promptly in amount sufficient to meet such requirements. The commissioner may make an investigation of the value of any security deposited pursuant to this article, at the time such security is presented for deposit or at any time thereafter, whenever in his judgment such investigation is necessary. The commissioner may make such charge as may be reasonable and proper for such investigation.

1576. When any revaluation of securities is made by the commissioner pursuant to Section 1575, other than at the time such securities are presented for deposit, United States Government securities having a maturity date less than five years from the date of such revaluation shall be valued at not less than par.

1577. The money and securities deposited pursuant to this article shall be subject to sale and the same or the proceeds thereof shall be subject to disposal by the State Treasurer only on the order of a court of competent jurisdiction and for the benefit respectively of the beneficiaries of that class of trust business for the security and protection of which the securities were deposited.

1578. The commissioner may, pursuant to Section 329, levy a civil penalty against any trust company that fails to comply with this article.

Article 4. Investments

1580. A trust company may invest its contributed capital only in the securities and properties in which a commercial bank is permitted to invest its funds pursuant to Sections 800 to 819, inclusive, and in loans on real property which commercial banks are permitted to make pursuant to Article 3 (commencing with Section 1480) of Chapter 14.

1581. Trust funds received by any trust company in connection with its trust business, if invested, shall be invested as provided in Part 4 (commencing with Section 16000) of Division 9 of the Probate Code.

1582. (a) As used in this section:

(1) "Fund" means any investment company registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), as amended from time to time.

(2) "Trust" means any court trust or private trust.

(3) "Trust Law" means Division 9 (commencing with Section 15000) of the Probate Code.

(b) Within the standards established by trust law, including, but not limited to, Division 9 (commencing with Section 15000) of the Probate Code, a trust company acting in any capacity under a trust may, in the exercise of its investment discretion unless the trust instrument provides expressly to the contrary, invest and reinvest in the securities of or other interests in any fund to which the trust company or its affiliate is providing services including, but not limited to, services as an investment adviser, sponsor, distributor, custodian, agent, registrar, administrator, servicer, or manager, and for which the trust company or its affiliate receives compensation.

(c) Before or within 30 days after the initial investment upon the exercise of discretionary powers authorized by subdivision (b), the trust company, acting in any capacity under a trust, shall furnish written notice of the exercise of the discretionary powers and a copy of the prospectus relating to the securities to all persons to whom the trust company is required to render statements of account pursuant to applicable provisions of the Trust Law or to whom the trust company regularly provides a statement of account unless specifically waived in writing.

(d) With respect to any trust so invested, the trust company shall disclose to all persons identified in subdivision (c), at least annually by prospectus, statement of account, or other written notice, a brief description of the fees or rates charged by the trust company and its affiliates for its services as investment adviser or investment manager to the fund.

(e) In connection with an investment or reinvestment authorized by subdivision (b), the portion of compensation a trust company receives from the trust reasonably attributable to investment advisory or investment management services to the trust shall be reduced (but not below zero) by an amount equal to compensation that is received by the trust company or its affiliates for providing investment advisory or investment management services to the fund for the portion of the trust invested in the fund.

1583. Any trust company or bank authorized to engage in the trust business holding trust funds awaiting investment or distribution may deposit or leave on deposit such funds with any state or national bank. Such funds shall not, however, be deposited or left with the same corporation or association depositing or leaving on deposit such funds or with any corporation or association holding or owning a majority of the capital stock of the trust company or bank making or leaving such deposit, unless such corporation or association shall first pledge, as security for such deposit, securities eligible for investment by savings banks having a market value of not less than the funds so deposited. No security shall be required with respect to any part of such deposits which is insured under the provisions of any law of the United States.

1584. Any trust company acting in any capacity under a court or private trust or when acting in such capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating such trust contains a provision to the contrary, may, with the consent of such cofiduciary or cofiduciaries cause any stock or other securities held in any such capacity to be registered in the name of a nominee or nominees of such trust company and any trust company when acting as depositary or custodian for the trustee of any other court or private trust, unless the instrument creating the trust contains a provision to the contrary, may, with the consent of the trustee of such other trust, cause any stock or other securities held by it in such capacity to be registered in the name of a nominee or nominees of such trust company. Any such trust company shall be liable for any loss occasioned by the acts of any nominee of such trust company with respect to such stock or other securities so registered. The records of such trust company shall at all times show the ownership of any such stock or other securities and of those held in bearer form. Such stock or other securities and those held in bearer form shall at all times be kept by such trust company separate and apart from its other assets and may be kept by such trust company:

(a) In a manner such that all certificates representing the stock or other securities from time to time constituting the assets of a particular estate, trust or other fiduciary account are held separate from those of all other estates, trusts or accounts; or

(b) In a manner such that, without certification as to ownership attached, certificates representing stock or other securities of the same class of the same issuer and from time to time constituting assets of particular estates, trusts or other fiduciary accounts are held in bulk, including, to the extent feasible, the merging of certificates of small denomination into one or more certificates of large denomination, provided that a trust company, when operating under the method of safekeeping security certificates described in this subdivision, shall be subject to such rules and regulations as, in the case of state chartered institutions, the commissioner and, in the case of national bank associations, the Comptroller of the Currency, may from time to time issue. Such trust company shall, on demand by any party to an accounting by such trust company as fiduciary or on demand by the attorney for such party, certify in writing the stock or other securities held by such trust company as such fiduciary for such party.

No domestic or foreign corporation or the registrar or transfer agent of any such corporation shall be liable for registering or causing to be registered on the books of such corporation any share or shares or other securities in the name of any nominee of such trust company or for transferring or causing to be transferred on the books of any such corporation any share or shares or other securities theretofore registered by such corporation in the name of any nominee of such trust company as herein provided when the transfer is made upon the authorization of such nominee.

1585. (a) For purposes of this section, two or more trust companies shall be deemed to be affiliated if they are members of the same affiliated group, within the meaning of Section 1504 of the Internal Revenue Code.

(b) Any trust company may establish and administer common trust funds composed of property permitted by law for the investment of trust funds, for the purpose of furnishing investments to any one or more of the following: (1) itself, as fiduciary; (2) itself and others, as cofiduciaries; (3) any affiliated trust company including, without limitation, any foreign (other state) affiliated trust company, as fiduciary; and (4) any affiliated trust company including, without limitation, any foreign (other state) affiliated trust company and others, as cofiduciaries. Any trust company may as such fiduciary or cofiduciary invest funds which it lawfully holds for investment in interests in common trust funds

administered by itself or by any affiliated trust company including, without limitation, any foreign (other state) affiliated trust company, if such investment is not prohibited by the instrument, judgment, decree, order, or statute creating or governing such fiduciary relationship, and if, in the case of cofiduciaries, the trust company procures the consent of its cofiduciaries to such investment.

(c) Each common trust fund established hereunder shall be treated as an entity separate and distinct from the fiduciary relationships participating therein. No fiduciary in administering a participating fiduciary relationship shall be required to make any apportionment or allocation between the principal and income of this relationship different from that made for the common trust fund. No participating fiduciary relationship, nor any person having an interest in that relationship, shall have or be deemed to have any ownership in any particular property of the common trust fund, but each participating fiduciary relationship shall have a proportionate undivided interest in the fund and its income, and the ownership of all property of the common trust fund shall be in the trustee of the fund.

(d) This section shall apply to fiduciary relationships now in existence or hereafter established, whether the same be revocable or irrevocable. The commissioner, at his or her direction, may make an examination of any common trust fund established hereunder at the times and to the extent as he or she may deem advisable. The provisions of the Corporate Securities Law shall not apply to the creation, administration, or termination of common trust funds, nor to participation therein.

1586. With regard to any participation certificates heretofore issued by any trust company, secured by a trust deed or mortgage, the full legal title in the deed or mortgage and debt (referred to in this section as “security”) shall be held by the trust company issuing the certificates as trustee of an express trust, with all powers necessary to extend, renew, enforce, collect, and liquidate the same, acquire title to the property covered thereby either through foreclosure or by voluntary conveyance; manage, lease, sell (either for cash or upon deferred payments), exchange, or otherwise realize upon the security or property and distribute the net proceeds thereof. All sums so realized shall, as and when received by such trustee, after payment of its compensation and all costs, charges,

and expenses, including brokers' commissions and advances for taxes and assessments, incurred or made in connection with the protection, administration, and liquidation of the security or property, be distributed to the trusts or persons who are beneficiaries of the trust, as their interests may appear therein. The rights and interests therein of any such beneficiary failing to contribute on demand its or his pro rata of sums advanced, expended, or required by the trust company in the protection, administration, or liquidation of the trust shall be subject to a lien for all sums, with legal interest thereon advanced, expended, or required for any of such purposes by the trustee or by any other beneficiary of the trust.

The trust in such security or property shall continue in the trust company so long as any of the certificates are outstanding, irrespective of any distribution of the certificates from the trust in which the same are held.

The purpose of this section is to define and clarify the rights and obligations of trust companies and of all persons and trusts interested in participation certificates issued under any authority of law.

Article 5. Miscellaneous

1600. A trust company has the following powers:

(a) It may act, or may be appointed by any court to act, in like manner as an individual, as executor, administrator, guardian or conservator of estates, assignee, receiver, depositary, trustee, custodian, or in any other fiduciary or representative capacity for any purpose permitted by law, may act as transfer agent or registrar of corporate stocks and bonds, may buy and sell securities for the account of customers, and may accept and execute any trust business permitted by any law of this or any other state or of the United States to be taken, accepted, or executed by an individual; and

(b) A trust company, upon becoming a member of the Federal Reserve System, shall continue to have such powers as may then or thereafter be conferred upon it by the laws of this State, subject to such federal rules, regulations, and laws as may govern state banks exercising trust powers or trust companies which become members of the Federal Reserve System.

1601. For the purposes of this chapter, all trusts and other business permitted to be accepted or executed by a trust company are hereby classified and defined as either court trusts or private trusts.

A "court trust" is one in which a trust company acts under appointment, order, or decree of any court, as executor, administrator, guardian, conservator, assignee, receiver, depositary, or trustee, or in which it receives on deposit money or property from a public administrator, under any provision of this code, or from any executor, administrator, guardian, assignee, receiver, depositary, or trustee, under any order or decree of any court.

A "private trust" is every other trust, agency, fiduciary relationship, or representative capacity.

1602. A trust company, its officers and employees, shall not disclose any information to any person concerning the existence, condition, management, and administration of any private trust confided to it, except:

(a) Where such disclosure is specifically authorized by the terms of the trust.

(b) Where such disclosure is determined by an officer of the trust company to be necessary in the administration of such trust.

(c) Where such disclosure is required by a court of competent jurisdiction or by a subpoena issued by an attorney pursuant to Section 1985 of the Code of Civil Procedure.

(d) Where such disclosure is made to, or upon the instructions of, any party executing the trust instrument.

(e) Where such disclosure refers to an irrevocable trust, to, or upon the instructions of, any beneficiary thereunder whether or not presently entitled to receive benefits therefrom.

(f) Where such disclosure is made to the commissioner in the course of an examination.

1603. The commissioner shall examine the court trust business of a trust company at least once every 24 months and shall examine the private trust business at such times and to such extent as he or she may deem necessary or advisable.

1604. In making the reports to the commissioner required by this division, every trust company shall report, in addition to the other facts called for, separately, the amount of real property and the amount of personal property held by such trust company in both its court trusts and in its private trusts.

1605. Any court having jurisdiction of any executor, administrator, guardian, conservator, assignee, receiver, depositary, or trustee, upon the application of any such officer or trustee or upon the application of any person having an interest in the estate or property administered by such officer or trustee, after such notice to the other parties in interest as the court may direct, or without notice if all parties in interest consent thereto, and after a hearing upon such application, may authorize or direct such officer or trustee, whether such person has duly qualified or not, to deposit any moneys then in his hands or which may come into his hands thereafter, and such portion or all of the personal assets of such estate as the court shall deem proper for safekeeping, with any such trust company. Upon such deposit being made the court shall by an order of record reduce the bond to be given, or theretofore given, by such officer or trustee so as to cover only the estate remaining in the hands of such officer or trustee. The money and property so deposited shall thereupon and thereafter be held by such trust company under the order and direction of the court.

Such trust company shall not be required to give any bond or security, except as provided in this division, in case of any deposit of moneys or other personal assets with it under this section. Its responsibility for the safekeeping of personal assets so deposited with it shall be that of a bailee for hire.

1606. Securities held by a trust company by direction of any court order issued pursuant to Section 1605 may be deposited in a securities depository, as defined in Section 30004, which is licensed under Section 30200 or exempted from licensing thereunder by Section 30005 or 30006.

1607. Whenever an executor, administrator, guardian or conservator of estates, assignee, receiver, depositary, or trustee is required to qualify by taking and subscribing an oath or to make an affidavit, any trust company acting in any such capacity may satisfy such requirement by the oath or affidavit of its president, vice president, secretary, assistant secretary, manager, trust officer, or assistant trust officer. Any such trust company shall be liable for its failure to perform any of the duties required by law to be performed by an individual acting in like capacity and shall be subject to the same penalties for such failure as would be applicable to an individual.

1608. Whenever any corporation desires to withdraw from and discontinue doing a trust business, it shall furnish to the commissioner satisfactory evidence of its release and discharge from all the obligations and trusts which it has assumed or which have been imposed on it by law. Thereupon the commissioner shall revoke his or her certificate of authority to do a trust business, and the State Treasurer shall return to it all of the securities deposited by it. Thereafter such corporation shall not be permitted to use and shall not use the word "trust" in its corporate name, or in connection with its business.

1609. The validity or legality of any act or proceeding done or taken by any trust company, relating to or in connection with the administration of its court and private trusts, shall not be affected or impaired by the neglect or failure of such trust company, or of any officer or employee thereof, to comply with any of the provisions of this division. All such acts and proceedings done or taken prior to the revocation of its certificate of authority to do a trust business by the commissioner, under the provisions of this division, or the revocation by any court or judge thereof of the appointment, order, or decree theretofore entered in such trust matter, shall be as valid and effective for all purposes as if any such neglect or failure had not occurred.

1610. Nothing in this chapter shall make it unlawful for any person or corporation to engage in the business of receiving and holding money in escrow or of acting as trustee under deeds of trust given solely for the purpose of securing obligations for the repayment of money other than corporate bonds.

1611. A bank or trust company shall not mingle trust funds received by it with other assets of the corporation or association and such funds shall not be used in the conduct of its business except to the extent that such funds are deposited with the same corporation or association in accordance with the provisions of this division. Any officer of any bank or association who knowingly violates or consents to the violation of this section is guilty of a felony.

1612. Notwithstanding any other provision of law, any bank and any trust company holding securities in a fiduciary capacity or while engaged in a trust business, or while acting in any capacity under a court or private trust, or while acting in that capacity with one or more persons as cofiduciary or cofiduciaries, unless the

instrument creating the trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit of the securities in a securities depository, as defined in Section 30004, which is licensed under Section 30200 or exempted from licensing thereunder by Section 30005 or 30006. When securities are so deposited, they may be held in the custody of the securities depository in which they are deposited or in the custody of any other securities depository so licensed or exempted and in which the securities depository in which the securities were deposited maintains an account, or in the custody of any bank or trust company with authority to accept custody of the securities, that accepts custody of the securities on behalf of a securities depository. The securities may be held in the name of the nominee of the securities depository in which they are deposited, or in the name of the nominee of any other securities depository with which the securities depository in which they are deposited maintains an account. The custodian of securities so deposited may merge certificates representing securities of the same class of the same issuer and may hold those certificates in bulk with any other securities deposited in any securities depository by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. Any bank or trust company that deposits or arranges for the deposit of the securities in a securities depository shall maintain records that at all times show the ownership of the deposited securities. A bank or trust company depositing securities pursuant to this section shall be subject to such rules and regulations as in the case of state chartered institutions, the commissioner and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. This section shall apply to securities now held or hereafter held by a bank or trust company in the above designated capacities. A bank or trust company may, but shall not be required to, own capital stock of a securities depository in which it deposits securities pursuant to this section.

1613. Notwithstanding any other provision of law, any bank and any trust company holding securities in a fiduciary capacity or while engaged in a trust business, or while acting in any capacity under a court or private trust, or while acting in that capacity with one or more persons as cofiduciary or cofiduciaries, unless the

instrument creating the trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit with a federal reserve bank of any such securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. Any bank or trust company that deposits or arranges for the deposit of securities pursuant to this section shall maintain records that at all times show the ownership of the securities deposited. A bank or trust company depositing securities pursuant to this section shall be subject to such rules and regulations as in the case of state-chartered institutions, the commissioner and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of the federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company pursuant to this section for the account of the fiduciary. A fiduciary shall, on demand by any party to its accounting, certify in writing to that party the securities deposited for its account as a fiduciary pursuant to this section. This section shall apply to all fiduciaries and custodians for fiduciaries, acting on the effective date of this section or who thereafter may act regardless of the state of the instrument or court order by which they are appointed.

Chapter 17. Safe Deposit

Article 1. General Provisions

1620. Notice to a bank operating a safety deposit department or to a company conducting a safety deposit business of an adverse claim (the person making the adverse claim being hereinafter in this section called “adverse claimant”) to any personal property in a safety deposit box maintained by a bank or company and rented to any person, or to any personal property held by the bank

or company in safekeeping or storage for any person shall be disregarded, and the bank or company, notwithstanding such notice, shall permit access to the box to the person to whom it is rented or shall deliver the contents thereof to or on the order of the person or shall deliver the property held in storage or safekeeping to or on the order of the person for whom it is held, without any liability on the part of the bank or company; subject, however, to the exceptions provided in subdivisions (a) and (b) of this section:

(a) If an adverse claimant delivers to the bank at the office at which the safety deposit is maintained or the property is held his affidavit stating that of his own knowledge the person in whose name the box stands or for whom the property is held is a fiduciary for the adverse claimant and that he has reason to believe such fiduciary is about to misappropriate the contents of the box or the property, and stating the facts upon which such claim of fiduciary relationship and such belief are founded, the bank or company shall refuse access to the safety deposit box or refuse to deliver the personal property for a period of not more than three (3) court days (including the day of delivery) from the date that the bank or company received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the bank or company at the office at which the safety deposit box is maintained or the property is held a restraining order, injunction, or other appropriate order against the bank or company from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names said box stands or for whom the property is held are parties, the bank or company shall comply with such order or injunction, without liability on its part.

(c) The provisions of this section shall be applicable even though the name of the person appearing on the bank's or company's books as the renter of the box or as the depositor of the property held in storage or safekeeping is modified by a qualifying or descriptive term such as "agent", "trustee", or other word or phrase indicating that the person may not be the owner in his own right of the contents of the box or of the property held in storage or safekeeping.

Before giving access to any safe-deposit box, the bank or company may demand payment to it of all costs and expenses of opening the safe-deposit box and all costs and expenses of repairing any damage to the safe-deposit box caused by the opening thereof.

Article 2. Remedies for Nonpayment of Rent

1630. Every bank conducting a safe-deposit business shall be entitled to the special remedies set forth in this article in enforcing the liabilities of safe-deposit box renters and of safekeeping and storage depositors.

1631. If the rental of any safe-deposit box is not paid within six months from the day it is due, the bank, or at any time thereafter and while such rental remains unpaid, may mail a notice to the person in whose name such box stands on its records stating that if the amount due for such rental is not paid on or before a specified day, which must be at least 30 days after the date of mailing such notice, the bank will cause such box to be forced open.

1632. At any time after the date specified in such notice, if the rental for such safe-deposit box to the date of payment and the cost of giving such notice have not been paid, the bank, in the presence of two of its employees, one of whom shall be an officer of the bank, may cause such box to be opened and the contents thereof to be removed and inventoried. The inventory shall be signed by such persons.

1633. The following persons, and no others, are entitled to receive from the bank a copy of the inventory:

(a) An executor of the decedent's will.

(b) The administrator of the decedent's estate.

(c) The attorney for the executor or administrator.

(d) A tenant of the safe-deposit box.

(e) Any heir of the decedent or beneficiary under the decedent's will.

(f) Any person whom the superior court having jurisdiction by order directs should be allowed to obtain a copy of the inventory.

1634. All contents removed from a safe-deposit box pursuant to Section 1632 shall be retained by the bank for at least two years unless sooner delivered to or on the order of the person in whose name such box stood on the records of the bank. The bank shall deliver the contents of such box to or on the order of the person

in whose name such box stood on its records, upon payment to it before such contents are sold or destroyed, of all rental due at the time of opening the box, the cost of giving notice, the charges for opening the box and for custody of the contents, and any other proper charges. The bank may deliver such contents on the order of the person in whose name such box stood on its records, irrespective of any information disclosed by the contents indicating ownership thereof by any other person.

