

California Department of
Financial Protection and Innovation

Commissioner's Report on the Offer or Sale of Securities by Permit under Corporations Code Section 25113 for 2023

PROTECTING CONSUMERS
FOSTERING TRUST & INNOVATION

DFPI
DEPARTMENT OF FINANCIAL
PROTECTION & INNOVATION

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DEPARTMENT OF FINANCIAL
PROTECTION & INNOVATION

DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION LEADERSHIP

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September 2024

Dear Partners:

At the Department of Financial Protections and Innovation (DFPI) we continue our mission to advance a regulatory framework that encourages economic development and responsible innovation in California, while balancing the need for consumer and investor protections.

In our last report covering 2022, we identified our work in securities oversight as a key priority, and as part of that effort, we began to expand our knowledge base to effectively regulate emerging and complex securities products to continue adapting to the dynamic securities landscape. We also began to conduct robust engagement with stakeholders and to increase our efforts to develop educational materials and programs for prospective investors to support economic mobility.

I hope you find our report informative. Please do not hesitate to contact our Assistant Chief Counsel of the Securities Program, Brynly Llyr at Brynly.Llyr@dfpi.ca.gov with questions or concerns. This report can also be found on the DFPI website at dfpi.ca.gov.

Sincerely,

Clothilde V. Hewlett
Commissioner
Department of Financial Protection and Innovation

Introduction

Under California law, only securities that are qualified by the Department of Financial Protection and Innovation (DFPI) or exempt from qualification may be offered or sold in this state.¹ To qualify a security, a prospective securities issuer must submit application documents to DFPI for review before money may be raised from investors. Securities that are exempt under state law do not need to be qualified by DFPI, provided that issuers adhere to the rules that apply to the exemption under which they are operating.²

In accordance with Corporations Code section 25113, subdivision (d), this report summarizes data for the previous calendar year and contains the following information:

- The general categories of investments for which permits were approved.
- The experience and net worth requirements imposed on issuers or sponsors.
- The total amount sought to be raised per category.
- Enforcement actions taken against permit holders.
- Any other information deemed relevant.

In addition to these data, we include information related to the breadth of Securities Exemption notices filed in California. We also share an outline of our strategic direction, which includes infrastructure and process improvements for our filers, investor and constituent outreach, and supporting responsible investment opportunities for Californians and funding for California businesses.

¹ See Corporate Securities Law of 1968 (Corp. Code, § 25000 *et seq.*; Cal. Code Regs., tit. 10, § 260.140 *et seq.*).

