



Commissioner's Report

On the Offer or Sale of Securities by Permit under Corporations Code Section 25113



December 2017



California Department of Business Oversight

Introduction

Corporations Code section 25113, subdivision (d) requires the Department of Business Oversight (DBO) to prepare an annual report summarizing data collected from businesses granted permits to offer and sell securities pursuant to Section 25113's other provisions. The report must include:

- A summary of the general categories of investments for which permits were approved.
- The minimum, maximum, and average net worth required of permit holders.
- The least stringent and most stringent suitability standards imposed on persons issued permits for each category.
- The experience requirements imposed.
- The total dollar amount of money sought to be raised per category.
- The number and nature of enforcement actions taken against permit holders.
- Any other information deemed relevant by the Commissioner of the DBO (Commissioner).

2016 Data and Summary

Permits

Generally, under the Corporate Securities Law of 1968 (Corporations Code section 25000 et seq.), the offer and sale of a security requires either a permit from the DBO or an exemption from the permit requirement.

General Categories of Investment

In 2016, the DBO issued securities permits in the following categories of investment: agriculture, church debt, church extension fund, communication, cooperative, energy, entertainment, financing, food and drink, medical research, mobile home park, multi-lender, mutual water company, nonprofit, real estate related, real estate investment trust (REIT), sports and recreation, technology and others. The DBO issued a total of 131 permits in all categories in 2016, compared with 138 in 2015.

The table below breaks down the number of permits issued by category of investment:

Category of Investment	Number of Permits Issued in 2016	Number of Permits Issued in 2015
Agricultural	2	2
Church Debt	16	12
Church Extension Fund	30	28
Communication	1	0
Co-ops*	10	8
Education	0	1
Energy	1	1
Entertainment	1	0
Financing	7	4
Food and drink	2	3
Medical research	1	0
Mobile home parks	10	11
Mortgage	0	1
Multi-lender	13	10
Mutual water companies	5	11
Nonprofit	9	12
Oil and gas	2	0
Real estate related	5	9
REIT	2	2
Sports and recreation	7	12
Technology	1	5
Transportation	0	1
Other**	6	5
Total	131	138

*The category "Co-ops includes hardware retailers, grocers, and professional services providers.

**The category "Other" includes a bank holding company, intentional community company, consumer products company, grocery store, mortgage loan broker/loan servicer, and cemetery/mortuary services.

Investor Suitability Standards

The Commissioner has broad discretion under the Corporate Securities Law of 1968 to set standards for the offer and sale of securities. The Commissioner may require investors to meet specific qualifications related to experience, level of financial responsibility, tax status, or any other criteria the Commissioner deems necessary.¹ These "investor suitability"

¹ Cal. Code Regs., tit. 10, § 260.140.01.

standards are imposed as needed and depend on the securities issued. As reflected in the table below, both the least and most stringent standards varied by category of investment in 2016. For some investment categories, no investor suitability standard was imposed. In other words, the issuer was permitted to offer and sell the securities in an “open qualification” to the public generally.² When investor suitability standards were imposed, the Commissioner in most cases restricted the offer and sale of the securities to persons having a minimum gross annual income and minimum net worth, or limited the percentage of net worth a person could invest. The table below sets out for each category of investment the least and most stringent suitability standards imposed by the Commissioner in 2016.

Category of Investment	Least Stringent Standard	Most Stringent Standard
Agriculture	Producer of agricultural products	\$150,000 net worth plus 10% net worth cap
Church Debt	No suitability standard imposed	\$250,000 net worth or \$75,000 gross income and \$75,000 net worth
Church Extension	No suitability standard imposed	Must be affiliated with the church
Communication	\$75,000 net worth or \$50,000 gross income and \$50,000 net worth plus 10% net cap	\$75,000 net worth or \$50,000 gross income and \$50,000 net worth plus 10% net cap
Co-ops*	No suitability standard imposed	Must be an employee
Energy	\$500,000 net worth or \$65,000 gross income and \$250,000 net worth plus 10% net worth cap	\$500,000 net worth or \$65,000 gross income and \$250,000 net worth plus 10% net worth cap
Entertainment	\$500,000 net worth or \$65,000 gross income and \$250,000 net worth plus 10% net worth cap	\$500,000 net worth or \$65,000 gross income and \$250,000 net worth plus 10% net worth cap
Financing	No suitability standard imposed	\$500,000 net worth or \$65,000 gross income and \$250,000 net worth plus 10% net worth cap
Food and drink	No suitability standard imposed	\$150,000 net worth plus 10% net worth cap
Medical research	Must be an employee	Must be an employee
Mobile home park	No suitability standard imposed	No suitability standard imposed
Multi-lender	\$225,000 net worth or \$60,000 gross income and \$60,000 net worth plus 10% net worth cap	\$500,000 net worth or \$65,000 gross income and \$250,000 net worth plus 10% net worth cap
Mutual water company	No suitability standard imposed	Member or resident who receives water from the mutual water company