1635. At any time after two years from the day when a safe-deposit box has been opened pursuant to this article, the bank may mail a notice to the person in whose name such box stood on its records, stating that unless the amounts due to the bank for rental, for the cost of mailing and publishing notice of sale, and for its charges for opening the box and for custody of its contents, and any other proper charges, giving the total amount thereof, are paid, the bank will offer for sale the contents thereof at a time and place named in such notice, which time shall be at least 30 days after the mailing thereof. If the amounts specified in such notice are not paid before the time of sale designated therein, the bank may sell all or any portion of the contents of such box, other than contents of the character described in Section 1668 and other than bonds and other securities which at the time of sale are listed on an established stock exchange in the United States, at public sale at the time and place given in such notice. Notice of the time and place of sale shall be published in a newspaper of general circulation in the county in which the sale is to be held once at least five days before the date of sale, or if no such newspaper is published in the county such notice shall be posted in three public places in the county at least five days before the date of sale. Such notice need describe the property only in general terms and as the unclaimed contents of a safe-deposit box. Such sale may be postponed from time to time by public pronouncement at the time and place of sale.

1636. Notwithstanding any of the provisions of this article, no stocks, bonds, or other securities which, at the time of sale pursuant to Section 1635, are listed on any established stock exchange in the United States may be sold at public sale but may be sold at any time thereafter through an established stock exchange.

1637. Upon the making of a sale of any securities, an officer of the bank shall execute and attach to the securities so sold an

affidavit reciting facts showing that such securities were sold pursuant to this article and that the provisions of this article governing such sale have been complied with. The affidavit shall be and constitute sufficient authority to any corporation whose stock is so sold or to any registrar or transfer agent of such corporation to cancel the certificates of stock so sold and to issue a new certificate or certificates representing such stock to the purchaser thereof, and to any registrar, trustee, or transfer agent of registered bonds or other securities, to register any such bonds or other securities in the name of the purchaser thereof.

1638. From the proceeds of any sale the bank shall deduct the amount set forth in such notice and any further charges which may have accrued since the mailing of the notice and shall record the balance of the proceeds, if any, on its books as a liability payable to the person in whose name the safe-deposit box was rented.

1639. Any documents, letters, or other articles found in a safe-deposit box opened pursuant to Section 1632, which in the judgment of at least two officers of the bank have no intrinsic or marketable value, need not be offered for sale. Any documents, letters, and articles and any other contents which have been offered for sale and for which no purchaser has been found, shall be retained by the bank for not less than one year from the date when the box was opened. At any time thereafter, unless sooner delivered to or on the order of the person in whose name the box stood on the records of the bank, the documents, letters, and articles and also those contents which have been offered for sale and for which no purchaser has been found, may be destroyed in the presence of an officer of the bank, but if no notice of intended sale of the contents of the box has been given pursuant to Section 1635, the bank shall mail a notice of its intention to destroy the documents, letters, and articles at least 30 days before the destruction of the same to the person in whose name the box stood on the records of the bank.

1640. If, before the effective date of this section, a bank or its predecessor in interest, has caused a safe-deposit box to be opened for nonpayment of rental, and the contents of such box or any part thereof remain in its custody, it shall be entitled to the special remedies in enforcing the liability of the former renter of such box as set forth in Sections 1634 to 1639, inclusive, whether or not such box was rented prior to October 1, 1949.

1641. Whenever a bank receives personal property for safekeeping or storage as bailee and issues a receipt therefor, the bank may enforce its lien as warehouseman in accordance with the provisions of the Uniform Commercial Code or at its option in the manner provided in Sections 1671 to 1673, inclusive, of this article.

1642. If the amount charged by a bank for the safekeeping or storage of personal property is not paid within six months from the day it is due, the bank, at any time thereafter and while such charges remain unpaid, may mail a notice to the person in whose name the receipt was issued, giving the amount then due for such safekeeping or storage and stating that unless such amount and any other charges accruing to the date of payment are paid, the bank will sell such personal property at a time and place named therein, which time shall be at least 30 days after the mailing of such notice. If the amount specified in such notice and all other charges of the bank and expenses of mailing and publishing notice of sale accruing to time of payment are not paid, the bank may sell all or any portion of such personal property at public sale at the time and place given in such notice. Notice of the time and place of sale shall be published once at least five days before the date of sale in a newspaper of general circulation published in the county in which the sale is to be held, or if no such newspaper is published in the county such notice shall be posted in three public places in the county at least five days before the date of sale. Such sale may be postponed from time to time by public pronouncement at the time and place of sale. The bank may include in the notice required to be mailed a statement to the effect that if the amount due at that time is not paid at least 10 days before the date set for the sale, it may cause any container in which any of such personal property may be, to be opened and the contents thereof to be sold at the time and place fixed for the sale with or without such container, or the container may be sold without the contents. If such statement is included in the notice, the bank, at any time within 10 days before the date fixed for the sale, may open any such container and remove the contents in the presence of two employees of the bank, one of whom shall be an officer thereof, both of whom shall make and sign an inventory of the contents. Thereafter, on the day fixed for the sale, the contents may be sold

as a whole or separately and with or without the container, or the container may be sold without the contents.

1643. From the proceeds of the sale, the bank shall deduct all charges as stated in the final notice, together with any further charges that have accrued since the mailing thereof, and reasonable expenses for notices, advertising, and sale, and shall credit the balance of the proceeds, if any, to an account in the name of the person in whose name the receipt for such personal property was issued.

1644. Any documents, letters, or other articles which, in the judgment of an officer of the bank, have no apparent intrinsic or marketable value, need not be offered for sale. The documents, letters, and articles and any other articles which have been offered for sale and for which no purchaser has been found, shall be retained by the bank for not less than one year from the date when notice of sale was mailed. At any time thereafter, unless sooner delivered to or on the order of the person in whose name the receipt was issued, the documents, letters and articles may be destroyed in the presence of an officer of the bank and of a notary public.

1645. The power conferred on a bank to sell the contents of a safe-deposit box or personal property received for safekeeping or storage for nonpayment of rental or other charges, includes power to sell any bonds, stock certificates, promissory notes, choses in action, or other securities, and any other tangible or intangible property found in such box or in the container in which such personal property was received for safekeeping or storage, regardless of whether it appears from such securities or property that the person in whose name the box stood or to whom the safekeeping or storage receipt was issued, possesses title to any interest in such securities or other property or power to transfer such title or interest.

1646. A bank holding a safe-deposit box originally rented from, or personal property against which a safekeeping or storage receipt was issued by, a predecessor in interest, or a bank holding the contents of such box, shall be entitled to the remedies as to such box or the contents thereof or as to the safekeeping or storage of such property in like manner and to the same extent as if such box had been rented from or such safekeeping or storage of personal property had been received by such bank in the first instance.

1647. The provisions of this article do not preclude any other remedy by action or otherwise now or hereafter existing for the enforcement of the claims of a bank against the person in whose name the safe-deposit box stood or stands, or in whose name the safekeeping or storage receipt was issued, nor bar the right of a bank to so recover, at its option, either the entire amount of the debt due to it without recourse to sale of the property, if any, or so much of the debt due to it as shall not have been paid by the proceeds of the sale of all or any portion of the property deposited with it.

1648. If the principal of, or interest or dividends on, any securities that have come into the possession of any bank by reason of action taken pursuant to this article, is due and payable at the time such securities come into the bank's possession, or thereafter while such securities remain in the possession of the bank, shall become due and payable, the bank at its election may collect such principal, interest, or dividends and from the proceeds thereof may deduct all sums then due to it from the person to whom such safe-deposit box was rented or to whom such safekeeping or storage receipt was issued. The remainder of the money so collected, if any, shall be credited by the bank to the account of the delinquent boxholder or of the person in whose name the safekeeping or storage receipt was issued.

1649. (a) Whenever this article requires that notice be sent to a person, and the box stood or stands on the records of the bank or the safekeeping or storage receipt was issued in the names of two or more persons, notice addressed to either or to any one of the two or more persons shall be binding upon and effective as to the remaining person or all remaining persons, and notice addressed to the name of any deceased individual shall be binding upon his or her legal representatives and on his or her heirs and legatees.

(b) Whenever this article requires that notice be published prior to a sale, the notice shall include the name and address of the person in whose name the safe-deposit box stood on the records of the bank or the safekeeping or storage receipt was issued. The names and addresses of all persons whose property is to be sold at the same time and place may be included in a single published notice.

(c) Whenever this article requires that an amount be credited to the account of a person in whose name a safe-deposit box stood

on the records of the bank or a safekeeping or storage receipt was issued, and the box stood or the receipt was issued in two or more names, the account shall be in both or all the names, subject to withdrawal by or upon the written order of any one or more of those persons, or by their successors or legal representatives.

(d) Whenever this article requires that a notice shall be mailed to the person in whose name the safe-deposit box stood on the records of the bank or a safekeeping or storage receipt was issued, the notice shall be deemed to have been so mailed if it is enclosed in a sealed envelope addressed to the person in whose name the safe-deposit box stood in the office of the bank at which the records of the safe-deposit box rentals are kept, or to the person in whose name the receipt was issued, as the case may be, addressed to the person at the address or place appearing on the safe-deposit or storage records of the office, and the envelope with postage prepaid has been deposited by at least first-class mail in the United States mail.

1650. Whenever an amount of safe-deposit rental, custody, safekeeping, or other charge is to be paid or deducted pursuant to this article, there shall be added to and paid or deducted with said amount, the amount of any tax imposed by laws and regulations.

1651. Any bank or trust company may receive bonds issued by the United States Government for safekeeping, collection, or storage, and shall receipt therefor to the depositor and shall maintain adequate records of all transactions therewith. In every case of such deposit the depositary bank shall have the right to return to the depositor either the identical bonds deposited by him or other bonds of the same issue, par value, and character.

Chapter 18. Interstate Acquisitions

1660. This chapter does not apply to any of the following transactions:

(a) An acquisition of control of a California state bank that requires the approval of the commissioner under Chapter 7 (commencing with Section 1250).

(b) A sale or merger that requires the approval of the commissioner under Division 1.6 (commencing with Section 4800).

1661. Each application filed with the commissioner for an approval under this chapter shall be in the form, shall contain the

information, shall be signed in the manner, and shall, if the commissioner requires by regulation or order, be verified in the manner that the commissioner may by regulation or order require.

1662. The fee for filing with the commissioner an application for an approval under this chapter is two thousand five hundred dollars ($2,500).

1663. (a) The definitions that are set forth in or are applicable to Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(d)) apply to this section.

(b) The commissioner may approve an acquisition by a bank holding company that is subject to Section 3(d)(2)(B) and (D)(ii) of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(d)(2)(B) and (D)(ii)) if the commissioner finds that the acquisition is consistent with the public convenience and advantage in this state.

1664. (a) The definitions that are set forth in or are applicable to Section 44 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u) apply to this section.

(b) This section does not apply if each bank involved in an interstate merger transaction (including each insured depository institution that is an affiliate of the surviving, resulting, or purchasing bank) that is organized under the laws of this state or that maintains a branch office in this state, is an industrial loan company (as defined in Section 4805.10).

(c) The commissioner may approve an interstate merger transaction that is subject to Section 44(b)(2)(B) and (D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(b)(2)(B) and (D)(ii)) if the commissioner finds that the transaction is consistent with the public convenience and advantage in this state.

Chapter 19. Foreign (Other State) Banks

Article 1. General Provisions

1670. In this chapter, unless the context otherwise requires:

(a) "Branch business unit" has the meaning set forth in subdivision (a) of Section 4840.

(b) "Core banking business" means the business of receiving deposits, paying checks, making loans, and other activities that the commissioner may specify by order or regulation. "Core

banking business," when used to describe the trust business, includes receiving fiduciary assets and administering fiduciary accounts.

(c) "Facility," when used with respect to a foreign (other state) bank, means an office in this state at which the bank engages in noncore banking business but at which it does not engage in core banking business.

(d) "Noncore banking business" means all activities permissible for commercial banks, industrial banks, or trust companies, except core banking business, and except those activities prohibited by law or determined by the commissioner by regulation or order not to be noncore banking business.

(e) "Whole business unit" has the meaning set forth in subdivision (g) of Section 4840.

1671. Each application filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner requires by regulation or order) be verified in the manner that the commissioner may by regulation or order require.

1672. (a) Each foreign (other state) bank that maintains a facility or a California branch office shall file with the commissioner such reports as and when the commissioner may by regulation or order require.

(b) Each report filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner requires by regulation or order) be verified in the manner that the commissioner may by regulation or order require.

1673. Each foreign (other state) bank that maintains a facility (other than a foreign (other state) national bank that maintains a California branch office) and each foreign (other state) state bank that maintains a California branch office shall make, keep, and preserve at the facility or branch office or at another place that the commissioner may by regulation or order approve, the books, accounts, and other records relating to the business of the office, in the form, in the manner, and for the time that the commissioner may by regulation or order provide.

1674. Fees shall be paid to and collected by the commissioner as follows:

(a) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank for approval to establish a facility is two hundred fifty dollars ($250).

(b) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank that is licensed pursuant to Article 4 (commencing with Section 1710) to maintain a facility for approval to relocate or to close the facility is one hundred dollars ($100).

(c) The fee for issuing a license pursuant to Article 4 (commencing with Section 3860) is twenty-five dollars ($25).

(d) Each foreign (other state) state bank that on June 1 of any year maintains one or more California branch offices shall pay, on or before the following July 1, a fee of one thousand dollars ($1,000) per California branch office. However, the minimum fee paid by a foreign (other state) state bank under this subdivision shall be not less than three thousand dollars ($3,000) and the maximum fee shall be not more than fifty thousand dollars ($50,000).

(e) Each foreign (other state) bank that on June 1 of any year maintains a facility but no California branch office shall pay, on or before the following July 1, a fee of two hundred fifty dollars ($250) for each facility.

(f) If the commissioner makes an examination in connection with a pending application, as described in subdivision (a) or (b), the applicant shall pay a fee for the examination of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(g) If the commissioner makes an examination of a foreign (other state) state bank that maintains a California branch office, the bank shall pay a fee for the examination of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(h) If the commissioner makes an examination of a facility of an uninsured foreign (other state) bank licensed under Article 4

(commencing with Section 1710), the bank shall pay a fee for the examination of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(i) If the commissioner makes an examination of a facility of an insured foreign (other state) bank that does not maintain a California branch office, the bank shall pay a fee for the examination of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

1675. (a) Any foreign (other state) state bank is exempted from the restrictions of Section 1 of Article XV of the California Constitution relating to rates of interest upon the loan or forbearance of any money, goods, or things in action or on accounts after demand.

(b) This section does not exempt a foreign (other state) state bank or any subsidiary from complying with all other laws and regulations governing the business in which the bank or subsidiary is engaged.

(c) This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution.

1676. (a) In this section, “subject bank” means a bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(b) Nothing in this chapter, except subdivision (c), applies to a subject bank that, as a foreign (other nation) bank, maintains an office in this state licensed under Chapter 20 (commencing with Section 1750) or a federal agency (as defined in Section 1750) or federal branch (as defined in Section 1750) in this state.

(c) No subject bank may at the same time maintain (1) as a foreign (other state) state bank, an office in this state and (2) as a foreign (other nation) bank, an office in this state licensed under Chapter 20 (commencing with Section 1750) or a federal agency

(as defined in Section 1750) or federal branch (as defined in Section 1750) in this state.

Article 2. California Branch Offices

1680. No foreign (other state) state bank may transact core banking business in this state except at a branch office established in accordance with federal law and the law of the domicile of the bank.

1681. Section 1680 does not prohibit:

(a) Any foreign (other state) state bank that does not maintain a California branch office from carrying on the activities described in subdivision (d) of Section 191 of the Corporations Code.

(b) Any foreign (other state) state bank that does not maintain a California branch office from making, in this state, loans secured by liens on real property located in this state.

(c) Any foreign (other state) state bank from having a California state bank as its agent pursuant to Chapter 6.5 (commencing with Section 800).

1682. No foreign (other state) bank may establish or maintain a California branch office unless it is qualified to transact intrastate business in this state under Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

1683. No foreign (other state) bank may establish or maintain a California branch office unless the bank is insured.

1684. (a) (1) No foreign (other state) bank may merge as the surviving corporation with a California bank, except that an insured foreign (other state) bank may do so in accordance with federal law, the law of the domicile of the foreign (other state) bank, this chapter, and Division 1.6 (commencing with Section 4800).

(2) No foreign (other state) bank may purchase the whole business unit of a California bank, except that an insured foreign (other state) bank may do so in accordance with federal law, the law of the domicile of the foreign (other state) bank, this chapter, and Division 1.6 (commencing with Section 4800).

(3) No foreign (other state) bank that does not already maintain a California branch office may establish or maintain a California branch office except in the manner described in paragraph (1) or (2) and in accordance with federal law, the law of the domicile of the foreign (other state) bank, and this chapter.

(b) This section constitutes:

(1) An election to permit early interstate merger transactions pursuant to Section 44(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(3)).

(2) An express prohibition against interstate branching through the acquisition of a branch business unit located in this state of a California bank (without acquisition of the whole business unit of the California bank) pursuant to Section 44(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(4)).

~~(3) An express prohibition against interstate branching through de novo establishment of California branch offices pursuant to Section 5155 of the Revised Statutes (12 U.S.C. Sec. 36) or Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1828(d)).~~

1685. (a) No foreign (other state) bank that does not already maintain a California branch office may:

(1) Merge as the surviving bank with a California bank pursuant to paragraph (1) of subdivision (a) of Section 1684, unless the California bank has been in existence for at least five years.

(2) Purchase the whole business unit of a California bank pursuant to paragraph (2) of subdivision (a) of Section 1684 unless the California bank has been in existence for at least five years.

(b) For purposes of this section, a California bank that is established solely for the purpose of, and does not open for business prior to, acquiring the whole business unit of a second California bank through a merger or purchase is deemed to have been in existence for the same period of time as the second California bank.

1686. The minimum age requirement set forth in Section 1685 does not apply in any case in which the factor set forth in subdivision (a) and any of the factors set forth in subdivision (b) apply.

(a) The foreign (other state) bank, by itself or in concurrent transactions with other depository corporations (as defined in Section 4805.06), acquires the whole business unit of the California bank or, if the California bank has been closed or placed in conservatorship, all or substantially all of the insured deposits of the California bank.

(b) (1) If the California bank is a national bank, one of the following:

(A) The bank is in default or in danger of default, as defined in Section 3(x) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(x)).

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(2) If the California bank is a state bank, one of the following:

(A) The commissioner has taken possession of the property and business of the bank pursuant to Section 592.

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(C) The commissioner finds that one or more of the factors listed in Section 592 exists and that imposing the minimum age requirement of Section 3825 is not in the public interest.

1687. (a) In case a foreign (other state) state bank that maintains a California branch office is a commercial bank, in addition to other provisions of this division and Division 1 (commencing with Section 99) that are otherwise applicable to the bank, the following provisions of this division apply to the bank with respect to its business in this state as if the bank were a California state commercial bank:

(1) Chapter 10 (commencing with Section 1320)

(2) Chapter 12 (commencing with Section 1400).

(3) Chapter 13 (commencing with Section 1450).

(4) Sections 1487, 1488, 1514, 1520, and 1522.

(5) Chapter 17 (commencing with Section 1620).

(b) In case a foreign (other state) state bank that maintains a California branch office is an industrial bank, in addition to other provisions of this division and Division 1 (commencing with Section 99) that are otherwise applicable to the bank, the provisions cited in paragraphs (1) to (7), inclusive, of subdivision (a) and the provisions of Chapter 15 (commencing with Section 1530) apply to the industrial bank with respect to its business in this state as if the bank were a California state industrial bank.

(c) In case a foreign (other state) state bank that maintains a California branch office is authorized pursuant to the law of its domicile to transact trust business, in addition to other provisions

of this division and Division 1 (commencing with Section 99) that are otherwise applicable to the bank, the following provisions of Chapter 16 (commencing with Section 1550) apply to the bank with respect to its business in this state as if the bank were a California state bank authorized to transact trust business:

(1) Article 3 (commencing with Section 1570). For purposes of Article 3 (commencing with Section 1570), the bank's principal place of business is deemed to be situated in the city in which its California branch office is located or, if it maintains California branch offices in two or more cities, in the city with the largest population.

(2) Article 4 (commencing with Section 1580), except Section 1580.

(3) Article 5 (commencing with Section 1600), except Sections 1583, 1584, 1585, 1588, and 1590.

(d) Subject to the provisions of subdivision (d), in case a foreign (other state) state bank that maintains a California branch office is authorized pursuant to the law of its domicile to transact trust business, the bank may engage in and conduct trust business in this state and may be appointed by any court to act in any fiduciary capacity in which a California state trust company is authorized to act.

(e) No foreign (other state) state bank that maintains a California branch office may transact at the branch office any business that it is not authorized to transact or is prohibited from transacting under the law of its domicile or that banks organized under the laws of this state are not authorized to transact or are prohibited from transacting.

(f) Whenever any provision of this chapter or of any regulation or order issued under this chapter that is applicable to or with respect to a foreign (other state) state bank that maintains a California branch office is inconsistent with any provision of any other chapter of this division, the former provision applies, and the latter provision does not apply.

