



Monthly Bulletin

Volume 6, Number 6

December, 2002

DFI Launches New Web Site

The Department of Financial Institutions (DFI) introduced a redesigned Web site in December to better serve our customers. The site content has been substantially expanded, and has been designed to facilitate its use by our licensees, consumers and the general public.

Please visit the new section, Licensee Services, available from the Home page. This section provides a "one-stop shop" of resources by institution type (e.g., Credit Unions, Commercial Banks, Transmitters of Money Abroad, etc.), and includes business forms, Financial Code, contact information and more.

Visit the redesigned Financial Institutions Web site at: www.dfi.ca.gov

Compliance with the California Corporate Disclosure Act and the Sarbanes-Oxley Act of 2002

Memo for Directors of Public Company Licensees

A memorandum is attached to the Monthly Bulletin that provides a summary of some of the new provisions of federal and state laws relating to corporate governance which may apply to some licensees. The California Corporate Disclosure Act and the Sarbanes-Oxley Act of 2002 ("Act") apply to public companies. There are exceptions to the applicability of the Act and the Act may not apply to licensees which are not public companies or which have holding companies. However, even though the licensee may not be subject to the Act, its holding company may be subject to it. Therefore, it is suggested that each licensee confer with its legal counsel regarding the application of the Act to the licensee or to its holding company.

111 Pine Street, Suite 1100, San Francisco, CA 94111-5613
300 South Spring Street, Suite 15513, Los Angeles, CA 90013-1204
1810—13th Street, Sacramento, CA 95814
9609 Waples Street, Suite 100, San Diego, CA 92121
Consumer Compliance

(415) 263-8500
(213) 897-2085
(916) 322-5966
(858) 642-4242
(800) 622-0620

Changes in Ownership of Transmitters of Money Abroad

The Commissioner must approve an application to acquire control of a corporation licensed to transmit money abroad **before** a person, directly or indirectly, acquires control of 10 percent or more of that company's stock. This includes the sale of stock to a subsidiary of an existing parent, even when the parent retains majority control. Although the Commissioner may exempt certain transactions as not being comprehended within the purposes of the Financial Code and the regulation of which he finds is not necessary or appropriate, this determination must be made by the Commissioner **in advance** of the acquisition of control.

Financial Code Section 1804 (a) states: *No person shall, directly or indirectly, acquire control of a licensee unless the commissioner has first approved in writing the acquisition of control.* The commissioner shall not approve the application unless the commissioner finds that the applicant and its officers and directors are of good character and sound financial standing; the applicant is competent to engage in the business of receiving money for transmission; and it is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with all the applicable provisions of the Financial Code and any regulation or order issued under the Financial Code.

In addition, corporations may hold a controlling interest in companies licensed to transmit money abroad. The numerous acquisitions or mergers which are occurring in the financial services industry may result in one corporation directly or indirectly acquiring control of a company licensed to transmit money abroad. It is important that corporations and their legal counsel closely review the ramifications of a proposed acquisition or merger, including whether the transaction would result in direct or indirect control of a company licensed to transmit money abroad. If such is the case, it is essential that an application to acquire control of the company licensed to transmit money abroad be filed **before** the merger or acquisition takes place.

A monetary penalty or other sanctions will result if the acquisition takes place in violation of the law. An application to acquire control of a transmitter should be filed at least 90 days prior to the direct or indirect change of control of a transmitter. If you have any questions regarding the above, please call Arlene Rutherford at (858) 642-4244 or Julio Prada at (415) 263-8540.

Transmitter of Money Abroad Data Survey Reminder

Transmitter of money abroad licensees are reminded that January 10, 2003 is the due date for returning the questionnaire assessing the feasibility of submitting data in an electronic format to the Department of Financial Institutions (DFI). Surveys were e-mailed to all transmitters and are to be returned by e-mail to Nancy Luke at nluke@dfi.ca.gov or by mail to Ms. Luke at the Department of Financial Institutions, 1810 13th Street, Sacramento, CA 95814, or faxed to (916) 445-7643. If you have any questions about this survey, please contact Patrick Carroll at pcarroll@dfi.ca.gov or by telephone at (415) 263-8559.

Money Services Businesses

The Department of Financial Institutions' new Web site includes links to sites of interest to Money Services Businesses. These include information related to the Bank Secrecy Act, the Financial Crimes Enforcement Network, the Office of Foreign Assets Control, the Patriot Act Communication System for Filing Reports with FinCEN and the USA Patriot Act. Please try these links at www.dfi.ca.gov/moneyservices/links.asp.