² Cal. Code Regs., tit. 10, § 260.001, subd. (f).

Non-profit	No suitability standard imposed	\$500,000 net worth or \$65,000 gross income and \$250,000 net worth plus 10% net worth cap
Real estate related	\$250,000 net worth or \$70,000 gross income and \$70,000 plus 10% net worth cap	\$500,000 net worth or \$65,000 gross income and \$250,000 net worth plus 10% net worth cap
REIT	\$250,000 net worth or \$75,000 gross income and \$75,000 net worth plus 10% net worth cap	\$250,000 net worth or \$75,000 gross income and \$75,000 net worth plus 10% net worth cap
Sports and recreation	\$500,000 net worth or \$65,000 gross income and \$250,000 net worth	\$1,000,000 net worth or \$100,000 gross income and \$500,000 net worth
Technology	No suitability standard imposed	No suitability standard imposed
Other**	No suitability standard imposed	Accredited Investor

*The category “Co-ops” includes hardware retailers, grocers, and professional services providers.

**The category “Other” includes a bank holding company, intentional community company, consumer products company, grocery store, mortgage loan broker/loan servicer, and cemetery/mortuary services.

Standards for Issuers or Sponsors

- Experience Requirements for Persons Issued Permits

The securities permit application requires the issuer to explain the applicant’s business experience. The DBO evaluates that explanation along with other information provided in the application. The Corporate Securities Law of 1968 imposes no experience requirement that applies to all issuers. However, regulations promulgated by the DBO set experience standards for issuers or sponsors in the Real Estate Program³ and in oil and gas offerings.⁴

In a real estate program, the general partner of the sponsor must have at least two years of relevant real estate experience or other experience relevant to acquiring and managing the types of properties sought by the program.⁵ Additionally, any affiliate providing service to the program must have no less than four years of relevant experience in the kind of service being rendered, or otherwise demonstrate knowledge and experience to render the proposed services.⁶

In an oil and gas offering, the general partner or chief operating officer must have at least three years relevant oil and gas experience demonstrating the knowledge and experience to

³ Cal. Code Regs., tit. 10, § 260.140.111.1.

⁴ Cal. Code Regs., tit. 10, § 260.140.122.1.

⁵ Cal. Code Regs., tit. 10, § 260.140.111.1.

⁶ *Id.* While nonconforming standards are viewed with disfavor, the guidelines contained in the regulations promulgated by DBO may be modified or waived by the Commissioner where good cause is shown. Modification will be accommodated where warranted by individual characteristics of a specific program and in a manner consistent with the guidelines. (Cal. Code Regs., tit. 10, § 260.140.110.1.)

manage the operations.⁷ Additionally, the general partner or any affiliate providing services to the program must have at least four years relevant experience in the services being rendered or otherwise demonstrate sufficient knowledge and experience to perform the services proposed.⁸

- Net Worth Requirements for Persons Issued Permits

Corporations Code section 25113(d) requires that the report include the “minimum, maximum, and average net worth required of those persons to whom permits are issued for each category.” The Commissioner, however, generally does not require specific net worth or minimum capital requirements for the issuer or sponsor unless required to do so by specific rule. In that regard, regulations governing REITs (real estate investment trusts),⁹ real estate programs,¹⁰ and oil and gas interests¹¹ specify net worth requirements.