1688. Notwithstanding Section 1684, a foreign (other state) bank that does not maintain offices in California may merge with or purchase the whole business unit of a foreign (other state) bank that already maintains one or more offices in California in accordance with Section 1684 pursuant to federal law and the law of the domicile of the surviving or purchasing bank. The surviving

or purchasing bank may retain the offices established in this state by the disappearing or selling bank. Thereafter, the surviving or purchasing bank may establish and maintain additional offices as if it were the disappearing or selling bank.

Article 3. Facilities of Insured Foreign (Other State) Banks

1700. No provision of this article applies to an insured foreign (other state) bank that maintains a California branch office.

1701. (a) No insured foreign (other state) bank may establish or maintain an office in this state at which it engages in noncore banking business unless the bank complies with this article and applicable provisions of Article 1 (commencing with Section 1670).

(b) (1) No person may establish or maintain an office in this state as representative of an insured foreign (other state) bank unless the bank complies with this article and applicable provisions of Article 1 (commencing with Section 1670).

(2) For purposes of this article, if any person establishes or maintains an office in this state as representative of an insured foreign (other state) bank, the insured foreign (other state) bank is deemed to establish and maintain the office as a facility.

1702. Not less than 30 days before an insured foreign (other state) bank establishes a facility, it shall file with the commissioner a report and the appointment called for in Section 3843.

1703. (a) Not less than 30 days before establishing a facility, an insured foreign (other state) bank shall file with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the bank's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility after the appointment has been filed, with the same force and validity as if served personally on the bank or its successors, as the case may be.

(b) Any insured foreign (other state) bank that maintains a facility and that has not filed with the commissioner an appointment pursuant to subdivision (a) is deemed by the maintenance of the facility to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial

or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility, with the same force and validity as if served personally on the bank or its successor, as the case may be.

(c) Service may be made on an uninsured foreign (other state) bank that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at any office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the bank served at the last address on file with the commissioner for any of the bank's offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making the service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

1704. Not less than 30 days before an insured foreign (other state) bank relocates a facility, it shall file a report with the commissioner.

1705. Not less than 30 days before an insured foreign (other state) bank closes a facility, it shall file a report with the commissioner.

Article 4. Facilities of Uninsured Foreign (Other State) Banks

1710. In this article, unless the context otherwise requires:

(a) "Controlling person," when used with respect to an uninsured foreign (other state) bank, means any person who directly or indirectly controls the bank. For purposes of this subdivision, "control" has the meaning set forth in subdivision (b) of Section 1250, and "person" has the meaning set forth in subdivision (d) of Section 1250.

(b) "Executive officer," when used with respect to an uninsured foreign (other state) bank or a controlling person of an uninsured foreign (other state) bank, means the chief executive officer, the chief operating officer, the chief financial officer, and any other person who participates or has authority to participate in major policymaking functions of the bank or controlling person.

(c) (1) "License" means a license issued under this article, authorizing an uninsured foreign (other state) bank to maintain a facility.

(2) "Licensed" means to be issued or to hold a license.

1711. (a) In this section, "act" includes (without limitation) omission.

(b) For purposes of making findings on an application by an uninsured foreign (other state) bank for approval to establish a facility:

(1) The commissioner may, in the absence of credible evidence to the contrary, presume that the directors, executive officers, and any controlling person of the bank, the directors and executive officers of any controlling person of the bank, and the members of the proposed management of the facility are each of good character and sound financial standing.

(2) The commissioner may find that the bank, a director, executive officer, or controlling person of the bank, a director or executive officer of a controlling person of the bank, or any member of the proposed management of the facility is not of good character if the person has done any of the following:

(A) Has been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty.

(B) Has consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty.

(C) Has consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty.

(D) Has willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any such application or report any material fact that was required to be stated in the application or report.

(E) Has willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(c) Paragraph (2) of subdivision (b) is not an exclusive list of the grounds upon which the commissioner may find, for purposes

of making findings on an application by an uninsured foreign (other state) bank for approval to establish a facility, that the bank, a director, executive officer, or controlling person of the bank, a director or executive officer of a controlling person of the bank, or any member of the proposed management of the facility is not of good character.

1712. (a) No uninsured foreign (other state) bank may establish or maintain an office in this state at which it engages in noncore banking business unless the uninsured foreign (other state) bank is licensed to maintain the office as a facility.

(b) (1) No person may establish or maintain an office in this state as representative of an uninsured foreign (other state) bank unless the uninsured foreign (other state) bank is licensed to maintain the office as a facility.

(2) For purposes of this article, if any person establishes or maintains an office in this state as representative of an uninsured foreign (other state) bank, the uninsured foreign (other state) bank is deemed to establish and maintain the office as a facility.

1713. (a) No uninsured foreign (other state) bank may establish or maintain a facility unless the commissioner has first approved the establishment of the office and issued a license authorizing the bank to maintain the office.

(b) If the commissioner finds all the following with respect to an application by an uninsured foreign (other state) bank for approval to establish a facility, the commissioner shall approve the application:

(1) The bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing.

(2) The financial history and condition of the bank are satisfactory.

(3) The management of the bank and the proposed management of the office are adequate.

(4) It is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in compliance with all applicable laws, regulations, and orders.

(5) The bank's establishment and maintenance of the office will promote the public convenience and advantage.

(6) The activities in which the bank proposes to engage at the office are noncore banking business and do not constitute core banking business.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by an uninsured foreign (other state) bank for approval to establish a facility has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.

1714. (a) No uninsured foreign (other state) bank that is licensed to maintain a facility may relocate the office unless the commissioner has first approved the relocation and issued a license authorizing the bank to maintain the office at the new site.

(b) If the commissioner finds the following with respect to an application by an uninsured foreign (other state) bank for approval to relocate a facility, the commissioner shall approve the application:

(1) In case the new site of the office is in the same vicinity as the old site, that the relocation of the office will not be substantially detrimental to the public convenience.

(2) In case the new site of the office is not in the same vicinity as the old site, both of the following:

(A) The relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area that is primarily served by the office at the old site.

(B) The relocation of the office to the new site will promote the public convenience and advantage.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by an uninsured foreign (other state) bank for approval to relocate a facility has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office at the new site have been fulfilled, the commissioner shall issue the license.

(d) Promptly after an uninsured foreign (other state) bank that is licensed to maintain a facility relocates the office, the bank shall surrender to the commissioner the license that authorized it to maintain the office at the old site.

1715. An uninsured foreign (other state) bank that is licensed to maintain a facility may, subject to any regulations that the commissioner may prescribe, engage in any noncore banking business at the office but may not solicit deposits, receive deposits, pay checks, make loans, or otherwise conduct core banking business at the office.

1716. (a) (1) No uninsured foreign (other state) bank that is licensed to maintain a facility may close the office unless the commissioner has first approved the closing.

(2) Paragraph (1) does not prohibit an uninsured foreign (other state) bank that is licensed to maintain a facility from closing the office in accordance with Section 1717.

(b) If the commissioner finds, with respect to an application by an uninsured foreign (other state) bank for approval to close a facility, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by an uninsured foreign (other state) bank for approval to close a facility has been approved and all conditions precedent to the closing have been fulfilled, the bank may close the office and shall promptly thereafter surrender to the commissioner the license that authorized it to maintain the office.

1717. (a) Any uninsured foreign (other state) bank that holds a license to maintain a facility may voluntarily surrender the license by filing the license and a report with the commissioner. However, any uninsured foreign (other state) bank that holds licenses to maintain two or more facilities may not voluntarily surrender fewer than all of the licenses.

(b) (1) Except as provided in paragraph (2), a voluntary surrender of a license is effective on the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner, or on any earlier date that the commissioner may by order specify.

(2) If a proceeding to revoke or suspend a license is pending when the license and the report called for in subdivision (a) are filed with the commissioner, or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner,

the voluntary surrender of the license is effective at the time and upon the conditions that the commissioner may by order specify.

1718. (a) (1) No uninsured foreign (other state) bank may be issued a license to maintain a facility unless it has first filed with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office as the bank's attorney to receive service of process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility after the appointment has been filed, with the same force and validity as if served personally on the bank or its successors, as the case may be.

(2) Any uninsured foreign (other state) bank that maintains a facility and that has not filed with the commissioner an appointment pursuant to paragraph (1) is deemed by the maintenance of the facility to have appointed the commissioner and the commissioner's successor from time to time in office as its attorney to receive service of any lawful process in a noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility with the same force and validity as if served personally on the bank or its successors, as the case may be.

(b) Service may be made on an uninsured foreign (other state) bank that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at an office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the bank served at the last address on file with the commissioner for any of its offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making the service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

1719. Each uninsured foreign (other state) bank that is licensed to maintain a facility shall assign to the office a popular name that includes the term "facility" and that consists of a specific

designation by name or number. The bank shall post the popular name and the name of the bank in a conspicuous place at the office.

1720. Each uninsured foreign (other state) bank that is licensed to maintain a facility shall post its license in a conspicuous place at the office.

1721. No license is transferable or assignable.

Chapter 20. Foreign (Other Nation) Banks

Article 1. General Provisions

1750. In this chapter, unless the context otherwise requires:

(a) "Agency" means a depositary agency or a nondepositary agency.

(b) "Branch office" means a limited branch office, a retail branch office, or a wholesale branch office.

(c) "Business in this state," when used with respect to a foreign (other nation) bank which is licensed to maintain one or more agencies or branch offices, includes (without limitation) the aggregate business of all the offices.

(d) "Controlling person," when used with respect to a foreign (other nation) bank, means any person who, directly or indirectly, controls the bank. For purposes of this subdivision, "control" has the meaning set forth in subdivision (b) of Section 1250, and "person" has the meaning set forth in subdivision (d) of Section 1250.

(e) "Depositary agency," when used with respect to a foreign (other nation) bank, means a place in this state at which the bank transacts commercial banking business but at which it does not transact the business of receiving deposits, except as permitted under paragraph (2) of subdivision (a) of Section 1805.

(f) "Executive officer," when used with respect to a foreign (other nation) bank or a controlling person of a foreign (other nation) bank, means the chief executive officer, the chief operating officer, the chief financial officer, and any other person who participates or has authority to participate in major policy-making functions of the bank or controlling person. "Executive officer," when used with respect to a foreign (other nation) bank, includes the head of the international division (or, if there is no such division, the closest equivalent division or unit) of such bank.

(g) "Federal agency" has the meaning set forth in Section 1(b) of the International Banking Act of 1978.

(h) "Federal branch" has the meaning set forth in Section 1(b) of the International Banking Act of 1978.

(i) (1) "License" means a license issued under this chapter, authorizing a foreign bank to maintain an office.

(2) To be "licensed" means to be issued or to hold a license.

(3) To be "licensed to transact business in this state," when used with respect to a foreign (other nation) bank, means that the bank is licensed to maintain an agency or branch office.

(j) "Limited branch office," when used with respect to a foreign (other nation) bank, means a place in this state at which the bank transacts commercial banking business but at which it does not transact the business of receiving deposits except as permitted under paragraph (3) of subdivision (a) of Section 1805.

(k) "Nondepositary agency," when used with respect to a foreign (other nation) bank, means a place in this state at which the bank transacts commercial banking business, except the business of receiving deposits.

(*l*) "Office," when used with respect to a foreign (other nation) bank, means any agency, branch office, or representative office of the bank.

(m) "Primary office," when used with respect to a foreign (other nation) bank that is licensed to maintain a single agency or branch office, means the agency or branch office and, when used with respect to a foreign (other nation) bank that is licensed to maintain two or more agencies or branch offices, means that one of the offices which the bank has designated as its primary office in accordance with Section 1766.

(n) "Representative office," when used with respect to a foreign (other nation) bank, means an office in this state at which the bank engages in representational functions but at which it does not transact commercial banking business.

(o) "Retail branch office," when used with respect to a foreign (other nation) bank, means a place in this state at which the bank transacts commercial banking business, including (without limitation) the business of receiving deposits.

(p) "Wholesale branch office," when used with respect to a foreign (other nation) bank, means a place in this state at which the bank transacts commercial banking business but at which it

does not transact the business of receiving deposits except as permitted under paragraph (4) of subdivision (a) of Section 1805.

1751. Nothing in this chapter, except Section 1760, applies to a federal agency or branch in this state.

1752. (a) In this section, "subject bank" means a bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(b) Nothing in this chapter, except subdivision (c), shall apply to a subject bank that maintains a branch office in this state as a foreign (other state) state bank pursuant to Chapter 19 (commencing with Section 1670), Section 13(f), 13(k), 18(d), or 44 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(f), 1823(k), 1828(d), or 1831u), or Section 9 of the Federal Reserve Act (12 U.S.C. Sec. 321).

(c) No subject bank shall at the same time maintain (1) as a foreign (other nation) bank, an office in this state licensed under this chapter and (2) as a foreign (other state) state bank, a branch office in this state pursuant to Chapter 19 (commencing with Section 1670), Section 13(f), 13(k), 18(d), or 44 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(f), 1823(k), 1828(d), or 1831u), or Section 9 of the Federal Reserve Act (12 U.S.C. Sec. 321).

1753. For purposes of this chapter, offices of foreign (other nation) banks are divided into classes and ranked in ascending order, as follows:

(a) Representative office.

(b) Nondepositary agency.

(c) Depositary agency.

(d) Limited branch office.

(e) Wholesale branch office.

(f) Retail branch office.

1754. (a) For purposes of this chapter:

(1) Changing a lower class office into a higher class office shall be treated as establishing the higher class office, but not as closing the lower class office.

(2) Changing a higher class office into a lower class office shall be treated as closing the higher class office, but not as establishing the lower class office.

(b) In the case of changing a higher class office into a lower class office, when the application for approval to close the higher class office has been approved and all conditions precedent to the closing have been fulfilled, the foreign (other nation) bank may change the higher class office into the lower class office, and the commissioner shall issue a license authorizing the bank to maintain the lower class office.

1755. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing with the commissioner an application by a foreign (other nation) bank that is not licensed to transact business in this state for approval to establish a branch office shall be two thousand dollars ($2,000).

(b) The fee for filing with the commissioner an application by a foreign (other nation) bank that is not licensed to transact business in this state for approval to establish an agency shall be one thousand five hundred dollars ($1,500).

(c) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to transact business in this state for approval to establish a branch office shall be one thousand dollars ($1,000).

(d) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to transact business in this state for approval to establish an agency shall be seven hundred fifty dollars ($750).

(e) The fee for filing with the commissioner an application by a foreign (other nation) bank for approval to establish a representative office shall be two hundred fifty dollars ($250).

(f) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to maintain an agency or branch office for approval to relocate or to close the office shall be two hundred fifty dollars ($250).

(g) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to maintain a representative office for approval to relocate or to close the representative office shall be one hundred dollars ($100).

(h) The fee for issuing a license shall be twenty-five dollars ($25).

(i) Each foreign (other nation) bank that on June 1st of any year is licensed to maintain a representative office but is not licensed

to transact business in this state shall pay, on or before the following July 1st, a fee of two hundred fifty dollars ($250) for each such representative office.

1756. Each application filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

1757. (a) In this section, "act" includes (without limitation) omission.

(b) For purposes of making findings on an application by a foreign (other nation) bank for approval to establish an office:

(1) The commissioner may, in the absence of credible evidence to the contrary, presume that the directors, executive officers, and any controlling person of the bank and the directors and executive officers of any controlling person of the bank are each of good character and sound financial standing.

(2) The commissioner may find that the bank, a director, executive officer, or a controlling person of the bank, or a director or executive officer of a controlling person of the bank is not of good character if that person has done any of the following:

(A) Has been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty.

(B) Has consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty.

(C) Has consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty.

(D) Has willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any application or report filed with the commissioner or in any proceeding before the commissioner, any material fact that was required to be stated therein.

(E) Has willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the

violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(c) Paragraph (2) of subdivision (b) shall not be deemed to be an exclusive list of the grounds upon which the commissioner may find, for purposes of making findings on an application by a foreign (other nation) bank for approval to establish an office, that the bank, a director, executive officer, or controlling person of the bank, or a director or executive officer of a controlling person of the bank is not of good character.

1758. (a) Each foreign (other nation) bank that is licensed to maintain an office shall file with the commissioner reports as and when the commissioner may, by regulation or order, require.

(b) Each report filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner so requires by regulation or order) be verified in the manner, that the commissioner may, by regulation or order, require.

1759. Each foreign (other nation) bank that is licensed to maintain an office shall make, keep, and preserve at the office or at another place that the commissioner may, by regulation or order, approve, the books, accounts, and other records relating to the business of the office, in the form, in the manner, and for the time that the commissioner may, by regulation or order, provide.

1760. (a) No foreign (other nation) bank which is licensed to maintain an agency or branch office shall concurrently maintain a federal agency or federal branch in this state.

(b) No foreign (other nation) bank which maintains a federal agency or federal branch in this state shall concurrently be licensed to maintain an agency or branch office in this state.

1761. (a) No foreign (other nation) bank shall concurrently be licensed to maintain offices of different classes.

(b) Subdivision (a) does not prohibit a foreign (other nation) bank that is licensed to maintain a representative office from being concurrently licensed to maintain an office of a different class or to prohibit a foreign (other nation) bank that is licensed to maintain an office other than a representative office from being concurrently licensed to maintain a representative office.

1762. (a) (1) No foreign (other nation) bank (other than a bank that is licensed to maintain an agency or branch office) shall

be issued a license to maintain a representative office unless it shall have first filed with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the bank's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the representative office after the appointment has been filed, with the same force and validity as if served personally on the bank or its successor, as the case may be.

(2) Any foreign (other nation) bank (other than a bank that is licensed to maintain an agency or branch office or that maintains a federal agency or federal branch in this state) that maintains a representative office and that has not filed with the commissioner an appointment pursuant to paragraph (1) shall be deemed by the maintenance of that office to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the representative office with the same force and validity as if served personally on the bank or its successor, as the case may be.

(b) (1) No foreign (other nation) bank shall be issued a license to maintain an agency or branch office unless it shall have first filed with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the bank's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises after the appointment has been filed, with the same force and validity as if served personally on the bank or its successor, as the case may be.

(2) Any foreign (other nation) bank that maintains an agency or branch office (other than a federal agency or federal branch) and that has not filed with the commissioner an appointment pursuant to paragraph (1) shall be deemed by the maintenance of that office to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its

successors with the same force and validity as if served personally on the bank or its successor, as the case may be.

(c) Service may be made on a foreign (other nation) bank that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at any office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the bank served at its last address on file with the commissioner at any of its offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

1763. No license shall be transferable or assignable.

1764. Each foreign (other nation) bank that is licensed to maintain an office shall post its license in a conspicuous place at the office.

1765. (a) Each foreign (other nation) bank that is licensed to maintain an office shall assign to the office a popular name that consists of a specific designation by name or number and shall post the popular name and the name of the bank in a conspicuous place at the office.

(b) The popular name that a foreign (other nation) bank assigns to a representative office that it is licensed to maintain shall include the term “representative office.”

(c) The popular name that a foreign (other nation) bank assigns to an agency that it is licensed to maintain shall not include the term “branch” unless the term is modified by the word “foreign” or “overseas” or by a similar word.

1766. Whenever a foreign (other nation) bank is licensed to maintain two or more agencies or branch offices, it shall designate one of such offices as its primary office.

1767. Each foreign (other nation) bank that is licensed to maintain an office shall conduct all of the business of the office in a single building or in adjoining buildings. However, for good cause and with the approval of the commissioner, the bank may

conduct part of the business of the office elsewhere in the same vicinity.

1768. Any foreign (other nation) bank that, at the time it makes a loan or forbearance or executes a contract therefor, has assets equal to at least one hundred million dollars ($100,000,000), is licensed to maintain an office in California, is licensed or otherwise authorized by another state of the United States to maintain an agency or branch office in that state, or maintains a federal agency or federal branch in any state of the United States is exempted from the restrictions of Section 1 of Article XV of the Constitution relating to rates of interest upon the loan or forbearance of any money, goods, or things in action or on accounts after demand.

This section does not exempt a foreign (other nation) bank or a subsidiary thereof from complying with all other laws and regulations governing the business in which such a bank or subsidiary is engaged.

This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the Constitution.

Article 2. Representative Offices

1780. (a) No foreign (other nation) bank shall establish or maintain an office in this state at which it engages in representational functions unless it is licensed to maintain a representative office, agency, or branch office at that place.

(b) (1) No person shall establish or maintain an office in this state as representative of a foreign (other nation) bank unless the bank is licensed to maintain the office as a representative office.

(2) For purposes of this chapter, if any person establishes or maintains an office in this state as representative of a foreign (other nation) bank, the bank shall be deemed to establish and maintain the office as a representative office.

(c) Neither subdivision (a) nor subdivision (b) shall be deemed to prohibit a foreign (other nation) bank that maintains a federal agency or federal branch in this state from establishing or maintaining one or more representative offices in this state.