Credit Union Audit Reminder

As the end of the year approaches, we would like to remind credit unions of the requirement to have an annual audit. Sections 14252 (b) and (c) of the California Financial Code ("FC") contains the following requirements:

- (b) Each credit union shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, 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 the audited financial statements of the credit union for, or as of the end of, the fiscal year, prepared in accordance with generally accepted accounting principles that the commissioner may specify and any other information that the commissioner may specify.
 - (2) The audit report shall be based upon an audit of the credit union conducted in accordance with generally accepted auditing standards and any other requirements that the commissioner may specify.
 - (3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is acceptable 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 credit union to take any action that the commissioner may find necessary or advisable to enable the independent certified public accountant or independent public accountant to remove the qualification.

Subsection (a) of FC Section 14252 allows the commissioner to grant an exemption from this requirement.

If it is the intent of management to *not* obtain an opinion audit for any given fiscal year, it must submit a written request for an exemption to FC Section 14252. This request should be sent to the attention of the Assistant Deputy Commissioner overseeing the credit union, and should include at least the following information:

1. A reasonably detailed description of the alternate type of audit that will be performed in lieu of an opinion audit, and who will be performing the audit.
2. That the alternate type of audit will at a minimum follow the audit procedures set forth in the NCUA's Supervisory Committee Guide.
3. A copy of the engagement letter from the individual(s) selected to perform the particular alternate type of audit.
4. The credit union's fiscal year, or other time period, to be covered by the alternate type of audit.

As with the requirements of an opinion audit submitted pursuant to FC Section 14252, an alternate type of audit allowed via written exemption from the Department must be submitted within 105 days of the credit union's fiscal year, unless otherwise extended or directed by the Commissioner. As such, it is important to submit any request for an audit exemption early enough to allow for processing of the request and for compliance with the 105 day reporting requirement.

An exemption to the opinion audit reporting requirements contained in FC Section 14252 is valid for only one fiscal year at a time. Thus, an exemption must be requested annually to secure future exemptions for future fiscal years.

To maintain public confidence and ensure proper oversight over this area, the Department will rarely grant more than two consecutive exemptions to the same credit union, in essence requiring an opinion audit for all State-chartered credit unions every few years.

Questions concerning these matters may be addressed to the attention of the Assistant Deputy Commissioner in your region.

Monthly Activity Report

Commercial Bank Activity

New Banks

Continental Bank of America

Proposed Location: in the vicinity of Gale Avenue and Fullerton Road, City of Industry/Rowland Heights, Los Angeles County

Correspondent: Gary Steven Findley, Esq.

Gary Steven Findley & Associates

1470 North Hundley Street, Anaheim, CA 92806

Phone: (714) 630-7136

Approved: 12/24/02

Diablo Valley Bank

Proposed Location: in the vicinity of in the vicinity of San Ramon Valley Boulevard and Hartz Way, City of Danville, Contra Costa County

Correspondent: Mr. James H. Avery

James H. Avery Company

PO Box 3009

San Luis Obispo, CA 93403

Phone: (805) 544-5477

Filed: 12/18/02

New Banks (Continued)

Pacific City Bank

Proposed Location: 3701 Wilshire Boulevard, Suite 100, Los Angeles, Los Angeles County

Correspondent: Jung C. Chang

2975 Wilshire Boulevard, Suite 520

Los Angeles, CA 90010

Phone: (213) 383-0423

Approved: 12/26/02

Merger

Harris Trust Company of California, San Francisco, with and into Harris Bank California, N.A., San Francisco

Effected: 12/2/02

Conversion to State Charter

Nara Bank, National Association, Los Angeles, to convert to a state-chartered bank under the name Nara Bank

Approved: 12/26/02

Purchase of Partial Business Unit

United Commercial Bank, San Francisco, to acquire the Brooklyn Branch of Broadway National Bank, New York

Filed: 9/25/02

Approved: 12/6/02

Effected: 12/13/02

Sale of Partial Business Unit

Bank of Orange County, Orange, to sell its Torrance Branch Office to Bay Cities National Bank, Redondo Beach

Effected: 12/13/02

Valley Bank, Moreno Valley, to sell the deposit liabilities of its Sun City Office to Provident Savings Bank, F.S.B., Riverside

Effected: 12/13/02

Acquisition of Control

Five Star Bancorp, to acquire control of Five Star Bank, Rocklin

Filed: 12/23/02

Change of Name

Discovery Valley Bank to Discovery Bank

Notified: 11/27/02

Correction

The November 2002 issue of the Monthly Bulletin showed the change of name from Coast Commerce Bank (Proposed) to Seacoast Commerce Bank. It should have been shown as Coast Commerce Bank (In organization) to Seacoast Commerce Bank.