Below is a summary of the minimum, maximum and average net worth of persons to whom permits were issued in 2016:

Category of Investment	Minimum Net Worth (in dollars)	Maximum Net Worth (in dollars)	Average Net Worth (in dollars)
Agricultural	8,405,582	23,904,667	16,155,125
Church Debt	-162,075	15,425,850	4,557,942
Church Extension Fund	962,117	203,509,000	39,000,212
Communication***	-13,860	-13,860	-13,860
Co-ops*	177,033	496,100,000	97,550,318
Energy***	-266,655	-266,655	-266,655
Entertainment***	27,463	27,463	27,463
Financing	88,101	85,849,000	20,739,573
Food and drink	83,737	126,886	105,312
Medical research***	1,359,356	1,359,356	1,359,356
Mobile home parks	-843,092	24,427,414	5,107,207
Multi-lender	73,404	13,404,000	4,282,961
Mutual water companies	220,637	5,635,701	1,690,034
Non-profit	997,206	265,006,000	98,763,461
Real estate related	-575	849,871	233,785
REIT	201,000	32,432,607	16,316,804
Sports and recreation	-4,656,709	54,049,000	16,645,354
Technology***	1,071,100,000	1,071,100,000	1,071,100,000

⁷ Cal. Code Regs., tit. 10, § 260.140.122.1.

⁸ *Id.*

⁹ Cal. Code Regs., tit. 10, § 260.140.91.

¹⁰ Cal. Code Regs., tit. 10, § 260.111.2.

¹¹ Cal. Code Regs., tit. 10, § 260.140.122.2.

Other**	862,840	13,811,000,000	2,786,590,772
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*The category "Co-ops" includes hardware retailers, grocers, and professional services providers.

**The category "Other" includes a bank holding company, intentional community company, consumer products company, grocery store, mortgage loan broker/loan servicer, and cemetery/mortuary services.

***There was only one permit issued under this category.

Note: Net worth was not available for four organizations categorized under Church Extension Fund, Multi-lender, Real estate related, and Other.

Total Dollar Amount Sought to be Raised

Below is a summary of the minimum, maximum and total dollar amount issuers requested to raise in applications filed in 2016, by category. The total amount sought to be raised increased significantly from 2015 to 2016:

Category of Investment	Minimum Dollar Amount (in dollars)	Maximum Dollar Amount (in dollars)	Total Dollar Amount in CA (in dollars) in 2016	Total Dollar Amount in CA in 2015
Agricultural	400,000	800,000	1,200,000	600,000
Church Debt	100,000	50,000,000	55,100,000	10,175,000
Church Extension Fund	500,000	750,000,000	3,351,100,000	2,228,291,000
Communication***	800,000	800,000	800,000	0
Co-ops*	130,000	3,000,000	14,943,989	8,973,792
Education			0	450,000
Energy***	500,000	500,000	500,000	20,000
Entertainment***	8,000,000	8,000,000	8,000,000	0
Financing	4,000,000	80,000,000	210,567,156	120,000,000
Food and drink	210,000	600,000	810,000	70,724,995
Medical research***	137,863,164	137,863,164	137,863,164	0
Mobile home parks	57,200	2,475,000	7,873,700	25,123,222
Multi-lender	500,000	200,000,000	878,500,000	589,500,000
Mutual water companies	23	260,000	323,773	1,294,080
Non-profit	300,000	500,000,000	785,675,000	0
Real estate related	1,500,000	50,000,000	81,000,000	392,000,000
REIT	50,000,000	50,000,000	100,000,000	50,000,000
Sports and recreation	28,500,000	333,700,000	676,450,000	1,226,425,000
Technology***	472,689,000	472,689,000	472,689,000	3,000,000
Other	293,000	50,000,000	67,419,290	28,242,500
Total			6,850,815,072	4,754,819,589

*The category "Co-ops" includes hardware retailers, grocers, and professional services providers.

**The category "Other" includes a bank holding company, intentional community company, consumer products company, grocery store, mortgage loan broker/loan servicer, and cemetery/mortuary services.

***There was only one permit issued under this category.

Enforcement Actions

The DBO took no new enforcement actions against any of the issuers who received a permit in 2016 under Section 25113.