1781. (a) (1) No foreign (other nation) bank shall establish or maintain a representative office unless the commissioner shall have first approved the establishment of the office and issued a license authorizing the bank to maintain the office.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank that maintains a federal agency or federal branch in this state from establishing or maintaining one or more representative offices in this state.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to establish a representative office, the commissioner shall approve the application:

(1) That the bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing.

(2) That the financial history and condition of the bank are satisfactory.

(3) That the management of the bank and the proposed management of the office are adequate.

(4) That it is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in compliance with all applicable laws, regulations, and orders.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to establish a representative office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.

1782. (a) No foreign (other nation) bank that is licensed to maintain a representative office shall relocate the office unless the commissioner shall have first approved the relocation and issued a license authorizing the bank to maintain the office at the new site.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to relocate a representative office, the commissioner shall approve the application:

(1) In case the new site of the office is in the same vicinity as the old site, that the relocation of the office will not be substantially detrimental to the public convenience and advantage; or

(2) In case the new site of the office is not in the same vicinity as the old site:

(A) That the relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area that is primarily served by the office at the old site; and

(B) That the relocation of the office to the new site will promote the public convenience and advantage.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to relocate a representative office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office at the new site have been fulfilled, the commissioner shall issue the license.

(d) Promptly after a foreign (other nation) bank that is licensed to maintain a representative office relocates the office, the bank shall surrender to the commissioner the license that authorized it to maintain the office at the old site.

1783. A foreign (other nation) bank that is licensed to maintain a representative office may, subject to any regulations that the commissioner may prescribe, engage in representational functions at the office but shall not solicit or accept deposits or otherwise transact business at the office.

1784. (a) (1) No foreign (other nation) bank that is licensed to maintain a representative office shall close the office unless the commissioner shall have first approved the closing.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank that is licensed to maintain a representative office from closing the office in accordance with Article 4 (commencing with Section 1825).

(b) If the commissioner finds, with respect to an application by a foreign (other nation) bank for approval to close a representative office, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to close a representative office has been approved and all conditions precedent to the closing have been fulfilled, the bank may close the office and shall promptly thereafter surrender

to the commissioner the license that authorized it to maintain the office.

Article 3. Agencies and Branch Offices

1800. (a) No foreign (other nation) bank shall transact business in this state except at an agency or branch office that it is licensed to maintain and at which it is permitted by this chapter to transact the business transacted.

(b) Subdivision (a) shall not be deemed to prohibit:

(1) Any foreign (other nation) bank that maintains a federal agency or federal branch in this state from transacting at the federal agency or federal branch any business that it may be authorized to transact under applicable federal laws and regulations;

(2) Any foreign (other nation) bank from carrying on the activities described in subdivision (d) of Section 191 of the Corporations Code;

(3) Any foreign (other nation) bank that does not maintain an agency or branch office from making in this state loans secured by liens on real property located in this state; or

(4) Any foreign (other nation) bank that does not maintain an agency or branch office from transacting trust business as permitted under Section 1555.

(c) For purposes of subdivision (a), no foreign (other nation) bank shall be deemed to be transacting business in this state merely because a majority-owned subsidiary transacts business in this state.

1801. No foreign (other nation) bank shall be licensed to maintain any agency or branch office unless it is qualified to transact intrastate business in this state under Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

1802. No foreign (other nation) bank shall be licensed to maintain a retail branch office unless the deposits in such office are insured by the Federal Deposit Insurance Corporation in accordance with the provisions of the Federal Deposit Insurance Act.

1803. (a) (1) No foreign (other nation) bank shall establish or maintain an agency or branch office unless the commissioner

shall have first approved the establishment of that office and issued a license authorizing the bank to maintain the office.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank from establishing or maintaining a federal agency or federal branch in this state.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to establish an agency or branch office, the commissioner shall approve the application:

(1) That the bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing.

(2) That the financial history and condition of the bank are satisfactory.

(3) That the management of the bank and the proposed management of the office are adequate.

(4) That it is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in a safe and sound manner and in compliance with all applicable laws, regulations, and orders.

(5) That the bank's plan to establish and to maintain the office affords reasonable promise of successful operation.

(6) That the bank's establishment and maintenance of the office will promote the public convenience and advantage.

(7) In case the office is to be a branch office, that the foreign nation where the bank is domiciled permits banks organized under the laws of this state and national banks headquartered in this state to establish and maintain in those foreign nation offices substantially equivalent to agencies, offices substantially equivalent to branch offices, or wholly (except for directors' qualifying shares) owned banks organized under the laws of the foreign nation.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to establish an agency or branch office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.

1804. (a) No foreign (other nation) bank which is licensed to maintain an agency or branch office shall relocate such office unless the commissioner shall have first approved such relocation and issued a license authorizing such bank to maintain the office at the new site.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to relocate any agency or branch office, the commissioner shall approve such application:

(1) In case the new site of the office is in the same vicinity as the old site:

(A) That it will not be unsafe or unsound for the bank to relocate the office; and

(B) That the relocation of the office will not be substantially detrimental to the public convenience and advantage, or that the relocation is necessary in the interests of the safety and soundness of the bank; or

(2) In case the new site of the office is not in the same vicinity as the old site:

(A) That the bank's plan to relocate the office and to maintain the office at the new site affords reasonable promise of successful operation;

(B) That the relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area which is primarily served by the office at the old site, or that the relocation is necessary in the interests of the safety and soundness of the bank; and

(C) That the relocation of the office to the new site will promote the public convenience and advantage.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to relocate an agency or branch office has been approved and all conditions precedent to the issuance of a license authorizing such bank to maintain such office at the new site have been fulfilled, the commissioner shall issue such license.

(d) Promptly after a foreign (other nation) bank which is licensed to maintain an agency or branch office relocates such office, such bank shall surrender to the commissioner the license which authorized it to maintain such office at the old site.

1805. (a) A foreign (other nation) bank that is licensed to maintain an agency or branch office may transact commercial banking business at the office, subject to the following:

(1) In case the office is a nondepositary agency, the bank shall not transact the business of accepting deposits.

(2) In case the office is a depositary agency, the bank shall not transact the business of accepting any deposits other than deposits of (A) a foreign nation, (B) an agency or instrumentality of a foreign nation, or (C) a person which resides, is domiciled, and maintains its principal place of business in a foreign nation. For purposes of this paragraph, "person" means any individual, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, limited liability company, or any other organization or any branch or division thereof.

(3) In case the office is a limited branch office, the bank shall not transact the business of accepting any deposits other than (A) deposits of the kind described in paragraph (2), or (B) deposits that a corporation organized under Section 25A of the Federal Reserve Act is permitted to accept.

(4) In case the office is a wholesale branch office, the bank shall not transact the business of accepting any deposits other than (A) deposits of the kind described in paragraph (2), (B) deposits of one hundred thousand dollars ($100,000) or more, or (C) deposits the acceptance of which the commissioner determines by regulation or order do not constitute engaging in domestic retail deposit activities requiring deposit insurance protection.

(5) In case the office is an agency, limited branch office, or wholesale branch office, the bank may, subject to any regulations that the commissioner may prescribe, maintain credit balances.

(6) In any case, the bank shall not transact any business that it is not authorized to transact or is prohibited from transacting under the law of its domicile or that commercial banks organized under the laws of this state are not authorized to transact or are prohibited from transacting.

(b) No foreign (other nation) bank that is licensed to maintain an agency or branch office shall transact any trust business at the office except as permitted under Section 1503.

1806. (a) In addition to other provisions of this division and Division 1 (commencing with Section 99) that are otherwise

applicable to or with respect to foreign (other nation) banks licensed to maintain nondepositary agencies, the following provisions of this division shall apply to or with respect to each foreign (other nation) bank licensed to maintain a nondepositary agency with respect to its business in this state as if the bank were a commercial bank organized under the laws of this state:

(1) Article 6 (commencing with Section 405) of Chapter 3 of Division 1.

(2) Chapter 6 (commencing with Section 550) of Division 1.

(3) Chapter 7 (commencing with Section 600) of Division 1.

(4) Chapter 4.5 (commencing with Section 1090).

~~(2)~~

(5) Chapter 17 (commencing with Section 1620).

~~(3) Chapter 6 (commencing with Section 530) of Division 1.~~

~~(4) Chapter 7 (commencing with Section 550) of Division 1.~~

~~(5) Chapter 8 (commencing with Section 660) of Division 1.~~

(6) Chapter 19 (commencing with Section 1620).

(b) In addition to other provisions of this division and Division 1 (commencing with Section 99) which are otherwise applicable to or with respect to foreign (other nation) banks licensed to maintain depositary agencies or branch offices, the following provisions of this division and Division 1 (commencing with Section 99) shall apply to or with respect to each foreign (other nation) bank licensed to maintain a depositary agency or branch office with respect to its business in this state as if the bank were a commercial bank organized under the laws of this state:

(1) Article 6 (commencing with Section 405) of Chapter 3 of Division 1.

(2) Chapter 6 (commencing with Section 550) of Division 1.

(3) Chapter 7 (commencing with Section 600) of Division 1.

(4) Chapter 4.5 (commencing with Section 1090).

~~(2)~~

(5) Chapter 10 (commencing with Section 1320).

~~(3)~~

(6) Chapter 12 (commencing with Section 1400).

~~(4)~~

(7) Chapter 13 (commencing with Section 1450).

~~(5)~~

(8) Chapter 14 (commencing with Section 1460).

~~(6)~~

(9) Chapter 17 (commencing with Section 1630).

~~(7) Chapter 6 (commencing with Section 530) of Division 1.~~

~~(8) Chapter 7 (commencing with Section 550) of Division 1.~~

~~(9) Chapter 8 (commencing with Section 660) of Division 1.~~

(10) Chapter 19 (commencing with Section 1670).

(11) Section 1864 and Article 2 (commencing with Section 1900), Article 3 (commencing with Section 1905), and Article 4 (commencing with Section 1910) of Chapter 21.

(c) Whenever any provision of this chapter or of any regulation or order issued under this chapter that is applicable to or with respect to foreign (other nation) banks licensed to transact business in this state is inconsistent with any provision of any other chapter of this division and Division 1 (commencing with Section 99) that is applicable to or with respect to foreign (other nation) banks licensed to transact business in this state, the former provision shall apply, and the latter provision shall not apply.

(d) (1) Whenever any provision of this division (other than the provisions of this chapter) and Division 1 (commencing with Section 99) is applicable to or with respect to foreign (other nation) banks licensed to transact business in this state, the provision shall be applied with any changes in points of detail as may be necessary or appropriate.

(2) Without limiting the provisions of paragraph (1), for purposes of any provision of this division (other than the provisions of this chapter) and Division 1 (commencing with Section 99) that is applicable to or with respect to a foreign (other nation) bank licensed to transact business in this state:

(A) "Approved by (or approval of) the board" means approved or ratified by the board of the bank, by a committee of the board authorized to exercise the powers of the board with respect to the particular matter, or by an officer of the bank who is assigned to the head office of the bank and who has authority over the bank's business in this state, including authority to approve or ratify the particular matter.

(B) "Head office" means the primary office of the bank.

(C) "Shareholders' equity" means the shareholders' equity of the bank or, if the bank has no shareholders' equity, the closest equivalent account or accounts.

(e) Whenever any provision of this division (other than the provisions of this chapter) and Division 1 (commencing with

Section 99) that is applicable to or with respect to a foreign (other nation) bank licensed to transact business in this state limits the amount of any assets or liabilities of the bank (including, by way of example, the amount of borrowings of, obligations to, or investments of the bank), for purposes of calculating the amount of the assets or liabilities, only the assets or liabilities of the agencies or branch offices of the bank shall be included, and the assets and liabilities of offices of the bank outside this state shall be excluded.

1807. (a) Whenever the commissioner calls for a report under Section 453 from commercial banks organized under the laws of this state, the commissioner shall call for a report from each foreign (other nation) bank that is licensed to transact business in this state.

(b) (1) A foreign (other nation) bank that is licensed to transact business in this state shall prominently display in the lobby of each agency and branch office, except an automated teller machine branch office (as defined in Section 1330), a notice that any person may obtain a financial report from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a financial report. The bank shall, promptly after receiving a request for a financial report, mail or otherwise furnish the financial report to the requester. The first financial report shall be provided without charge.

(2) The financial report called for in this subdivision shall contain either (A) the information that the commissioner may require by regulation or (B) in the absence of a regulation, the last balance sheet and income statement, each without any schedules, that the bank filed with the commissioner pursuant to Section 453.

1808. Each foreign (other nation) bank which is licensed to maintain a depositary agency, limited branch office, or wholesale branch office shall, in accordance with such regulations as the commissioner may prescribe, give notice that deposits in such office are not insured by the Federal Deposit Insurance Corporation.

1809. (a) In case a foreign (other nation) bank is licensed to maintain a depositary agency or branch office and such office is not subject to the regulations of the Depository Institutions Deregulation Committee, Regulation Q of the Board of Governors of the Federal Reserve System, or Part 329 of the regulations of the Federal Deposit Insurance Corporation, such bank shall, with

respect to deposits accepted at the office, comply with such regulations regarding maximum interest rates on deposits, prepayment of time deposits, and related matters as the commissioner may prescribe as being necessary and appropriate to maintain competitive equality between foreign (other nation) banks and banks organized under the laws of this state which are subject to the regulations of the Depository Institutions Deregulation Committee, Regulation Q of the Board of Governors of the Federal Reserve System, or Part 329 of the regulations of the Federal Deposit Insurance Corporation.

(b) For purposes of, and notwithstanding any contrary provisions of, Chapter 3.5 (commencing with Section 11340), Part 1 of Division 3 of Title 2 of the Government Code, whenever the commissioner adopts a regulation or order of repeal of a regulation under subdivision (a), the commissioner may, without describing specific facts showing the need for immediate action, find that adoption of such regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, and such regulation or order of repeal shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

1810. (a) Each foreign (other nation) bank which is licensed to transact business in this state shall keep the assets of such business separate and apart from the assets of its business outside this state.

(b) The creditors of the business in this state of a foreign (other nation) bank which is licensed to transact business in this state shall be entitled to priority over other creditors with respect to the assets of such bank's business in this state.

1811. (a) In this section:

(1) "Adjusted liabilities," when used with respect to a foreign (other nation) bank, means the liabilities of such bank's business in this state, excluding (A) accrued expenses, (B) any liability to an office (whether in or outside of this state) or majority-owned subsidiary of the bank, and (C) such other liabilities as the commissioner may by regulation or order exclude.

(2) "Applicable minimum," when used with respect to eligible assets deposited or to be deposited with an approved depository by a foreign (other nation) bank, means such amount as the commissioner may from time to time by regulation or order

determine to be necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the bank's business in this state, or for the protection of the public interest. However, in the case of a foreign (other nation) bank which is licensed to maintain a branch office, the applicable minimum shall in no event be less than 1 percent of the adjusted liabilities of such bank.

(3) "Approved depository," when used with respect to a foreign (other nation) bank, means a bank organized under the laws of this state or a national bank headquartered in this state which has been selected by such foreign (other nation) bank and approved by the commissioner for the purpose of acting as the approved depository of the foreign (other nation) bank and which has filed with the commissioner, in such form as the commissioner may by regulation or order prescribe, an agreement to comply with all applicable provisions of this section and of any regulation or order issued under this section.

(4) "Eligible assets" when used with respect to a foreign (other nation) bank, means any of the following:

(A) Cash.

(B) Any security of the type described in Section 1572.

(C) Any negotiable certificate of deposit which (i) has a maturity of not more than one year, (ii) is payable in the United States, and (iii) is issued by a bank organized under the laws of a state of the United States, by a national bank, or by a branch office of a foreign (other nation) bank which is located in the United States.

(D) Any commercial paper which is payable in the United States and which is rated P-1 or its equivalent by a nationally recognized rating service; provided, however, that any conflict in rating shall be resolved in favor of the lower rating.

(E) Any banker's acceptance which is payable in the United States and which is eligible for discount with a Federal Reserve bank.

(F) Any other asset which the commissioner by regulation or order determines to be eligible.

Notwithstanding the foregoing provisions of this paragraph, "eligible asset," when used with respect to a foreign (other nation) bank, does not include any instrument the issuer of which (i) is, or is affiliated with, such foreign (other nation) bank, (ii) is domiciled in, or controlled by a bank or other person domiciled

in, the same foreign nation as the foreign (other nation) bank, or (iii) is, or is controlled by, such foreign nation. For purposes of the foregoing provision, to be "affiliated" means to control, to be controlled by, or to be under common control with; and to "control" has the meaning set forth in subdivision (b) of Section 1250.

(b) For purposes of this section:

(1) The amount of adjusted liabilities of a foreign (other nation) bank's business in this state shall be computed for such period, in such manner, and on such basis as the commissioner may by regulation or order prescribe.

(2) Any eligible asset shall be valued at the lesser of market or par.

(c) (1) Before any foreign (other nation) bank is licensed to transact business in this state, such bank shall deposit, and each foreign (other nation) bank which is licensed to transact business in this state shall maintain on deposit, with an approved depository eligible assets having a value in an amount not less than the applicable minimum.

(2) Whenever a foreign (other nation) bank which is licensed to transact business in this state ceases to be so licensed, such bank shall thereafter maintain on deposit with an approved depository eligible assets having a value in an amount not less than the applicable minimum for such period of time as the commissioner may determine to be necessary for the protection of creditors of the bank's business in this state or for the protection of the public interest.

(d) (1) No foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section shall withdraw any such eligible assets except with the prior approval of the commissioner.

(2) No approved depository which holds eligible assets on deposit from a foreign (other nation) bank pursuant to this section shall release any such eligible assets except with the prior approval of the commissioner or as otherwise provided in subdivision (h).

(e) Any foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section shall, unless the commissioner shall have suspended or revoked its license to transact business in this state or taken possession of its property and business in this state, be entitled to receive any income paid on such eligible assets.

(f) (1) Whenever a foreign (other nation) bank deposits eligible assets with, or withdraws eligible assets from, an approved depository pursuant to this section, such bank shall do so in accordance with such procedures and requirements as the commissioner may by regulation or order prescribe.

(2) Whenever an approved depository receives, holds, or releases eligible assets pursuant to this section, such approved depository shall do so in accordance with such procedures and requirements as the commissioner may by regulation or order prescribe and shall file with the commissioner such reports as and when the commissioner may by regulation or order require.

(g) Whenever a foreign (other nation) bank maintains eligible assets on deposit with an approved depository pursuant to this section:

(1) The eligible assets shall be deemed to be pledged to the commissioner for the benefit of the creditors of the bank's business in this state; and, notwithstanding any provision of the Uniform Commercial Code to the contrary, the commissioner, for the benefit of such creditors, shall be deemed to have a security interest in such eligible assets.

(2) The eligible assets shall be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the approved depository against the bank.

(h) (1) In case the commissioner takes possession of the property and business of a foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section, such approved depository shall, upon order of the commissioner, release such eligible assets to the commissioner, as liquidator of the property and business of such bank.

(2) In case a foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section fails to pay any judgment creditor of its business in this state and the commissioner has not taken possession of the property and business of such bank, such approved depository shall release such eligible assets to the commissioner, and the commissioner shall make such disposition of the eligible assets, as a court of competent jurisdiction of this state or of the United States may order for the benefit of such judgment creditor. For purposes of this paragraph, "judgment creditor of its business in this state"

means a person to whom the bank is required to pay money under a judgment which (A) arose out of the bank's business in this state, (B) has been entered by a court of this state or of the United States, (C) has become final, in that all possibility of direct attack on such judgment by way of appeal, motion for new trial, motion to vacate, or petition for extraordinary writ has been exhausted, and (D) has remained unpaid for a period of not less than 60 days after becoming final.

1812. (a) In this section:

(1) "Adjusted liabilities," when used with respect to a foreign (other nation) bank which is licensed to maintain a branch office in this state, means the liabilities of such bank's business in this state, excluding (A) accrued expenses, (B) any liability to an office (whether in or outside of this state) or majority-owned subsidiary of the bank, and (C) such other liabilities as the commissioner may by regulation or order exclude.

(2) "Eligible assets" means any asset which the commissioner by regulation or order determines to be eligible for purposes of this section. However, "eligible asset," when used with respect to a foreign (other nation) bank which is licensed to maintain a branch office, includes (A) any asset which such bank maintains on deposit pursuant to Section ~~1761~~ *1811* and (B) any reserves which the bank maintains with respect to its business in this state in accordance with requirements prescribed by the Board of Governors of the Federal Reserve System.

(b) For purposes of this section, the amount of eligible assets and the amount of adjusted liabilities of a foreign (other nation) bank which is licensed to maintain a branch office in this state shall each be computed for such period, in such manner, and on such basis as the commissioner may by regulation or order prescribe.

(c) A foreign (other nation) bank licensed to maintain a branch office in this state shall hold at its branch offices in this state or at such other places as the commissioner may approve, eligible assets in such amount, if any, as the commissioner may from time to time by regulation or order determine to be necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the bank's business in this state, or for the protection of the public interest. However, in no event shall such

amount exceed 108 percent of the adjusted liabilities of the bank's business in this state.