Industrial Bank Activity**Change of Name**

Tustin Thrift and Loan Association, Tustin to Tustin Community Bank
Effected: 11/22/02

Premium Finance Company Activity**New Premium Finance Company**

Blackwater Premium Finance of California, Inc.
6046 Cornerstone Court West, Suite 202, San Diego, San Diego County
Approved: 12/12/02

Golden State Finance Corp.
2501 E. Chapman Avenue, Suite 100, Fullerton, Orange County
Filed: 12/11/02

Millennium Financing of California, Inc.
22349 La Palma Avenue, Suite D-110, Yorba Linda, Orange County
Filed: 12/9/02

Mutual Credit Corporation
511 West Palm Drive, Suite 210, Placentia, Orange County
Approved: 12/12/02

Voluntary Surrender of License

Premium Star Finance Company
2501 East Chapman Avenue, Fullerton, Orange County
Filed: 5/24/02
Approved: 9/20/02
Effected: 9/20/02

Credit Union Activity**Conversion to State Charter**

Capital Power Federal Credit Union, Sacramento as Capital Power Credit Union
Approved: 12/23/02
Effected: 12/24/02

Conversions to State Charter (Continued)

EBTEL Federal Credit Union, Pleasanton, to convert to state charter as EBTEL Credit Union

Approved: 10/4/02

Effected: 12/2/02

Medical Centers Federal Credit Union, to convert to state charter as Focus One Community Credit Union

Effected: 12/20/02

Riverside Campus Federal Credit Union, Riverside

Approved: 12/23/02

SafeAmerica Federal Credit Union, Pleasanton as SafeAmerica Credit Union

Approved: 10/4/02

Effected: 12/18/02

Merger

Medi-Serv Credit Union, San Francisco, into San Francisco Fire Credit Union, San Francisco

Effected: 12/16/02

Change of Name

1st City Credit Union to change its name to First City Credit Union

Effected: 12/5/02

Field of Membership

Sixteen credit unions received approvals to add 52 new fields of membership during November 2002.

Bylaw Amendments

Two credit unions received approvals for two bylaw amendments during November 2002.

Variations

One credit union received an approval for a request for variance to sections of the California Code of Regulations during November 2002.

Transmitter of Money Abroad Activity

Change of Name

LBC Mabuhay USA Corporation to LBC Mundial Corporation
Effected: 9/20/02

DONALD R. MEYER
Commissioner of Financial Institutions

Bulletin for Month ended
December 2002, issued pursuant
to Financial Code, Section 258



The *Monthly Bulletin* is available without charge via email as a PDF attachment. To subscribe, please send e-mail with your name, e-mail address, company name and phone number to bulletin@dfi.ca.gov.

MEMORANDUM

To: Directors of Public Company Licensees

Date: December 31, 2002

Subject: Compliance with the California Corporate Disclosure Act and the Sarbanes-Oxley Act of 2002

From: Donald R. Meyer, Commissioner of Financial Institutions

The purpose of this memorandum is to provide a summary of some of the new provisions of federal and state laws relating to corporate governance which may apply to some licensees. The California Corporate Disclosure Act and the Sarbanes-Oxley Act of 2002 ("Act") apply to public companies. There are exceptions to the applicability of the Act and the Act may not apply to licensees which are not public companies or which have holding companies. However, even though the licensee may not be subject to the Act, its holding company may be subject to it. Therefore, it is suggested that each licensee confer with its legal counsel regarding the application of the Act to the licensee or to its holding company.

I California Corporate Disclosure Act

The California Corporate Disclosure Act, effective January 1, 2003, amends Sections 1502 and 2117, and adds Section 1502.5 to, the Corporations Code (Stats. 2002, ch. 1015). The new state law requires additional public disclosures by "publicly traded companies," including domestic and foreign corporations, qualified to transact intrastate business in California. The purpose of the new required disclosures is to help combat fraud and protect investors. "Publicly traded company" means a company with securities listed or admitted to trading on a national or foreign exchange, or which is the subject of two-way quotations that are regularly published. Such companies must file with the Secretary of State a statement, in the form prescribed, including the following additional information:

- Name of independent auditor, description of other services provided as specified, and date of the last audit, including a copy of the report;
- Annual compensation paid to each director and executive officer;
- Description of any loans made to any director at a preferential loan rate;
- Statement indicating whether any bankruptcy has been filed by corporation executive officers or directors during the past 10 years;
- Statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the previous 10 years;
- Statement indicating whether the corporation violated any federal security laws or any **banking** or security provisions of California law during the previous 10 years for which the corporation was found liable in an action before a federal or state court or regulatory agency or a self-regulatory agency in which a judgment over \$10,000 was entered.