(d) If the commissioner finds, with respect to a foreign (other nation) bank licensed to maintain a branch office in this state, that such action is necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of such bank's business in this state, or for the protection of the public interest, the commissioner may order the bank to place all or part of the eligible assets which the bank is required to hold under subdivision (c) in the custody of such bank organized under the laws of this state or such national bank headquartered in this state as the commissioner may designate.

1813. (a) (1) No foreign (other nation) bank which is licensed to maintain an agency or branch office shall close such office unless the commissioner shall have first approved such closing.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank which is licensed to maintain an agency or branch office from closing such office in accordance with Article 4 (commencing with Section 1825).

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to close an agency or branch office, the commissioner shall approve such application:

(1) That it will not be unsafe or unsound for the bank to close the office; and

(2) That the closing of the office will not be substantially detrimental to the public convenience and advantage or that the closing of the office is necessary in the interests of the safety and soundness of the bank.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to close an agency or branch office has been approved and all conditions precedent to such closing have been fulfilled, such bank may close such office and shall promptly thereafter surrender to the commissioner the license which authorized it to maintain the office.

Article 4. Voluntary Surrender of License

1825. (a) Any foreign (other nation) bank that holds a license to maintain an office may voluntarily surrender the license by filing the license and a report with the commissioner. However, any foreign (other nation) bank that holds licenses to maintain two or more offices may not voluntarily surrender less than all of the licenses.

(b) (1) Except as otherwise provided in paragraph (2), a voluntary surrender of a license shall be effective on the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner or on an earlier date as the commissioner may by order specify.

(2) If a proceeding to revoke or suspend a license is pending at the time when the license and the report called for in subdivision (a) are filed with the commissioner or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner, the voluntary surrender of the license shall become effective at the time and upon the conditions that the commissioner may by order specify.

Article 5. Enforcement

1830. If the commissioner finds that any person has violated any provision of this chapter or of any regulation or order issued under this chapter, the commissioner may order the person to pay to the commissioner a civil penalty imposed pursuant to Section 329.

1831. If, after notice and a hearing, the commissioner finds any of the following with respect to a foreign (other nation) bank that is licensed to maintain an office, the commissioner may issue an order suspending or revoking the license of the bank:

(a) That the bank has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law, regulation, or order;

(b) That the bank, in case it is licensed to transact business in this state, is transacting the business in an unsafe or unsound

manner or, in any case, is transacting business elsewhere in an unsafe or unsound manner;

(c) That the bank is in unsafe or unsound condition;

(d) That the bank has ceased to operate its office;

(e) That the bank is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities exceed its assets;

(f) That the bank has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That the bank is the subject of an order for relief in bankruptcy or has sought other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against the bank and the bank has by any affirmative act approved of or consented to the action or the relief has been granted;

(h) That a receiver, liquidator, or conservator has been appointed for the bank or that any proceeding for such an appointment or any similar proceeding has been initiated in the place where the bank is domiciled;

(i) That the existence of the bank or the authority of the bank to transact banking business under the laws of the place where the bank is domiciled has been suspended or terminated; or

(j) That any fact or condition exists that, if it had existed at the time when the bank applied for its license to transact business in this state, would have been grounds for denying the application.

1832. (a) If the commissioner finds that any of the factors set forth in Section 1831 is true with respect to any foreign (other nation) bank that is licensed to maintain an office and that it is necessary, in case the bank is licensed to transact business in this state, for the protection of the interests of creditors of the bank's business in this state or, in any case, for the protection of the public interest that the commissioner immediately suspend or revoke the license of the bank, the commissioner may issue an order suspending or revoking the license of the bank.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the foreign (other nation) bank to which the order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence the hearing within 15 business days after the application is filed with

the commissioner (or within any longer period to which the bank consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any foreign (other nation) bank to which an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the bank to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

1833. Any foreign (other nation) bank whose license to maintain an office is suspended or revoked shall immediately surrender the license to the commissioner.

1834. (a) Any foreign (other nation) bank to which an order is issued under Section 1831 or 1832 may apply to the commissioner to modify or rescind such order. The commissioner shall not grant the application unless he or she finds that it is in the public interest to do so and that it is reasonable to believe that the bank will, if and when it is again licensed to maintain an office, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any foreign (other nation) bank to which an order is issued under Section 1831 or 1832 to petition for judicial review of the order shall not be affected by the failure of the bank to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

1835. (a) If the commissioner finds that any of the factors set forth in Section 1781 is true with respect to any foreign (other nation) bank which is licensed to transact business in this state and that it is necessary for the protection of the interests of the creditors of such bank's business in this state or for the protection of the public interest that he or she take immediate possession of the property and business of the bank, the commissioner may by order forthwith take possession of the property and business of the bank and retain possession until the bank resumes business in this state or is finally liquidated. The bank may, with the consent of the commissioner, resume business in this state upon such conditions as the commissioner may prescribe.

(b) (1) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), such bank may, within 10 days, apply to the

superior court in the county in which the primary office of the bank is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss such application or enjoin the commissioner from further proceedings and order him or her to surrender the property and business of the bank to the bank or make such further order as may be just.

(2) The judgment of the court may be appealed by the commissioner or by the bank in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. In case the commissioner appeals the judgment of the court, such appeal shall operate as a stay of the judgment, and the commissioner shall not be required to post any bond.

(c) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of such bank pursuant Chapter ~~7~~ *6* (commencing with Section 550) and Chapter ~~8~~ *7* (commencing with Section 600) of Division 1, and the provisions of such chapters (except Sections 592, 593, and 690) shall apply as if the bank were a bank organized under the laws of this state.

(d) When the commissioner has completed the liquidation of the property and business of a foreign (other nation) bank, the commissioner shall transfer any remaining assets to such bank in accordance with such orders as the court may issue. However, in case the bank has an office in another state of the United States which is in liquidation and the assets of such office appear to be insufficient to pay in full the creditors of the office, the court shall order the commissioner to transfer to the liquidator of the office such amount of any such remaining assets as appears to be necessary to cover such insufficiency; if there are two or more such offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of such offices in such manner as the court finds equitable.

Chapter 21. International and Foreign Banking and Financing

Article 1. International and Foreign Banking and Financing Corporations

1850. As used in this article, unless the context otherwise requires, "corporation" means a corporation organized under the laws of this state for the purpose of transacting business pursuant to this article.

1851. The provisions of Chapter 1 (commencing with Section 99) of Division 1 applicable to, or with respect to, banks shall apply to, or with respect to, as the case may be, corporations.

1852. When authorized by the previous written consent of the commissioner as provided by Chapter 3 (commencing with Section 1040) one or more persons may organize a corporation.

1853. The articles of a corporation shall provide that the purpose of the corporation is to engage in the business of international and foreign banking and other international and foreign financial operations, the business of banking and other financial operations in any dependency or insular possession of the United States, and any other lawful activities which are not, by applicable laws or regulations, prohibited to a corporation transacting business under this article.

1854. The articles of incorporation shall be submitted to the commissioner for his or her approval before they are filed with the Secretary of State pursuant to the Corporations Code. After the articles have been filed with the Secretary of State the corporation shall file with the commissioner a copy thereof, certified by the Secretary of State, and, after the organization meeting of the directors, a copy of its bylaws certified by its secretary.

1855. Each corporation shall have power, under such rules and regulations as the commissioner may prescribe:

(a) To purchase, sell, discount, and negotiate, with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, securities, including the obligations of the United States or of any state thereof

but not including shares of stock in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to such limitations and restrictions as the commissioner may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the commissioner may prescribe; to receive deposits outside of the United States and to receive only such deposits in this state or in any other state of the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies or insular possessions of the United States.

(b) Generally, to exercise such powers as are incidental to the powers conferred by this article or as may be usual, in the determination of the commissioner, in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies, or possessions in which it shall transact business and not inconsistent with the power specifically granted herein. Nothing contained in this article shall be construed to prohibit the commissioner, under his or her power to prescribe rules and regulations, from limiting the aggregate amount of liabilities of any or all classes incurred by the corporation and outstanding at any one time.

(c) To establish and maintain for the transaction of its business branches or agencies in foreign countries, their dependencies or colonies, and in any state of the United States, and in the dependencies or insular possessions of the United States, at such places as may be approved by the commissioner and under such rules and regulations as he or she may prescribe, including any state of the United States, or countries or dependencies not specified in the original organization certificate.

(d) With the consent of the commissioner to purchase and hold stock or other certificates of ownership in any other corporation organized under the laws of this state for the purpose of transacting business pursuant to this article, or under the laws of the United States, or under the laws of any foreign country or a colony of dependency thereof, or under the laws of any state, dependency or insular possession of the United States but not engaged in the general business of buying or selling goods, wares, merchandise, or commodities in the United States, and not transacting any

business in the United States except such as in the judgment of the commissioner may be incidental to its international or foreign business.

1856. Except with the approval of the commissioner, no corporation shall invest in any one corporation an amount in excess of 10 per centum of its own shareholders' equity, except in a corporation engaged in the business of banking, when 15 per centum of its shareholders' equity may be so invested.

1857. No corporation shall purchase, own, or hold stock or certificates of ownership in any other corporation organized under this article or under the laws of any state which is in substantial competition therewith, or which holds stock or certificates of ownership in corporations which are in substantial competition with the purchasing corporation.

1858. Nothing contained in this article shall prevent corporations from purchasing and holding stock in any corporation where such purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired in corporations shall within six months from such purchase be sold or disposed of at public or private sale unless the time to so dispose of same is extended by the commissioner as provided by Section ~~1333~~ *1511*.

1859. No corporation shall carry on any part of its business in the United States except such as, in the judgment of the commissioner, shall be incidental to its international or foreign business. Except such as is incidental and preliminary to its organization no corporation shall exercise any of the powers conferred by this article until it has been duly authorized by the commissioner to commence business under the provisions of this article.

1860. No corporation shall engage in commerce or trade in commodities except as specifically provided in this article, nor shall it either directly or indirectly control or fix or attempt to control or fix the price of any such commodities. The license of any corporation violating this section shall be subject to forfeiture as provided in this article.

1861. It shall be unlawful for any director, officer, agent, or employee of any corporation to use or to conspire to use the credit, the funds, or the power of the corporation to fix or control the price of any commodities, and any person violating this section shall be

punished by a fine of not less than two thousand dollars ($2,000) nor more than ten thousand dollars ($10,000), imprisonment in a county jail for not more than one year, imprisonment in the state prison, or by both that fine and imprisonment, in the discretion of the court.

1862. No corporation shall be organized without adequate shareholders' equity.

1863. The provisions of Chapter 5 (commencing with Section 1100) (except the provisions of Section 1121) applicable to, or with respect to, banks shall apply to, or with respect to, as the case may be, corporations.

1864. Any bank may invest in the shares of any corporation organized under the provisions of this article, but the aggregate amount of stock held in all corporations engaged in business of the kind described in this chapter shall not exceed 10 percent of the subscribing bank's shareholders' equity.

1865. (a) In this section, "foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. "Foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating.

(b) Except as otherwise provided in subdivision (c), a majority of the shares of the capital stock of any corporation shall at all times be held and owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a state of the United States, or by firms or companies, the controlling interest in which is owned by citizens of the United States.

(c) Notwithstanding the provisions of subdivision (b), one or more foreign banks, institutions organized under the laws of foreign countries which own or control foreign banks, or banks organized under the laws of the United States, the states of the United States, or the District of Columbia, the controlling interests in which are owned by any such foreign banks or institutions, may, with the

approval of the commissioner and upon such terms and conditions and subject to such rules and regulations as the commissioner may prescribe, own and hold 50 percent or more of the shares of the capital stock of any corporation.

1866. Whenever it shall appear to the commissioner that any corporation has violated the provisions of its articles of incorporation or any law of this state, or is conducting its business in an unsafe or unauthorized manner, or if the contributed capital of any such corporation is impaired, or if the corporation shall refuse to submit its books, papers and concerns to the inspection of any examiner of the department or if any officer thereof shall refuse to be examined upon oath touching the concerns of the corporation or if the corporation shall suspend payment of its obligations, or if from any examination or report provided for by this article the commissioner shall have reason to conclude that the corporation is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any corporation shall neglect or refuse to observe any order of the commissioner specified in Section 580 or 581, the commissioner may forthwith take possession of the property and business of such corporation and retain such possession until such corporation shall resume business, or its affairs be finally liquidated as provided by this code for the liquidation of banks.

1867. No corporation shall deposit any of its funds with any other moneyed corporation unless the other corporation has been nominated and designated as a depositary for the funds of the depositing corporation by the vote of a majority of the directors of the depositing corporation and has been approved by the commissioner as a depositary. The commissioner may in his or her discretion revoke his or her approval of any such depositary. This limitation shall not apply to the deposit of funds by a corporation with another moneyed corporation, that owns all or a majority of the capital stock of the corporation.

1868. No corporation shall be the holder of any shares of its own capital stock unless such stock shall have been taken to prevent loss upon a debt previously contracted in good faith, and stock so acquired shall, within six months from the time of its acquisition, be sold or disposed of at public or private sale.

1869. No corporation shall, either directly or indirectly, make any discount to any person for the purpose of enabling him to pay for or hold shares of its stock either subscribed for or purchased by him. Any corporation making any such discount shall forfeit to the people of the State twice the amount of such discount.

1870. No corporation shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any other person, or under any title or designation that is not truly descriptive thereof.

1871. Every corporation shall conform its methods of keeping its books and records to such orders in respect thereto as have been made and promulgated by the commissioner. Any corporation that refuses or neglects to obey such order shall be subject to a penalty of one hundred dollars ($100) for each day it so refuses or neglects.

1872. Each official communication directed by the commissioner to a corporation or to any officer thereof, relating to an examination or investigation conducted by the department or containing suggestions or recommendations as to the conduct of the business of such corporation, shall be submitted, by the officer receiving it, to the board at the next meeting of such board, and duly noted in the minutes of the meetings of such board.

1873. On or before the first day of February in each year, each corporation and every foreign corporation licensed by the commissioner to transact the business of such a corporation in this state, shall make a written report to the commissioner which shall contain a statement of its condition on the morning of the first day of January in that year and shall be in the form and contain the matters prescribed by the commissioner. The commissioner may, however, in his or her discretion, accept from a corporation, which has branches in a foreign country or countries, a report containing a statement of its condition as of a date not later than the first day of January and not earlier than the first day of November in the preceding year. Every report shall be verified by the oaths of the two principal officers in charge of the affairs of the corporation or foreign corporation at the time of the verification, which shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the corporation or foreign corporation has been transacted at the location required by this article and not elsewhere.

1874. Every corporation and foreign corporation shall also make such other special reports to the commissioner as he or she may from time to time require, which shall be in such form and filed at such date as may be prescribed by the commissioner and shall, if required by the commissioner, be verified in such manner as he or she may prescribe.

1875. If any corporation or foreign corporation shall fail to make any report required by this article on or before the day designated for the making thereof, or shall fail to include therein any matter required by the commissioner, it shall forfeit to the people of the state the sum of one hundred dollars ($100) for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the commissioner.

1876. Every corporation shall hold a meeting of its stockholders annually upon a date fixed in its bylaws at its main office, or if its main office is to be located outside of this State, at its branch or other office in this State.

1877. Every corporation shall keep at its main office, or if its main office is to be located outside of this state, at its branch or other office in this state, books containing the names of all stockholders thereof, and the names and addresses of the members of its board of directors, together with copies of all reports made by it to the commissioner.

1878. Every corporation shall make reports to the commissioner at such times and in such form as the commissioner may require and is subject to examination by examiners appointed by the commissioner, to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two calendar years. The cost of such examinations shall be fixed by the commissioner and be paid by the corporation examined.

1879. No officer, director, clerk or other employee of any corporation, and no person in any way interested or concerned in the management of its affairs, shall as individuals discount, or directly or indirectly, make any loan upon any note or other evidence of debt, which he shall know to have been offered for discount to such corporation, and to have been refused. Every person violating the provisions of this section, shall, for each

offense, forfeit to the people of the State twice the amount of the loan which he shall have made.

1880. Every officer, director, clerk, employee, or agent of any corporation who embezzles, abstracts, or willfully misapplies any of the moneys, funds, credits, securities, evidence of indebtedness or assets of any character of such corporation, or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, debenture, draft, bill of exchange, mortgage, judgment, or decree, or who makes any false entry in any book, report, or statement of such corporation with intent, in either case, to injure or defraud such corporation or any other company, body politic or corporate, or any individual person, or to deceive any officer of such corporation, the commissioner, or any agent or examiner appointed to examine the affairs of any such corporation; and every receiver of any corporation and every clerk or employee of such receiver who shall embezzle, abstract, or willfully misapply or wrongfully convert to his or her own use any moneys, funds, credits, or assets of any character which may come into his or her possession or under his or her control in the execution of his or her trust or the performance of the duties of his or her employment; and every such receiver or clerk or employee of such receiver who shall, with intent to injure or defraud any person, body politic or corporate, or to deceive or mislead the commissioner or any agent or examiner appointed to examine the affairs of such receiver, shall make any false entry in any book, report, or record of any matter connected with the duties of such receiver; and every person who with like intent aids or abets any officer, director, clerk, employee, or agent of any corporation, or receiver or clerk or employee of such receiver as aforesaid in any violation of this article shall upon conviction thereof be imprisoned for two, three, or four years, and may also be fined not more than five thousand dollars ($5,000), in the discretion of the court.

1881. Whoever being connected in any capacity with any corporation represents in any way that the State of California is liable for the payment of any bond or other obligation, or the interest thereon, issued or incurred by any corporation, or that the State of California incurs any liability in respect of any act or omission of the corporation, shall be punished by a fine of not

more than ten thousand dollars ($10,000) and by imprisonment in the state prison.

1882. No person shall act in this State as the representative of any foreign corporation in transacting the business described in this article as the business of a corporation unless such corporation shall have complied with the provisions of this article relating to such corporations.

1883. Every foreign corporation before being licensed by the commissioner to transact in this state the business of a corporation, or any part thereof, shall subscribe and acknowledge and submit to the commissioner at his or her office, an application certificate in duplicate, which shall specifically state:

(a) The name of such foreign corporation.

(b) The place where its business is to be transacted in this state.

(c) The amount of its capital stock actually paid in cash and the amount subscribed for and unpaid.

(d) A complete and detailed statement of its financial condition as of a date within 60 days prior to the date of such application certificate.

1884. At the time the application certificate is first submitted to the commissioner, such corporation shall also submit a duly authenticated copy of its charter, or articles, and its bylaws.

1885. No foreign corporation shall transact in this state the business defined in this article or any part thereof, unless such corporation shall have:

(a) Been authorized by its charter to carry on such business and shall have complied with the laws of the state or country under which it is incorporated.

(b) Made the deposit with the State Treasurer required by this article.

(c) Designated the commissioner, by an instrument in writing duly executed, its true and lawful attorney upon whom all process in any action or proceeding by any resident of this state against it may be served with the same effect as if it were a domestic corporation and had been lawfully served with process within this state.

(d) Received a license duly issued to it by the commissioner.

1886. When the commissioner shall have issued a license to any foreign corporation, it may engage in the business of a

corporation of the kind authorized by this article at the location specified in the license.

1887. Every foreign corporation, before receiving a license to transact business in this state, shall deposit with the State Treasurer of the State of California upon authorization of the commissioner, in trust as security for the depositors with and creditors of such corporation in this state, lawful money of the United States or securities of the kind and character described in Article 3 (commencing at Section 1570) of Chapter 16, of the value of one hundred thousand dollars ($100,000). Such foreign corporation so long as it shall continue solvent and comply with the laws of this state, may be permitted by the commissioner to collect the interest on the securities so deposited and from time to time to exchange such securities for others, and examine and compare such securities, as provided by said article.

1888. The foreign corporation shall pay a license fee of five hundred dollars ($500).

1889. Every foreign corporation, duly licensed by the commissioner to transact in this state the business defined and authorized in this article, or any part thereof, shall within 30 days after the date of such license, submit to the commissioner a statement verified by two of its principal officers, which shall contain the full name and business address of every individual, partnership or unincorporated association, who is acting or whom it proposes to have act as its agent or representative in this state. Whenever any such corporation shall engage any person to act for it in this state and the name and address of such person is not contained in such verified statement submitted to the commissioner, such foreign corporation shall forthwith submit to the commissioner an amended statement verified in the same manner as the original. A violation of this provision shall subject such foreign corporation to a forfeiture of one thousand dollars ($1,000) for each offense.

1890. Whenever the commissioner shall have revoked the license of any such foreign corporation and shall have taken the action to make such revocation effective, all the rights and privileges of the foreign corporation to transact business in this state shall forthwith cease and determine.

1891. Nothing in this division restricts the right of a state international or foreign banking or financing corporation to convert into an international or foreign banking or financing corporation

organized under the laws of the United States upon compliance with such laws.

1892. An international or foreign banking or financing corporation organized under the laws of the United States may convert into a state international or foreign banking or financing corporation with the approval of the commissioner which he or she shall not grant unless he or she is satisfied that such international or foreign banking or financing corporation organized under the laws of the United States meets all of the requirements set forth in this article for the establishment of a state international or foreign banking or financing corporation.

1893. Nothing in this division restricts the right of any one or more state international or foreign banking or financing corporations to merge into or consolidate with one or more international or foreign banking or financing corporations organized under the laws of the United States.

1894. Nothing in this division restricts one or more international or foreign banking or financing corporations organized under the laws of the United States from merging into one or more state, international or foreign banking or financing corporations. For the purpose of effecting any such merger any such international or foreign banking or financing corporation shall be deemed a "foreign corporation" as that term is used in Section 1108 of the Corporations Code and the laws of Congress shall be deemed the "laws of the state" in which such international or foreign banking or financing corporation is formed.

1895. Whenever a state international or foreign banking or financing corporation survives the merger of one or more international or foreign banking or financing corporations and the agreement for merger has been filed with the Secretary of State with the approval of the commissioner endorsed thereon, a copy thereof, certified by the Secretary of State, shall immediately be filed with the commissioner and upon, but not until, such filing the merger shall be and become effective for all purposes.

1896. Whenever one or more state international or foreign banking or financing corporations and one or more international or foreign banking or financing corporations organized under the laws of the United States have been merged or consolidated, the surviving or resulting international or foreign banking or financing corporation succeeds without other transfer to all the rights and

property of each constituent international or foreign banking or financing corporation and is subject to all the debts and liabilities of each such constituent corporation in the same manner as if the surviving or resulting international or foreign banking or financing corporation had incurred them.

All rights of creditors of each constituent international or foreign banking or financing corporation are preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the time of the consolidation or merger.

Any action or proceeding pending by or against any one of the constituent international or foreign banking or financing corporations may be prosecuted through judgment, which binds the resulting or surviving international or foreign banking or financing corporation; or such consolidated or surviving corporation may be proceeded against or substituted in the place of any such constituent corporation.

1897. Whenever an international or foreign banking or financing corporation organized under the laws of the United States converts into a state international or foreign banking or financing corporation, or whenever such state corporation converts into such corporation organized under the laws of the United States, or if any such state corporation merges or consolidates with any such corporation organized under the laws of the United States, the surviving or resulting corporation shall be deemed to be the same corporate entity as the converting or constituent corporation and any reference to the converting corporation or to any constituent corporation, whether executed or taking effect before or after the conversion, merger or consolidation, shall be deemed a reference to the surviving or resulting corporation.

Article 2. Bank Investments in International or Foreign Banking or Financing Companies Organized Under the Laws of the United States

1900. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the commissioner may prescribe, invest in the stock of one or more corporations organized under the laws of the United States for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other

financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in dependencies or insular possessions of the United States and to act when required by the Secretary of the Treasury of the United States as fiscal agents of the United States; provided, however, that the aggregate amount of stock held in all corporations engaged in business of the kind described in this chapter shall not exceed 10 per centum of the subscribing bank's shareholders' equity.

1901. Every bank investing in the capital stock of any corporation described in Section 1900 shall be required to furnish information concerning the condition of such corporation to the commissioner upon demand, and the commissioner may order special examinations of said corporation at such time or times as he or she may deem appropriate. The cost of such special examinations shall be paid by said corporation.

1902. Before any bank shall be permitted to purchase stock in any corporation described in Section 1900 the said corporation shall enter into an agreement or undertaking with the commissioner to restrict its operations or conduct of its business in such manner or under such limitations and restrictions as the said commissioner may prescribe for the place or places wherein such business is to be conducted. If at any time the commissioner shall ascertain that the regulations prescribed by him or her are not being complied with, said commissioner is hereby authorized and shall have power to institute an investigation of the matter and to send for persons and papers, subpoena witnesses and administer oaths in order to satisfy himself or herself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or any bank which may be a stockholder therein, to comply with the regulations laid down by the said commissioner, said bank may be required to dispose of its stockholding in the said corporation upon reasonable notice.

Article 3. Bank Investments in International or Foreign Banking or Financing Corporations Organized Under the Laws of any State of the United States

1905. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the

commissioner may prescribe, invest in the stock of one or more corporations organized under the laws of any state of the United States (other than a corporation organized under the laws of this state for the purposes of transacting business under the provisions of Article 1 (commencing with Section 1850) and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in dependencies or insular possessions of the United States; provided, however, that the stock at the time of the acquisition would constitute a permissible investment for a national bank; and provided, further, that the aggregate amount of stock held in all corporations engaged in business of the kind described in this chapter shall not exceed 10 percent of the subscribing bank's shareholders' equity. Nothing in this section shall be construed in any way to limit the powers conferred by Section 1864.

Article 4. Bank Investments in Foreign Banks

1910. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the commissioner may prescribe, acquire and hold, directly or indirectly, the stock or other evidences of ownership in one or more banks organized under the laws of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the commissioner, shall be incidental to the international or foreign business of the bank. An application for consent shall be in such form and contain such information as the commissioner may require, and be accompanied by a fee of five hundred dollars ($500). The aggregate amount invested by any bank in the stock or other evidences of ownership shall not in any way be subject to, or included in, the limitations prescribed in Sections 1864, 1900, and 1905, but the aggregate amount invested directly or indirectly (other than through a corporation organized under the laws of this state for the purpose of transacting business under Article 1 (commencing with Section 1850) or operating under Article 2 (commencing with Section 1900) or Article 3 (commencing with Section 1905) in the stock or other

evidences of ownership of all foreign banks, taken together with investments by the subscribing bank in the shares of corporations organized under the laws of this state for the purpose of transacting business under Article 1 (commencing with Section 1850) or operating under Article 2 (commencing with Section 1900) or Article 3 (commencing with Section 1905), shall not at any one time exceed 25 percent of the subscribing bank's shareholders' equity.

SEC. 4. Division 1.2 (commencing with Section 2000) is added to the Financial Code, to read:

DIVISION 1.2. MONEY TRANSMISSION ACT

Chapter 1. General Provisions

2000. This chapter shall be known and may be cited as the Money Transmission Act.

2001. The Legislature finds and declares all of the following:

(a) Money transmission businesses conduct a significant amount of business in this state and technological advances are occurring in the provision of money transmission services.

(b) Persons who use money transmission businesses in this state use those businesses for, among other purposes, paying for the necessities of life and transmitting money to family members.

(c) The failure of money transmission businesses to fulfill their obligations would cause loss to consumers, disrupt the payments mechanism in this state, undermine public confidence in financial institutions doing business in this state, and adversely affect the health, safety, and general welfare of persons in this state.

(d) To protect the interests of consumers of money transmission businesses in this state, to maintain public confidence in financial institutions doing business in this state, and to preserve the health, safety, and general welfare of the people of this state, it is necessary to regulate money transmission businesses in this state.

2002. It is the intent of the Legislature that the provisions of this act accomplish all of the following:

(a) Protect the interests of persons in this state who use money transmission services.

(b) Provide for the safe and sound conduct of the business of licensees.

(c) Maintain public confidence in licensees.

2003. For purposes of this chapter, the following definitions shall apply:

(a) "Affiliate," when used with respect to a specified person, means any person controlling, controlled by, or under common control with, that specified person, directly or indirectly through one or more intermediaries. For purposes of subdivisions (q) and (v), a specified person is affiliated with another person if that person controls, is controlled by, or under common control through the ownership directly or indirectly of shares or equity securities possessing more than 50 percent of the voting power of that specified person.

(b) "Agent" means a person that provides money transmission in California on behalf of the licensee, provided that the licensee becomes liable for the money transmission from the time money or monetary value is received by that person. However, "agent" does not include any officer or employee of the licensee when acting as such at an office of a licensee.

(c) "Applicant" means a person that files an application for a license or for acquisition of control of a licensee under this chapter.

(d) "Average daily outstanding" means the amount of outstanding money transmission obligations in California at the end of each day in a given period of time, added together, and divided by the total number of days in that period of time.

(e) "Branch office" means any office in this state of a licensee or agent at which the licensee receives money or monetary value to provide money transmission, either directly or through an agent.

(f) "Business day" means one of the following:

(1) When used with respect to any act to be performed in this state, any day other than Saturday, Sunday, or any other day that is provided for as a holiday in the Government Code.

(2) When used with respect to any act to be performed in any jurisdiction other than this state, any day other than a day that is a legal holiday under the laws of that jurisdiction.

(g) "Commissioner" means the Commissioner of Financial Institutions.

(h) "Control" has the meaning set forth in Section 1250.

(i) "Day" means calendar day.

(j) "In California" or "in this state" means physically located in California, or with, to, or from persons located in California.

(k) "Issue" and "issuer" mean, with regard to a payment instrument, the entity that is the maker or drawer of the instrument in accordance with the California Commercial Code and is liable for payment. With regard to stored value, "issue" and "issuer" mean the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value. Only a licensee may issue stored value or payment instruments.

(*l*) "Licensee" means a corporation or limited liability company licensed under this chapter.

(m) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(n) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(o) "Money transmission" means any of the following:

(1) Selling or issuing payment instruments.

(2) Selling or issuing stored value.

(3) Receiving money for transmission.

(p) "Outstanding," with respect to payment instruments and stored value, means issued or sold by the licensee in the United States and not yet paid or refunded by the licensee, or issued or sold on behalf of the licensee in the United States by its agent and reported as sold, but not yet paid or refunded by the licensee. "Outstanding," with respect to receiving money for transmission means all money or monetary value received in the United States for transmission by the licensee or its agents but not yet paid to the beneficiaries or refunded to the person from whom the money or monetary value was received. All outstanding money transmission of a licensee is and shall remain a liability of the licensee until it is no longer outstanding.

(q) "Payment instrument" means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate.

(r) "Person" means an individual, corporation, business trust, estate, trust, partnership, proprietorship, syndicate, limited liability

company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or joint stock company, or any other organization or legal or commercial entity, provided, however, that "person," when used with respect to acquiring control of or controlling a specified person, includes any combination of two or more persons acting in concert.

(s) "Receiving money for transmission" or "money received for transmission" means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means. The term does not include sale or issuance of payment instruments and stored value.

(t) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(u) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(v) "Stored value" means monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term does not include a credit card voucher, letter of credit, or any stored value that is only redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

(w) "Traveler's check" means an instrument that meets all of the following:

(1) Is designated on its face by the term "traveler's check" or by any substantially similar term or is commonly known and marketed as a traveler's check.

(2) Contains a provision for a specimen signature of the purchaser to be completed at the time of purchase.

(3) Contains a provision for a countersignature of the purchaser to be completed at the time of negotiation.

Chapter 2. Exemptions

2010. This chapter does not apply to the following:

(a) The United States or a department, agency, or instrumentality thereof, including any federal reserve bank and any federal home loan bank.

(b) Money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service.

(c) A state, county, city, or any other governmental agency or governmental subdivision of a state.

(d) A commercial bank or industrial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, or any foreign (other nation) bank that is licensed under Article 3 (commencing with Section 1800) of Chapter 20 or that is authorized under federal law to maintain a federal agency or federal branch office in this state; a trust company licensed pursuant to Section 1042 or a national association authorized under federal law to engage in a trust banking business; an association or federal association, as defined in Section 5102 the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor; and any federally or state chartered credit union the member accounts of which are insured or guaranteed as provided in Section 14858.

(e) Electronic funds transfer of governmental benefits for a federal, state, county, or local governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof.

(f) A board of trade designated as a contract market under the federal Commodity Exchange Act (7 U.S.C. Secs. 1-25, incl.) or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board.

(g) A person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from registration granted under the federal securities laws to the extent of its operation as such a provider.

(h) An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers, to the extent of its operation as such a provider.

(i) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer.

(j) A person listed under subdivision (d) is exempted from all the provisions of this chapter, except Sections 2062 and 2063.

2011. The commissioner may, by regulation or order, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this chapter any person or transaction or class of persons or transactions, if the commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this chapter.

Chapter 3. Licenses

2030. (a) A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under this chapter or is an agent of a person licensed or exempt from licensure under this chapter.

(b) A license under this chapter is not transferable or assignable.

2031. (a) No person other than a corporation or limited liability company may apply for or be issued a license.

(b) No person other than the following may be issued a license:

(1) A corporation or limited liability company organized under the laws of this state.

(2) A corporation, other than a corporation organized under the laws of this state, that is qualified to transact intrastate business in this state under Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) A limited liability company, other than a limited liability company organized under the laws of this state, that is qualified to transact intrastate business in this state under Chapter 10 (commencing with Section 17450) of Title 2.5 of the Corporations Code, except that a limited liability company that is organized outside the United States shall not be issued a license.

2032. (a) In this section, “material litigation” means litigation that according to United States generally accepted accounting principles is significant to an applicant’s or a licensee’s financial health and would be required to be disclosed in the applicant’s or

licensee's annual audited financial statements, report to shareholders, or similar records.

(b) An applicant for licensure under this chapter shall pay to the commissioner a nonrefundable fee of five thousand dollars ($5,000).

(c) An applicant for a license under this chapter shall do so in a form and in a medium prescribed by the commissioner by order or regulation. The application shall state or contain all of the following:

(1) The legal name and residential business address of the applicant and any fictitious or trade name used by the applicant in conducting its business.

(2) A list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the 10-year period next preceding the submission of the application.

(3) A description of any money transmission services previously provided by the applicant and the money transmission services that the applicant seeks to provide in this state.

(4) A list of the applicant's proposed agents and the locations in this state where the applicant and its agents propose to engage in money transmission.

(5) A list of other states in which the applicant is licensed to engage in money transmission and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state.

(6) Information concerning any bankruptcy or receivership proceedings affecting the licensee.

(7) A sample form of payment instrument or instrument upon which stored value is recorded, if applicable.

(8) A sample form of receipt for transactions that involve money received for transmission.

(9) The name and address of any bank through which the applicant's payment instruments and stored value will be paid.

(10) A description of the source of money and credit to be used by the applicant to provide money transmission services.

(11) The date of the applicant's incorporation or formation and the state or country of incorporation or formation.

(12) A certificate of good standing from the state or country in which the applicant is incorporated or formed.

(13) A description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded.

(14) The legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the 10-year period next preceding the submission of the application, of each executive officer, manager, director, or person that has control, of the applicant, and the education background for each such person.

(15) A list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control, of the applicant has been involved in the 10-year period next preceding the submission of the application.

(16) A copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application.

(17) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application.

(18) If the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under Section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m).

(19) If the applicant is a wholly owned subsidiary of:

(A) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under Section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78m) and, if available, for the two-year period next preceding the submission of the application.

(B) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States.

(20) The name and address of the applicant's registered agent in this state.

(21) The applicant's plan for engaging in money transmission business, including without limitation three years of pro forma financial statements.

(22) Any other information the commissioner requires with respect to the applicant.

(d) The commissioner may waive any of the information required under subdivision (c) or permit an applicant to submit other information instead of the required information.

2033. (a) The commissioner may conduct an examination of the applicant and the applicant shall pay the reasonable cost of the examination.

(b) If the commissioner finds all of the following with respect to an application for a license, the commissioner shall approve the application:

(1) The applicant has adequate tangible shareholders' equity, as specified in Section 2040 to engage in the business of money transmission and the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in the business of money transmission.

(2) The applicant, the directors and officers of the applicant, any person that controls the applicant, and the directors and officers of any person that controls the applicant are of good character and sound financial standing.

(3) The applicant is competent to engage in the business of money transmission.

(4) The applicant's plan for engaging in the business of money transmission affords reasonable promise of successful operation.

(5) It is reasonable to believe that the applicant, if licensed, will engage in the business of money transmission and will comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter.

(c) The commissioner shall deny an application for a license if he or she finds, after notice and a hearing, that the requirements of subdivision (b) have not been satisfied.

2034. (a) Before any corporation or limited liability company is issued a license, the corporation or limited liability company shall file with the commissioner, in such form as the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner to be the corporation's or limited liability company's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the corporation or limited liability company, or any of its successors, that arises under this chapter or under any regulation

or order issued under this chapter after such appointment has been filed, with the same force and validity as if served personally on the corporation or limited liability company or its successor, as the case may be.

(b) Service may be made by leaving a copy of the process at any office of the commissioner, but that service is not effective unless (1) the party making that service, who may be the commissioner, sends notice of service and a copy of the process by registered or certified mail to the party served at its last address on file with the commissioner, and (2) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(c) The provisions of this section are in addition to, and not in limitation of, other provisions of law relating to service of process.

2035. (a) No person shall, directly or indirectly, acquire control of a licensee unless the commissioner has first approved, in writing, the acquisition of control. An application to acquire control of a licensee shall be in writing, under oath, and in a form prescribed by the commissioner. The application shall contain that information which the commissioner may require.

(b) The commissioner shall not approve the application unless the commissioner finds all of the following:

(1) The applicant and all of the officers and directors of the applicant are of good character and sound financial standing.

(2) The applicant is competent to engage in the business of money transmission.

(3) It is reasonable to believe that, if the applicant acquires control of the licensee, the applicant and the licensee will comply with all applicable provisions of this chapter and any regulation or order issued under this chapter.

(4) The applicant's plans, if any, to make any major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee.

(c) For the purposes of subdivision (b), the commissioner may find an applicant's plan to make major changes in the management of a licensee is detrimental to the licensee if the plan provides for a person who is not of good character to become a director or officer of the licensee. The grounds specified in this subdivision

shall not be deemed to be the only grounds upon which the commissioner may find, for the purposes of subdivision (b), that an applicant's plan to make a major change in the management of a licensee is detrimental to the licensee.

(d) If it appears to the commissioner that any person is violating or failing to comply with this section, the commissioner may direct the person to comply with this section by an order issued over the commissioner's official seal.

(e) Whenever it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this section or of any regulation or order of the commissioner issued pursuant to this section, the commissioner may apply to the superior court for an order enjoining the person from violating or continuing to violate this section or that regulation or order, and for other equitable relief as the nature of the case or interests of the licensee, the controlling person, the creditors or shareholders of the licensee or controlling person or the public may require.

(f) The commissioner may, for good cause, amend, alter, suspend, or revoke any approval of a proposal to acquire control of a licensee issued pursuant to this section.

(g) There shall be exempted from the provisions of this section any transaction which the commissioner by regulation or order exempts as not being comprehended within the purposes of this section and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of a licensee or the customers of a licensee.

(h) The commissioner may conduct an examination of the applicant and the applicant shall pay the reasonable cost of the examination.

2036. The commissioner may impose on any authorization, approval, license, or order issued pursuant to this chapter any conditions that he or she deems reasonable or necessary to the public interest.

2037. (a) As security, each licensee shall deposit and thereafter maintain on deposit with the Treasurer cash in an amount not less than, or securities having a market value not less than, such amount as the commissioner may find and order from time to time as necessary to secure the faithful performance of the obligations of the licensee with respect to money transmission in California. These securities shall be subject to the approval of the

commissioner and shall consist of interest-bearing bonds, notes, or other obligations of the United States or any agency or instrumentality thereof, or of the State of California, or of any city, county, or city and county, political subdivision or district of the State of California, or that are guaranteed by the United States or the State of California.

(b) So long as a licensee that maintains securities on deposit with the Treasurer pursuant to this section is solvent, that licensee shall be entitled to receive any interest paid on the securities.

(c) In lieu of the deposit of cash or securities pursuant to subdivision (a), a licensee may deliver to the commissioner the bond of a surety company, in form and written by a company satisfactory to the commissioner, in an amount not less than the amount of the deposit of cash or securities required of the licensee, conditioned upon the faithful performance of the obligations of the licensee with respect to money transmission in California. The commissioner shall deposit such bond with the Treasurer.

(d) A licensee that sells or issues payment instruments or stored value shall maintain securities on deposit or a bond of a surety company in an amount of no less than five hundred thousand dollars ($500,000) or 50 percent of the average daily outstanding payment instrument and stored value obligations in California, whichever is greater; provided that such amount shall not be more than two million dollars ($2,000,000).

(e) A licensee that engages in receiving money for transmission shall maintain securities on deposit or a bond of a surety company in an amount greater than the average daily outstanding obligations for money received for transmission in California, provided that such amount shall not be less than two hundred fifty thousand dollars ($250,000) nor more than seven million dollars ($7,000,000).

(f) The amount of securities on deposit or a bond of a surety company required to be maintained by subdivisions (d) and (e) are cumulative.

(g) The money and securities deposited with the State Treasurer pursuant to this section and the proceeds of any bond held by the State Treasurer pursuant to this section shall constitute a trust fund for the benefit of persons in California who purchased payment instruments or stored value from the licensee or its agent, or persons in California who delivered to any licensee or its agent

money or monetary value for money transmission. Suit to recover on any bond may be brought by any party aggrieved in a court of competent jurisdiction of any county in which the licensee has an agent.