II Sarbanes-Oxley Act of 2002

The provisions of the Act became effective on July 30, 2002. The purpose of this legislation includes protection of investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws and is "intended to address the systemic and structural weaknesses affecting our capital markets as revealed by the repeated failures of audit effectiveness and corporate and financial and broker-dealer

responsibility in recent months and years.”¹ The Act is said to effect the most extensive reforms in American business practices since the Great Depression and enactments of the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”). The Act provides a legislative response to the problems of Enron, Global Crossing, World Com, other cases of corporate malfeasance, and attempts to restore confidence in our capital markets.

Application, Administration and Enforcement

The Act applies to “issuers,” as defined in the Act, which includes all SEC-reporting companies, domestic or foreign. Section 2 (a). Such public companies include banks and bank holding companies but exclude banks which are wholly-owned subsidiaries of bank holding companies, or other wholly-owned affiliates of banks or bank holding companies. The Act also amended Section 12(i) of the Exchange Act to make it clear that the federal banking agencies have the authority to administer and enforce various provisions of the Act applicable to banks which are public companies, specifically, Sections 302, 303, 304, 306, 401(b), 404, 406, and 407. Section 335.101 of the FDIC Regulations (12 C.F.R § 335.101) incorporates through cross reference the regulations of the Securities and Exchange Commission (“SEC”) issued under specified sections of the Exchange Act. The Federal Reserve Board’s Regulation H has also been amended to require registered member banks to comply with any rules the SEC adopts under Section 10A(m) of the Exchange Act (added by Section 301 of the Act), or Sections 302, 303, 304, 306(a), 401(b), 404, 406, and 407 of the Act. Some of the provisions of the Act are effective immediately, but most provisions require rulemaking by the SEC. The SEC must propose and adopt final rules for implementation of various provisions of the Act by the deadlines specified in the Act. The following is an overview of certain sections of the Act which relate to or are applicable to state-chartered banks which are public companies.

Public Accounting Oversight Board. Sections 101-109. The Act seeks to reform the accounting profession by establishing the Public Company Oversight Board, a self-regulatory, nonprofit corporation subject to SEC oversight (“Board”). The Board is responsible for overseeing the audits and auditors of public companies and participates in the establishment of auditing standards relating to the preparation of audit reports for issuers. The Board is to be fully organized by April 26, 2003.

Public Company Audit Committees. Section 301. Each board of an insured bank (or its holding company) which is a public company must comply with the additional requirements of Section 301, as well as continue to comply with the existing financial management requirements of the Federal Deposit Insurance Act. 12 U.S. C. § 1831(m). The SEC must adopt rules directing the national security exchanges and the National Association of Securities Dealers to prohibit listing any company that does not satisfy the audit committee requirements in Section 301. The audit committee must be composed of entirely “independent” directors as defined in the Act. “Independence” is defined to prohibit the director’s acceptance of any consulting, advisory or other compensatory fees from the issuer and being an affiliate of the issuer, or any subsidiary, thereof, subject to the exemption authority of the SEC and federal banking agencies. The audit committee is directly responsible for the appointment, compensation, and oversight of any registered public accounting firm engaged by the issuer. Each audit committee has the authority to engage independent counsel and other advisors. This new authority under the Act is similar to the existing authority of “large bank” audit committees, as defined by the FDIC, to have access to its own outside counsel. 12 U.S.C. § 1831 (g)(1)(C)(ii). The SEC must adopt final rules for implementation of Section 301 by April 26, 2003. The SEC must also issue rules requiring **disclosure** of

¹ Report of the Committee on Banking, Housing, and Urban Affairs on the Public Company Accounting Reform and Investor Protection Act of 2002, at 1. The bill was enacted as the Sarbanes-Oxley Act of 2002, Pub. L. No 107-204, 116 Stat.745 (2002).

whether an issuer's audit committee includes at least one **"financial expert,"** with auditing experience and knowledge of GAAP, as defined in the Act. **Section 407.**