(h) Securities on deposit or a bond shall cover claims for so long as the commissioner specifies, but for at least four years after the licensee ceases to provide services under this chapter in this state. However, the commissioner may permit the amount of the security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored value obligations outstanding, or outstanding money or monetary value received for money transmission, is less than the deposit or bond. The commissioner may permit a licensee to substitute another form of security acceptable to the commissioner for the security effective at the time the licensee ceases to provide money transmissions in this state.

2038. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing an application for a license is five thousand dollars ($5,000), as provided in subdivision (b) of Section 2032.

(b) The fee for filing an application for approval to acquire control of a licensee is three thousand five hundred dollars ($3,500).

(c) A licensee shall pay annually on or before July 1, a licensee fee of two thousand five hundred dollars ($2,500).

(d) A licensee shall pay annually on or before July 1, one hundred twenty-five dollars ($125) for each licensee branch office in this state.

(e) A licensee shall pay annually on or before July 1, twenty-five dollars ($25) for each agent branch office in this state.

(f) Whenever the commissioner examines a licensee or any agent of a licensee, the licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(g) Whenever the commissioner examines an applicant, the applicant shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars ($75) per

hour for each examiner engaged in the examination plus, if it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(h) Each fee for filing an application shall be paid at the time the application is filed with the commissioner. No fee for filing an application shall be refundable, regardless of whether the application is approved, denied, or withdrawn.

2039. (a) The commissioner may by order or regulation grant exemptions from this section in cases where the commissioner finds that the requirements of this section are not necessary or may be duplicative.

(b) In addition to such other reports as may be required pursuant to Sections 453, 454, and 455, each licensee shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year that shall comply with all of the following provisions:

(1) The audit report shall contain audited financial statements of the licensee for or as of the end of the fiscal year prepared in accordance with United States generally accepted accounting principles and such other information as the commissioner may require.

(2) The audit report shall be based upon an audit of the licensee conducted in accordance with United States generally accepted auditing standards and such other requirements as the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take such action as the commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

(c) Each licensee shall, not more than 45 days after the end of each calendar year quarter, or within a longer period as the

commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(1) Financial statements, including balance sheet, income statement, statement of changes in shareholders' equity, and statement of cashflows, for, or as of the end of, that calendar year quarter, verified by two of the licensee's principal officers. The verification shall state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement on the report is true.

(2) For issuers and sellers of payment instruments and stored value, a schedule of eligible securities owned by the licensee pursuant to Section 2081.

(3) Other information as the commissioner may by regulation or order require.

(d) Each licensee, not more than 45 days after the end of each calendar year quarter, shall file with the commissioner a report containing all of the following:

(1) The current address of each branch office of the licensee in this state. If a branch office was opened or closed during the calendar year quarter, the date it was opened or closed. If a branch office was relocated during the calendar year quarter, the addresses of the old and new locations and the date of relocation.

(2) The name of each person who acted as an agent in this state of the licensee during the calendar year quarter and the address for each agent branch office. If a person was appointed or terminated as an agent during the calendar year quarter, the date of appointment or termination. If an agent branch office relocated, the addresses for the old and new locations and the date of relocation.

(3) The total volume of activities, number of transactions conducted, and outstanding money transmission obligations in California under this chapter and in the United States in the calendar year quarter categorized by type of money transmission. For money received for transmission, a report of the average daily outstanding transmission liabilities in California, and, if applicable, a schedule of each foreign country to which money was sent, along with the total amount of money sent to that foreign country in that calendar year quarter. For payment instruments and stored value,

a report of the average daily outstanding payment instruments and stored value liabilities in California in that calendar year quarter.

(4) Other information as the commissioner may by regulation or order require.

(e) Each licensee shall file with the commissioner other reports as and when the commissioner may by regulation or order require.

2040. (a) A licensee under this chapter shall maintain tangible shareholders' equity in an amount determined to be adequate by the commissioner from time to time, but in no event shall tangible shareholders' equity be less than five hundred thousand dollars ($500,000). "Tangible shareholders' equity" means shareholders' or members' equity minus intangible assets as determined in accordance with United States generally accepted accounting principles.

(b) The commissioner at any time may require a licensee to write down any asset held by it to a valuation that will represent its then fair market value. Any receivable or debt due to a licensee that is past due and unpaid for the period of one year shall be charged off, unless it is well secured or is in process of collection.

(c) The aggregate value of a licensee's accounts receivable, excluding money transmission receivables, loans or extensions of credit to any one person, or that person's affiliates, cannot exceed 50 percent of the licensee's tangible shareholders' equity without the advanced written approval of the commissioner. Whenever such amount equals or exceeds 20 percent of the licensee's tangible shareholders' equity, the licensee shall maintain records evidencing such amount and any security or other source of payment for the amount owed, and such other records as the commissioner may require by order or regulation.

2041. (a) A licensee shall conduct money transmission in California under its true name unless it has complied with Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code.

(b) A licensee may only conduct money transmission in California under its true name unless it has provided 30-day advance written notice to the commissioner. A licensee may also use a trade name or logo, so long as there is reasonable disclosure of its true name.

2042. (a) In addition to the fees provided in Section 2038, the commissioner shall levy an assessment each fiscal year, on a pro

rata basis, on those licensees that at any time during the preceding calendar year engaged in the business of money transmission in California in an amount that is, in his or her judgment, sufficient to meet the commissioner's expenses in administering the provisions of this chapter and to provide a reasonable reserve for contingencies.

(b) For licensees that sell or issue payment instruments or stored value, the amount of the annual assessment on any licensee shall not exceed the sum of the products determined by multiplying (1) increments of the aggregate face amount of payment instruments and stored value issued or sold in California by the licensee, directly or indirectly through agents, in the calendar year next preceding the date of such assessment, by (2) percentages of the base assessment rate, according to the following table:

Aggregate face amount of payment instruments and stored value sold (in millions)	Percentage of base assessment rate
First $ 1	100.0
Next $9	25.0
Next $40	12.5
Next $50	6.0
Next $400	3
Next $500	2
Excess over $1,000	1

The base assessment rate shall be fixed from time to time by the commissioner but shall not exceed one dollar ($1) per one thousand dollars ($1,000) face amount of payment instruments and stored value sold.

(c) For licensees receiving money for transmission, the basis of the apportionment of the assessment among the licensees assessed shall be the proportion that the total amount of money received for transmission by the licensee in California bears in relation to the total amount of money received for transmission by all licensees in California, as shown by the reports of licensees to the commissioner for the preceding calendar year. The assessment rate shall be fixed from time to time by the commissioner but shall not exceed one dollar ($1) per one thousand dollars ($1,000) of money received for transmission in California by the licensee.

(d) The commissioner shall notify each licensee by mail of the amount levied against it. The licensee shall pay the amount levied within 20 days. If payment is not made to the commissioner within that time, the commissioner shall assess and collect, in addition to the annual assessment, a penalty of 5 percent of the assessment for each month or part thereof that the payment is delinquent.

Chapter 4. Agents

2060. (a) In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(b) No licensee shall appoint or continue any person as agent, unless the licensee and the person have made a written contract. A written contract between a licensee and an agent shall require the agent to operate in full compliance with this chapter.

(c) The written contract shall contain each of the following provisions:

(1) That the licensee appoints the person as its agent with authority to conduct money transmission on behalf of the licensee.

(2) That the agent shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the commissioner by regulation or order requires and preserve the records for the time specified by the regulation or order.

(3) That all money or monetary value, less fees due agents provided for and expressly set forth in the written agreement, received by the agent for money transmission on behalf of the licensee shall be trust funds owned by and belonging to the licensee until the time when the money or an equivalent amount are remitted by the agent to the licensee in accordance with this section.

(4) That the money must be remitted in accordance with the provisions of this chapter.

(5) Any other provisions that the commissioner may by regulation or order find to be necessary to carry out the provisions and purposes of this chapter.

(d) An agent shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the agent.

(e) An agent of a licensee shall remit any money, less fees, received on behalf of the licensee for money transmission as follows:

(1) Within three business days of receipt.

(2) In case the aggregate face amount of the money, less fees, does not in any calendar week exceed ten thousand dollars ($10,000), within 10 business days of receipt.

(3) Within a period longer than three business days of receipt, if the agent has previously deposited with, and during such period maintains on deposit with, an office of an insured bank or of an insured savings and loan association located in the United States in an account that is in the sole and exclusive name of the licensee an amount that, for each day by which such period exceeds three business days, is not less than the aggregate face amount of money received on behalf of the licensee for money transmission that the agent usually sells per day.

(4) Within such shorter period as the licensee may provide.

(f) An agent may not provide money transmission outside the scope of activity permissible under the contract between the agent and the licensee. All money or monetary value, less fees, received by an agent of a licensee shall, from the time when the money is received by the agent until the time when the money or an equivalent amount is remitted by the agent to the licensee, constitute trust funds owned by and belonging to the licensee.

(g) An agent may not use a subagent to conduct money transmissions on behalf of a licensee.

(h) Each licensee shall exercise reasonable supervision over its agents to ensure compliance with applicable laws, rules, and regulations with respect to money transmission.

(i) No agent of a licensee shall, nor shall any licensee cause or knowingly permit any of its agents to, conduct money transmission on behalf of the licensee without concurrently receiving money, monetary value or its equivalent, credit card, or payment instrument, or a combination of same believed to be valid in an amount not less than the amount of the money transmission being provided. In the case of a sale of payment instruments or stored value to an insured bank, an insured savings and loan association, or an insured credit union, the licensee or agents of the licensee may receive such amounts the next business day after the sale.

(j) If any agent of a licensee shall commingle any money or monetary value, less fees, received on behalf of the licensee for money transmission with any other property owned or controlled by the agent, all such property shall be impressed with a trust in favor of the licensee in an amount equal to the aggregate amount of such money so commingled. No money or monetary value, less fees, received by any agent on behalf of the licensee for money transmission, while held by such agent, nor any property impressed with a trust pursuant to this subdivision, shall be subject to attachment, levy of execution, or sequestration by order of any court, except for the benefit of the licensee.

(k) Each licensee shall be liable as a principal for the money or monetary value from the time when the money or monetary value is received by the agent. Each licensee shall be liable as the maker or drawer on each payment instrument issued or sold by such licensee.

2061. (a) No licensee shall appoint any person as an agent unless it has conducted a review of the proposed agent's fitness to act as an agent and has determined that the proposed agent and any persons who control the proposed agent are of good character and sound financial standing.

(b) A licensee shall maintain records of this review for each agent while the agent is providing money transmission on behalf of the licensee, and for three years after the relationship with the agent has terminated.

2062. A person may not provide money transmissions on behalf of a person not licensed or not exempt from licensure under this chapter. A person that engages in that activity provides money transmissions services to the same extent as if the person was a licensee, and shall be jointly and severally liable with the unlicensed or nonexempt person.

2063. (a) No agent of a licensee who has actual notice that the commissioner has suspended or revoked the license of the licensee or that the commissioner has issued an order taking possession of the property and business of the licensee shall conduct money transmission on behalf of the licensee.

(b) If any agent of a licensee, after first having actual notice that the commissioner has suspended or revoked the license of the licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, conducts

money transmission on behalf of the licensee, the agent shall be jointly and severally liable with the licensee for payment of the money transmission.

Chapter 5. Eligible Securities

2081. (a) A licensee shall at all times own eligible securities having an aggregate market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and stored value obligations issued or sold in the United States and all outstanding money received for transmission in the United States.

(b) If the commissioner finds that the financial condition of a licensee is impaired, or that the financial condition of a licensee is such that its business is being conducted in an unsafe and unsound manner, the commissioner, to protect the public interest, may issue an order, subject to the procedures set forth in Section 2148, doing one or both of the following:

(1) Increasing the amount of eligible securities that the licensee must maintain.

(2) Requiring the licensee to obtain, as security for the payment of outstanding money transmission obligations, additional security in the form of financial guarantees.

(c) Eligible securities, even if commingled with other assets of the licensee, are deemed to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instrument and stored value obligations, and all senders of outstanding money received for transmission, in the event of bankruptcy or receivership of the licensee, or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No eligible securities impressed with a trust pursuant to this subdivision shall be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

(d) All outstanding payment instruments and stored value issued or sold by a licensee or its agent, and all outstanding money received for transmission by a licensee or its agent, shall remain a liability of the licensee from the time money or monetary value is received by the licensee or its agent until the licensee receives

confirmation that such money or monetary value was received by the beneficiary, or until the outstanding payment instrument or stored value obligation has been paid, or until the money is refunded to the customer.

(e) A licensee shall maintain a record in the United States of proof of receipt by the beneficiary or refund to the customer of money received for transmission.

2082. (a) "Eligible security" means any United States currency eligible security or foreign currency eligible security.

(b) For the purposes of this chapter, the following are United States currency eligible securities:

(1) Cash.

(2) Any deposit in an insured bank or an insured savings and loan association or insured credit union.

(3) Any bond, note, or other obligation that is issued or is guaranteed by the United States or any agency of the United States.

(4) Any bond, note, or other obligation that is issued or guaranteed by any state of the United States or by any governmental agency of or within any state of the United States and that is assigned an eligible rating by an eligible securities rating service.

(5) Any bankers acceptance that is eligible for discount by a federal reserve bank.

(6) Any commercial paper that is assigned an eligible rating by an eligible rating securities service.

(7) Any bond, note, or other obligation that is assigned an eligible rating by an eligible securities rating service.

(8) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.), that holds itself out to investors as a money market fund, and that operates in accordance with all provisions of the Investment Company Act of 1940, and the regulations of the Securities and Exchange Commission applicable to money market funds, including Section 270.2a-7 of the regulations of the Securities and Exchange Commission (17 C.F.R. Sec. 270.2a-7).

For purposes of this paragraph and paragraph (9), "investment company," "management company," and "open-end" have the meanings set forth in Sections 3, 4, and 5, respectively, of the

Investment Company Act of 1940 (15 U.S.C. Secs. 80a-4, and 80a-5, respectively).

(9) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and that invests exclusively in securities that constitute eligible securities that comply with valuation requirements of this chapter.

(10) Any account due to any licensee from any agent in the United States on account of the receipt of money on behalf of the licensee for money transmission by the agent, if the account is current and not past due or otherwise doubtful of collection.

(11) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities.

(c) "Foreign currency eligible security" means any of the following that is denominated in a foreign currency:

(1) Cash.

(2) Any deposit in an office of a bank acceptable to the commissioner that is located in a foreign country.

(3) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities pursuant to Section 2086.

(d) For the purposes of this chapter, "value" means the following:

(1) When used with respect to an eligible security owned by a licensee of the type described in paragraph (10) of subdivision (b), net carrying value as determined in conformity with United States generally accepted accounting principles. However, in computing the value of the account, any amount that consists of money that has not been remitted to the licensee or refunded within 45 business days of receipt by the agent shall be excluded from the value of the account and shall be excluded from the calculation of eligible securities.

(2) Market value when used with respect to any other eligible security owned by a licensee.

2083. (a) In computing for purposes of Section 2082 the aggregate value of eligible securities owned by a licensee, all of the following shall be excluded:

(1) The value of any eligible security if and to the extent that the value of the eligible security, when combined with the

aggregate value of all other eligible securities owned by the licensee that are issued or guaranteed by the same person or by any affiliate of the same person by whom the eligible security is issued or guaranteed, exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee.

(2) The portion of the aggregate value of all eligible securities of the type described in paragraph (10) of subdivision (b) of Section 2082 that exceeds 25 percent of the aggregate value of all eligible securities owned by the licensee; and that portion of the aggregate value of agent receivables from any one person that exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee, or any higher percentage that the commissioner may approve for the licensee, up to a maximum of 20 percent.

(3) The portion of the aggregate value of all eligible securities of the type described in paragraph (6) of subdivision (b) of Section 2082 that exceeds 20 percent of the aggregate value of all eligible securities owned by the licensee.

(4) The portion of the aggregate value of all eligible securities of the type described in paragraph (7) of subdivision (b) of Section 2082 that exceeds 20 percent of the aggregate value of all eligible securities owned by the licensee.

(5) The portion of the aggregate value of all eligible securities of the type described in paragraph (8) of subdivision (b) of Section 2082, except for a money market fund that invests exclusively in obligations issued or guaranteed by the United States or any agency of the United States, that exceeds 20 percent of the aggregate value of all eligible securities owned by the licensee.

(6) The portion of the aggregate value of all eligible securities of the type described in paragraphs (6), (7), and (8) of subdivision (b) of Section 2082 that exceeds 50 percent of the aggregate value of all eligible securities owned by the licensee.

(b) Subdivision (a) shall not be deemed to require the exclusion of the value of any of the following eligible securities, and each of the following eligible securities shall be exempted from the limitations of subdivision (a):

(1) The following eligible securities:

(A) Cash.

(B) Any deposit in an insured bank, insured savings and loan association, or insured credit union.

(C) Any bond, note, or other obligation for the payment of which the full faith and credit of the United States are pledged.

(2) Any eligible security that the commissioner, in view of the financial condition of the obligor or issuer and such other factors as may in the opinion of the commissioner be relevant, finds to be of such quality that exclusion of the value of such eligible security pursuant to subdivision (a) is not necessary for the purposes of this chapter and which the commissioner by regulation or order exempts, in whole or in part, from the limitations of subdivision (a).

2084. (a) A licensee shall be deemed to own an eligible security only if the following apply:

(1) The licensee owns the eligible security solely and exclusively in its own right, both of record and beneficially.

(2) The eligible security is not subject to any pledge, lien, or security interest.

(3) The licensee can freely negotiate, assign, or otherwise transfer the eligible security.

(b) Notwithstanding subdivision (a), no licensee shall be deemed not to own an eligible security solely on account of any of the following facts, provided that, but for that fact, the licensee would be deemed to own the eligible security under the provisions of subdivision (a):

(1) The fact that the eligible security is owned of record by a documented nominee of the licensee or by a securities depository.

(2) The fact that the licensee has pledged the eligible security with the United States or any state of the United States to secure payment by the licensee of transmission money.

2085. If the commissioner finds that any eligible security or class of eligible securities is not of sufficient liquidity or quality to be eligible securities, the commissioner may by regulation or order declare the security or class of securities to be ineligible.

2086. If the commissioner finds that any security or class of securities that is not an eligible security is of sufficient liquidity and quality to be an eligible security, the commissioner may by regulation or order declare the security or class of securities to be eligible securities.

2087. (a) If the commissioner finds that a rating assigned to a class of securities by an eligible securities rating service indicates that the class of securities is of sufficient quality to be eligible

securities, the commissioner may by regulation or order declare the rating to be an eligible rating.

(b) With respect to this chapter "eligible rating" means any rating assigned to such security or class of securities by such eligible securities rating service which the commissioner has by regulation or order declared to be an eligible rating.

2088. (a) The commissioner may by regulation or order declare a securities rating service to be an eligible securities rating service if the commissioner finds the following with respect to the securities rating service:

(1) It has been continuously engaged in the business of rating securities for a period of not less than three years.

(2) It is competent to rate securities and is nationally recognized for rating securities in a competent manner.

(3) It publishes its ratings of securities on a nationwide basis.

(b) With respect to this chapter "eligible securities rating service" means any securities rating service that the commissioner by regulation or order declared to be an eligible securities ratings service.

2089. A licensee shall maintain eligible securities that are adequately diversified, predominantly of a duration commensurate with the licensee's outstanding money transmission obligations, and of sufficient liquidity and quality to promptly pay the outstanding money transmission obligations of the licensee.

Chapter 6. Consumer Disclosures

2100. (a) (1) Each licensee shall file with the commissioner a certified copy of every receipt form used by it or by its agent for receiving money for transmission prior to its first use. No licensee or its agent shall use any receipt, a certified copy of which has not been filed with the commissioner, or use a receipt that the commissioner has deemed not to be in compliance pursuant to paragraph (2).

(2) If the commissioner determines, within 30 business days of the filing date of a receipt, that the receipt does not comply with the requirements of this section or Sections 2102 and 2103, the commissioner shall notify the licensee in writing that the receipt is not in compliance with those requirements.

(b) Notwithstanding subdivision (a), before a new licensee issues its first receipt to a customer, it shall file with the commissioner a certified copy of the receipt forms to be used by it or its agents for receiving money for transmission. The new licensee shall not use the receipt forms until approved by the commissioner. For purposes of this subdivision, a new licensee is a licensee that has not been previously licensed by the commissioner as a money transmitter or has not previously received money for transmission in California.

(c) If a receipt is required by this chapter to be in English and another language, the English version of the receipt shall govern any dispute concerning the terms of the receipt. However, any discrepancies between the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the licensee or its agent and the licensee or its agent shall be liable for any damages caused by these discrepancies.

(d) Any licensee violating the requirements of this section shall be subject to a fine of fifty dollars ($50) for each violation. This provision is in addition to any other enforcement provisions that may apply to such a violation.

(e) If any licensee or its agent uses a receipt form, a certified copy of which has not been filed with the commissioner, the licensee shall be liable for the acts of its agent whether or not the licensee authorized the agent to use that form.

(f) The receipt form shall comply with the requirements of Sections 2102 and 2103.

2101. Every licensee or its agent shall forward all money received for transmission or give instructions committing equivalent money to the person designated by the customer within 10 days after receiving that money, unless otherwise ordered by his or her customer.

2102. (a) Every licensee or its agent shall refund to the customer within 10 days of receipt of the customer's written request for a refund any and all money received for transmission unless any of the following occurs:

(1) The money has been forwarded within 10 days of the date of receipt.

(2) Instructions have been given committing an equivalent amount of money to the person designated by the customer within 10 days of the date of the receipt of the money from the customer.

(3) The customer instructs the licensee to transmit the money at a time beyond 10 days. If the customer gives instructions as to when the money shall be forwarded or transmitted and the moneys have not yet been forwarded or transmitted, the licensee or its agent shall refund the customer's money within 10 days of receipt of the customer's written request for a refund.

(4) Refund would violate law.

(b) In the case of money received for transmission, a receipt shall be provided by a licensee or its agent to all customers which shall be made available to the customer in English and in the language principally used by that licensee or that agent to advertise, solicit, or negotiate, either orally or in writing, at that branch office if other than English. The receipt shall either include or have attached a conspicuous statement in English and in the language principally used by the licensee or that agent to advertise, solicit, or negotiate, either orally or in writing at that branch office if other than English in a size equal to at least 10 point bold type, as follows:

RIGHT TO REFUND

"You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if _____ (name of licensee) does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you.

If your instructions as to when the moneys shall be forwarded or transmitted are not complied with and the money has not yet been forwarded or transmitted, you have a right to a refund of your money.

If you want a refund, you must mail or deliver your written request to _____ (name of licensee) at _____ (mailing address of licensee). If you do not receive your refund, you may be entitled to your money back plus a penalty of up to $1,000 and attorney's fees pursuant to Section 2102 of the California Financial Code."

(c) A cause of action under this section may be brought in small claims court if it does not exceed the jurisdiction of that court, or in any other appropriate court. The customer shall be entitled to recover each of the following:

(1) Any and all money received for transmission, plus any fees and charges paid by the customer.

(2) A penalty in an amount not to exceed one thousand dollars ($1,000). The court shall award the prevailing party costs and attorney's fees.

2103. (a) The receipt presented to each customer for money received for transmission pursuant to subdivision (b) of Section 2102 shall clearly state the rate of exchange for the particular transaction, if any, the amount of commission or fees, and the net exchange after all fees and commissions have been deducted. The receipt shall also state the total amount of money presented by the customer and the total amount to be delivered to the beneficiary designated by the customer. These disclosures shall be in English and in the same language as that principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, at that branch office if other than English.

(b) If window and exterior signs concerning the rates of exchange for money received for transmission are used, they shall clearly state in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, at that branch office if other than English, the rate of exchange for exchanging the currency of the United States for foreign currency. If an interior sign or any advertising is used that quotes exchange rates, it shall, in addition to clearly stating the rates of exchange for exchanging the currency of the United States for foreign currency, also state all commissions and fees charged on all such transactions.

(c) At each branch office, there shall be disclosed the exchange rates, fees, and commissions charged in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, with respect to money received for transmission at that branch office. At each branch office, there shall be signage clearly identifying the name of the licensee as well as any trade names used by the licensee at that branch office.

(d) If the customer does not specify at the time the money is presented to the licensee or its agent the country to which the money is to be transmitted, the rate of exchange for the transaction is not required to be set forth on the receipt. If the customer does specify at the time the money is presented to the licensee or its agent the country to which the money is to be transmitted but the specified country's laws require the rate of exchange for the transaction to be determined at the time the transaction is paid out to the intended recipient, the rate of exchange for the transaction is not required to be set forth on the receipt.

2104. Each licensee or agent shall prominently post on the premises of each branch office that issues or sells payment instruments, and at machines located in this state and operated by the licensee or agent that issues or sells payment instruments, a notice clearly stating that payment instruments are not insured by the federal government, the state government, or any other public or private entity. This notice shall be printed in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, with respect to the purchase of payment instruments. The information required in this notice shall be clear, legible, and in letters not less than one-half inch in height. The notice shall be posted in a conspicuous location in the unobstructed view of the public within the premises. The licensee shall provide to each of its agents the notice required by this section. In those locations operated by an agent, the agent, not the licensee, shall be responsible for the failure to properly post the required notice.

2105. (a) Each licensee or agent shall prominently post on the premises of each branch office that conducts money transmission a notice stating that:

> "If you have complaints with respect to any aspect of the money transmission activities conducted at this location, you may contact the California Department of Financial Institutions at its toll-free telephone number, 1-800-622-0620, by e-mail at consumer.complaint@dfi.ca.gov, or by mail at Department of Financial Institutions, Consumer Services, 1810 13th Street, Sacramento, CA 95811."

(b) The commissioner may by order or regulation modify the content of the notice required by this section. This notice shall be

printed in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate either orally or in writing, with respect to money transmission at that branch office. The information required in this notice shall be clear, legible, and in letters not less than one-half inch in height. The notice shall be posted in a conspicuous location in the unobstructed view of the public within the premises. The licensee shall provide to each of its agents the notice required by this section. In those locations operated by an agent, the agent, and not the licensee, shall be responsible for the failure to properly post the required notice.

2106. (a) No licensee shall sell or issue any form of payment instrument in California unless a certified copy of the payment instrument has first been filed with the commissioner. The payment instrument shall clearly identify the licensee as the issuer.

(b) The commissioner may by order or regulation declare that a form of payment instrument is prohibited if it is misleading in any material respect or otherwise does not comply with applicable law.

(c) A payment instrument that identifies the agent through which the licensee sells the payment instrument shall identify the agent as such and shall identify the licensee at least as conspicuously as it does the agent.

Chapter 7. Examinations, Special Reports, and Records

2120. (a) The commissioner may at any time and from time to time examine the business and any office, within or outside this state, of any licensee or any agent of a licensee in order to ascertain whether that business is being conducted in a lawful manner and whether all money transmission is properly accounted for.

(b) The directors, officers, and employees of any licensee or agent of a licensee being examined by the commissioner shall exhibit to the commissioner, on request, any or all of the licensee's accounts, books, correspondence, memoranda, papers, and other records and shall otherwise facilitate the examination so far as it may be in their power to do so.

2121. The commissioner may consult and cooperate with other state or federal money transmission regulators in enforcing and administering this chapter. They may jointly pursue examinations

and take other official action that they are otherwise empowered to take.

2122. A licensee shall file a report with the commissioner within five business days after the licensee has reason to know of the occurrence any of the following events:

(a) The filing of a petition by or against the licensee under the United States Bankruptcy Code (11 U.S.C. Secs. 101-110, incl.) for bankruptcy or reorganization.

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors.

(c) The commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed.

(d) The cancellation or other impairment of the licensee's bond or other security.

(e) A charge or conviction of the licensee or of an executive officer, manager, director, or person in control of the licensee for a felony.

(f) A charge or conviction of an agent for a felony.

2123. A licensee that is a money services business under the regulations adopted pursuant to the United States Bank Secrecy Act (31 C.F.R. Part 103) and the agents of the licensee that are money services businesses shall comply with those regulations.

2124. (a) A licensee shall maintain the following records for determining its compliance with this chapter for at least three years:

(1) A record of each payment instrument or stored value obligation sold.

(2) A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts.

(3) Bank statements and bank reconciliation records.

(4) Records of outstanding payment instruments and stored value obligations.

(5) Records of each payment instrument and stored-value obligation paid within the three-year period.

(6) A list of the last known names and addresses of all of the licensee's agents and their branch offices.

(7) Any other records the commissioner reasonably requires by order or regulation.

(b) A licensee or its agent shall maintain records of any receipts provided pursuant to Section 2102 for six months or a longer period of time specified in the contract between the licensee and its agent.

(c) The items specified in subdivisions (a) and (b) may be maintained in any form of record.

(d) Records may be maintained outside this state if they are made available to the commissioner on seven days' notice that is sent in a record.

(e) If records not required to be maintained in English pursuant to Section 456 are in a language other than English, the licensee shall provide records translated into English within seven days' notice that is sent in a record.

Chapter 8. Additional Enforcement Provisions

2148. (a) If it appears to the commissioner that a licensee is violating or failing to comply with any law of this state, the commissioner may direct the licensee to comply with the law by an order issued under the commissioner's official seal, or if it appears to the commissioner that any licensee is conducting its business in an unsafe or injurious manner, the commissioner may in like manner direct it to discontinue the unsafe or injurious practices. The order shall require the licensee to show cause before the commissioner, at a time and place to be fixed by the commissioner, as to why the order should not be observed.

(b) If, upon any hearing held pursuant to subdivision (a), the commissioner finds that the licensee is violating or failing to comply with any law of this state or is conducting its business in an unsafe or injurious manner, the commissioner may make a final order directing it to comply with the law or to discontinue the unsafe or injurious practices. A licensee shall comply with the final order unless, within 10 days after the issuance of the order, its enforcement is restrained in a proceeding brought by the licensee.

2149. (a) The commissioner may issue an order suspending or revoking a license, or taking possession of and placing a licensee in receivership, if after notice and an opportunity for hearing, the commissioner finds that:

(1) The licensee is violating this chapter or a regulation adopted or an order issued under this chapter, or a condition of approval issued under this chapter.

(2) The licensee does not cooperate with an examination or investigation by the commissioner.

(3) The licensee engages in fraud, intentional misrepresentation, or gross negligence.

(4) The competence, experience, character, or general fitness of the licensee, or any director, officer, employee, or person in control of a licensee, indicates that it is not in the public interest to permit the person to provide money transmission services.

(5) The licensee engages in an unsafe or unsound practice.

(6) The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors.

(7) The licensee does not remove an agent after the commissioner issues and serves upon the licensee a final order including a finding that the agent has violated this chapter.

(8) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or any person has applied for any such relief under that law against the licensee and the licensee has by any affirmative act approved of or consented to the action or the relief has been granted.

(9) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application.

(b) In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the licensee's provision of money transmission services, the magnitude of the loss, the gravity of the violation of this chapter, and the previous conduct of the person involved.

2150. (a) The commissioner may issue an order suspending or revoking the designation of an agent if, after notice and an opportunity for hearing, the commissioner finds that:

(1) The agent violated this chapter or a regulation adopted or an order issued under this chapter.

(2) The agent did not cooperate with an examination or investigation by the commissioner.

(3) The agent engaged in fraud, intentional misrepresentation, or gross negligence.

(4) The agent is convicted of a violation of a state or federal anti-money laundering statute.

(5) The competence, experience, character, or general fitness of the agent, or any director, officer, employee, or person in control of the agent, indicates that it is not in the public interest to permit the agent to provide money transmissions.

(6) The agent is engaging in an unsafe or unsound practice.

(7) The agent has made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement that was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any of those applications, reports, or proceedings any material fact which is required to be stated therein.

(8) The agent is an agent of a licensee who, because of its operations and financial condition, is not competent to supervise and monitor the agent.

(9) The agent will not comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter.

(b) In determining whether an agent is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the agent's provision of money transmission services, the magnitude of the loss, the gravity of the violation of this chapter or a rule adopted or order issued under this chapter, and the previous conduct of the agent.

(c) No licensee shall appoint as an agent any person with respect to whom an order issued under this section is in effect.

(d) No person with respect to whom an order issued under this section is in effect shall become or continue to be an agent of any licensee.

(e) If applicable, the commissioner may disclose to the licensee criminal history information upon which an order is based.

2150.1. (a) Every order, decision, or other official act of the commissioner is subject to review in accordance with law.

(b) Whenever the commissioner has taken possession of the property and business of any licensee, the licensee, within 10 days after that taking, if it deems itself aggrieved thereby, may apply to the superior court in the county in which the head office of the

licensee is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing and a determination of the facts upon the merits, may dismiss the application or enjoin the commissioner from further proceedings and direct the commissioner to surrender the property and business to the licensee.

2150.2. (a) If the commissioner finds that any of the factors set forth in Section 2149 is true with respect to any licensee and that it is necessary for the protection of the public interest, the commissioner may issue an order immediately suspending or revoking the licensee's license.

(b) Within 30 days after the license is suspended or revoked pursuant to subdivision (a), the licensee may file with the commissioner an application for a hearing on the suspension or revocation.

(c) If the commissioner fails to commence a hearing within 15 business days after the application is filed with the commissioner pursuant to subdivision (b) or within a longer period of time agreed to by the licensee, the suspension or revocation shall be deemed rescinded.

(d) Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the suspension or revocation. Otherwise, the suspension or revocation shall be deemed rescinded.

(e) The right of the licensee to petition for judicial review of the suspension or revocation shall not be affected by the failure of the licensee to apply to the commissioner for a hearing on the suspension or revocation pursuant to subdivision (b).

2151. (a) If the commissioner finds that any of the factors set forth in Section 2150 is true with respect to any agent and that it is necessary for the protection of the public interest, the commissioner may issue an order immediately suspending or barring that agent from continuing to be or becoming an agent of any licensee during the period for which that order is in effect.

(b) Within 30 days after an order is issued pursuant to subdivision (a), the licensee or the agent or former agent with respect to whom the order was issued may file with the commissioner an application for a hearing on the order.

(c) If the commissioner fails to commence a hearing within 20 business days after the application is filed with the commissioner

pursuant to subdivision (b) or within a longer period of time agreed to by the parties, the suspension or revocation shall be deemed rescinded.

(d) Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order.

(e) The right of the licensee or agent or former agent to petition for judicial review of the order shall not be affected by the failure of that person to apply to the commissioner for a hearing on the order pursuant to subdivision (b).

2151.1. The commissioner may assess a civil penalty against a person that violates this chapter or a regulation adopted or an order issued under this chapter in an amount not to exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day or part thereof during which the violation continues, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

2152. (a) A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter or that intentionally makes a false entry or omits a material entry in such a record is guilty of a felony.

(b) A person that knowingly engages in an activity for which a license is required under this chapter without being licensed or exempt from licensure under this chapter is guilty of a felony.

(c) Nothing in this chapter limits the power of the state to punish any person for any act that constitutes a crime under any statute.

2153. The enforcement provisions of this chapter are in addition to any other enforcement powers that the commissioner may have under law.

Chapter 9. Miscellaneous Provisions

2170. Any licensee may surrender its license by filing with the commissioner the license and a report with any information as the commissioner requires. The voluntary surrender of the license shall become effective at the time and upon the conditions as the commissioner specifies by order.

2171. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, illegal, or

unenforceable, that invalidity, illegality, or unenforceability shall not affect other provisions or applications of this chapter that can be given effect without the invalid, illegal, or unenforceable provision or application, and to this end, the provisions of this chapter are declared to be severable.

2172. (a) A license issued under the former Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), or the former Division 16 (commencing with Section 33000) that is in effect immediately before January 1, 2011, shall remain in effect as a valid license under this chapter.

(b) Any person that, prior to January 1, 2011, was not required to obtain a license under the former Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), or Division 16 (commencing with Section 33000), but is required to have a license under this chapter, shall file an application for a license pursuant to this chapter by July 1, 2011, in order to continue conducting money transmission in this state directly or through agents. If the application is timely filed and pending with the commissioner, that person may continue to conduct money transmission in this state, until the application has been approved, abandoned, or denied.

SEC. 5. The heading of Division 1.1 (commencing with Section 4000) of the Financial Code is amended and renumbered to read:

DIVISION 1.3. THE SETTING OF FEES IN CONSUMER CREDIT AGREEMENTS AND RELATED CONSUMER PROTECTIONS

SEC. 6. The heading of Division 1.2 (commencing with Section 4050) of the Financial Code is amended and renumbered to read:

DIVISION 1.4. CALIFORNIA FINANCIAL INFORMATION PRIVACY ACT

SEC. 7. The heading of Division 1.3 (commencing with Section 4100) of the Financial Code is amended and renumbered to read:

DIVISION 1.5. FINANCIAL INSTITUTIONS

SEC. 8. The heading of Division 1.5 (commencing with Section 4800) of the Financial Code is amended and renumbered to read:

DIVISION 1.6. DEPOSITORY CORPORATIONS—SALE, MERGER, AND CONVERSION

SEC. 9. The heading of Division 1.6 (commencing with Section 4970) of the Financial Code is amended and renumbered to read:

DIVISION 1.7. COVERED LOANS

SEC. 10. The heading of Division 1.7 (commencing with Section 4981) of the Financial Code is amended and renumbered to read:

DIVISION 1.8. SECURITIES SALES

SEC. 11. The heading of Division 1.8 (commencing with Section 4990) of the Financial Code is amended and renumbered to read:

DIVISION 1.9. PERSONS CONNECTED WITH FINANCIAL INSTITUTIONS

SEC. 12. The heading of Division 1.9 (commencing with Section 4995) of the Financial Code is amended and renumbered to read:

DIVISION 1.10. HIGHER-PRICED MORTGAGE LOANS

SEC. 13. Section 1861 is added to the Financial Code, to read:

1861. It shall be unlawful for any director, officer, agent, or employee of any corporation to use or to conspire to use the credit, the funds, or the power of the corporation to fix or control the price of any commodities, and any person violating this section shall be punished by a fine of not less than two thousand dollars ($2,000) nor more than ten thousand dollars ($10,000), imprisonment in a county jail for not more than one year, imprisonment pursuant to subdivision (h) of Section 1170 of the

Penal Code, or by both that fine and imprisonment, in the discretion of the court.

SEC. 14. Section 1881 is added to the Financial Code, to read:

1881. Whoever being connected in any capacity with any corporation represents in any way that the State of California is liable for the payment of any bond or other obligation, or the interest thereon, issued or incurred by any corporation, or that the State of California incurs any liability in respect of any act or omission of the corporation, shall be punished by a fine of not more than ten thousand dollars ($10,000) and by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

SEC. 15. Section 14315 of the Financial Code is amended to read:

14315. (a) On taking possession of the business and assets of any credit union as provided in this chapter, the commissioner may proceed to liquidate the credit union in the manner provided by ~~Article 8 (commencing with Section 305) of Chapter 2~~ *Chapter 7 (commencing with Section 600)* of Division 1, and the provisions of that ~~article~~ *chapter*, except Sections ~~325, 325.1, 325.2, and 330~~ *700, 701, 702, and 710*, shall apply as if the California credit union were a California state commercial bank, or he or she may appoint a liquidating agent or a liquidating committee of three members of the credit union to liquidate the business and assets of the credit union in the manner provided in Article 2 (commencing with Section 15250) of Chapter 9, except that in lieu of the certificate required under Section 15252 the commissioner shall prepare and file in the office of the Secretary of State a certificate of commencement of liquidation proceedings upon taking possession of the business and assets, and the commissioner or his authorized deputy shall countersign the certificate referred to in Sections 15257 and 15258 whenever liquidation is involuntary. The commissioner may, however, prepare and file a final certificate whenever he or she retains possession of the assets of any credit union for the purpose of liquidation. The liquidating agent need not be a member of the credit union to be liquidated, and may be a person, firm, or corporation as determined by the commissioner.

(b) If the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the commissioner may tender to the National Credit Union Administration an appointment as conservator or receiver of the

California credit union. If the National Credit Union Administration accepts the appointment, the National Credit Union Administration shall have, in addition to any powers conferred by federal law, the powers conferred on the commissioner pursuant to subdivision (a).

SEC. 16. Section 14652 of the Financial Code is amended to read:

14652. Every credit union may invest in securities and other assets described in Chapter ~~9~~ *10* (commencing with Section ~~1000) of the Banking Law~~ *800) of Division 1* as legal investments for ~~savings banks~~ *nonbank licensees*.

SEC. 17. (a) It is the intent of the Legislature to provide licensees under Division 1.2 (commencing with Section 2000) of the Financial Code, as added by Section 4 of this bill, which recasts the provisions of Chapter 14 (commencing with Section 1800) of Division 1 of the Financial Code, as added by Section 2 of Chapter 612 of the Statutes of 2010, adequate time to update receipts, notices, disclosures, and postings to conform to the provisions of this bill.

(b) A licensee under Division 1.2 (commencing with Section 2000) of the Financial Code, as added by Section 4 of this bill, shall, by July 1, 2012, update all receipts, notices, disclosures, and postings, as set forth in that division, to conform to the provisions of this bill.

SEC. 18. Sections 13 and 14 of this bill add Sections 1861 and 1881 to the Financial Code. The language in those sections is identical to the language proposed by Sections 98 and 99 of AB 109, which has been chaptered but is not operative. Sections 13 and 14 of this bill shall become operative only if (1) this bill is enacted and becomes effective on or before January 1, 2012, (2) this bill adds Sections 1861 and 1881 to the Financial Code with language identical to Sections 98 and 99 of AB 109, and (3) AB 109 becomes operative, in which case Sections 1861 and 1881 of the Financial Code, as added by Section 3 of this bill, shall remain operative only until the operative date of AB 109, at which time Sections 13 and 14 of this bill shall become operative.

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