Loans to Executive Officers and Directors. The ban on loans to executive officers and directors in Section 402 does not apply to an issuer that is an insured depository institution, as defined in the Federal Deposit Insurance Act, if the loan is subject to the requirements of the insider lending restrictions of Section 22(h) of the Federal Reserve Act and the Federal Reserve Board's Regulation O. California state insured non-member banks, including public companies, are subject to the lending restriction of Regulation O of the Federal Reserve Board pursuant to both Section 337.3 of the FDIC Regulations and Financial Code Section 3370 et seq. These authorities provide ample support for the statement that insured banks are subject to the lending restrictions of Section 22(h) of the Federal Reserve Act (Regulation O), and, therefore, are not subject to Section 402 of the Act (ban on loans to insiders). While insured banks are not subject to Section 402, **independent state-chartered trust companies which are not "insured depository institutions" but are public companies may be subject to the prohibitions contained in Section 402.**

Corporate Responsibility for Financial Reports. Sections 302 and 906. SEC Order 4-460 required a "one time" certification from the 947 largest public companies, compelling the CEOs and CFOs to certify to the accuracy of disclosures when the next quarterly report was required to be filed. There are also two apparently divergent certification requirements contained in **Section 302** and **Section 906**, each requiring the CEOs and CFOs of public companies to certify that the financial statements contained in the company's periodic reports fairly present in all material respects the financial condition and results of operations of the company, as well as certification of other matters as required by each section. **A "knowing" and "willful" failure to comport with the requirements of Section 906 results in criminal penalties.** Section 906 is effective immediately. **Section 302** also requires a **company's** CEO and CFO to certify that the periodic report(s) do not contain any untrue statement of a material fact or material omission, as well as other matters. Section 302 has been implemented by SEC Rules 13a-14 and 15d-14. Reporting companies, foreign private issuers, and voluntary filers are all subject to the certification requirements of Section 302.

Improper Influence on Audits. Section 303. The Act makes it illegal for a company's directors or officers to "fraudulently influence, coerce, manipulate, or mislead" an accountant for the purpose of rendering the company's audit report materially misleading. The SEC must adopt final rules by April 26, 2003.

CEO and CFO Forfeiture of Certain Bonuses and Profits. Section 304. The Act requires CEOs and CFOs to disgorge bonuses, other incentive- or equity-based compensation and profits where an accounting restatement is required due to material noncompliance of the issuer with any financial reporting requirement under the securities laws as a result of misconduct. This requirement is subject to the exemption authority of the SEC. Effective immediately.

Prohibition of Insider Trades During Pension Fund "Blackout Periods." Section 306(a). This section prohibits executive officers and directors from acquiring or transferring company equity securities during pension fund "black out" periods. "Blackout period" means a period of more than three business days during which trading in a company retirement plan is suspended. Effective by January 26, 2003.

Code of Ethics for Senior Financial Officers. Section 406. The SEC must issue rules requiring each issuer to disclose in periodic reports, whether or not it has adopted a code of ethics for senior financial officers. The SEC must adopt final rules by January 23, 2003.

Officer and Director Bars and Penalties. Section 305 and 1105. In Section 305, the Act gives the SEC the authority to bar an individual from serving as an officer or director of a public company upon a finding that the individual is “unfit” to serve. Section 1105 gives the SEC authority in an administrative cease and desist proceeding to bar an individual who has violated the anti-fraud provisions of the Securities Act and/or the Exchange Act from acting as a director or officer of any public company, if the individual’s conduct demonstrates “unfitness” to serve. Effective immediately.

Enhanced Financial Disclosures. Sections 401, 403, 404 and 409. Public companies must provide in periodic reports and other reports filed with the SEC enhanced disclosures in pro forma financial statements and of off-balance sheet transactions (Section 401), include an internal control report in the annual report (Section 404), provide accelerated reporting of certain management purchases and sales of securities (Section 403), and disclose material changes in financial condition or operations “**on a rapid and current basis**”(Section 409). Section 403 is in effect. The SEC must adopt final rules implementing Section 401 by January 26, 2003. Sections 404 and 409 are subject to SEC rulemaking, with no time limit specified.

New Federal Felony. Section 807. The Act creates a new federal felony with a 25 year maximum penalty for defrauding shareholders of publicly traded companies. Effective immediately.

Note: These summaries are not intended to constitute legal advice. Please confer with your legal counsel regarding the provisions of federal and state laws discussed in these summaries.