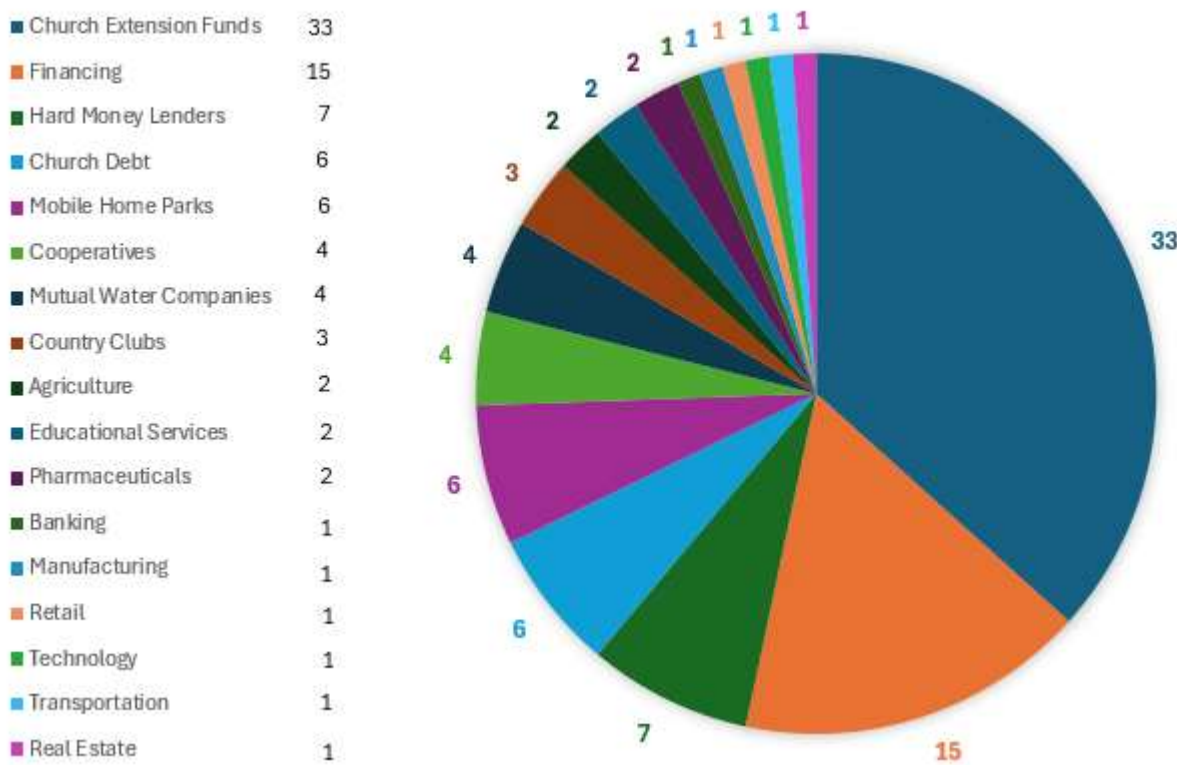
² *Id.*

2023 Permit Summary under Corporations Code section 25113

General Categories of Investment

In 2023, DFPI issued 90 permits under Corporations Code section 25113 in categories of investment, including church extension funds, financing,³ hard money lenders,⁴ church debt, mobile home parks, cooperatives,⁵ mutual water companies, country clubs, agriculture, educational services, pharmaceuticals, banking, manufacturing, retail, technology, transportation, and real estate.

PERMITS ISSUED BY INVESTMENT TYPE (2023)



Investor Suitability Standards

To support the protection of consumers and trust in the markets, the Commissioner has broad discretion to set standards for the offer and sale of securities.⁶ 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, known as Investor Suitability.⁷ These Investor Suitability standards are imposed when deemed necessary during legal review and will depend on the securities issued. As reflected in the table below, both the least stringent and most stringent standards varied by category of investment in 2023. For some investment categories, the

³ Financing includes non-profit 501(c)(3) and for-profit companies financing through debt.

⁴ Hard money lenders include mortgage pools and fractional interest investments.

⁵ Cooperatives include hardware retailers, grocers, and professional services providers.

⁶ See Corp. Code, § 25000 *et seq.*, Cal. Code Regs., tit. 10, § 260.140 *et seq.*

⁷ Cal. Code Regs., tit.10, § 260.140.01.

Investor Suitability standard imposed was limited to California residents.⁸ In many cases, however, the Commissioner restricted the offer and sale of the securities to persons at a minimum gross income and minimum net worth, or limited the percentage of net worth a person could invest.

Suitability Standards by Investment Type

Type of Investment	Least Stringent Standard	Most Stringent Standard
Agriculture	None	\$150,000 net worth (with investment not to exceed 10 percent) or \$75,000 net worth and \$50,000 gross income (with investment not to exceed 10 percent)
Banking	Employees of the Issuer only	Employees of the Issuer only
Church Debt	None	Church Members Only
Church Extension Funds	None	Church Members Only
Cooperatives	None	\$150,000 net worth or \$75,000 net worth and \$50,000 gross income
Country Clubs	None	\$500,000 net worth and 100,000 gross income (with investment not to exceed 10 percent) or \$200,000 gross income (with investment not to exceed 10 percent) or \$1,000,000 net worth (with investment not to exceed 10 percent)
Educational Services	None	None
Financing	None	\$500,000 net worth (with investment not to exceed 10 percent) or \$250,000 net worth and \$65,000 gross income (with investment not to exceed 10 percent)
Hard Money Lenders	\$250,000 net worth (with investment not to exceed 10 percent) or	\$1,000,000 net worth (with investment not to exceed 10 percent) or \$200,000 net worth and \$300,000 gross income (with investment not to exceed 10 percent)

⁸ Cal. Code Regs., tit. 10, § 260.001, subd. (e).

	\$70,000 net worth and \$65,000 gross income (with investment not to exceed 10 percent)	
Manufacturing	Employees of the Issuer only	Employees of the Issuer only
Mobile Home Parks	Residents of the Park	Residents of the Park
Mutual Water Companies	Members Only	Members Only
Pharmaceutical	Employees of the Issuer only	Employees of the Issuer only
REIT	Employees of the Issuer only	Employees of the Issuer only
Retail	None	None
Technology	Employees of the Issuer only	Employees of the Issuer only
Transportation	Employees of the Issuer only	Employees of the Issuer only

Standards for Issuers or Sponsors

The securities permit application requires an issuer to explain the business experience. DPFI evaluates the issuer's explanation along with other information provided in the application. There is no experience requirement that applies to all issuers. However, regulations promulgated by DFPI set experience standards for issuers or sponsors in a real estate program⁹ and oil and gas offerings.¹⁰

In a real estate offering, the general partner of the sponsor must have at least two years of real estate experience or other experience relevant to acquiring and managing the types of properties sought by the program.¹¹ Additionally, any affiliate providing services to the program must have no less than four years of experience or otherwise demonstrate knowledge and experience to render the proposed services.¹²

In an oil and gas offering, the general partner or its chief operating officers must have at least three years of relevant oil and gas experience needed to successfully manage operations.¹³ Additionally, the general partner or any affiliate providing services to the program must have at least four years of relevant experience in the services being rendered or otherwise demonstrate sufficient knowledge and experience to perform the proposed services.¹⁴

⁹ Cal. Code Regs., tit. 10, § 260.140.111.1.

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

¹¹ Cal. Code Regs., tit. 10, § 260.140.111.1.

¹² *Id.*

¹³ Cal. Code Regs., tit. 10, § 260.140.122.1.

¹⁴ *Id.*

Net Worth Requirements

Corporations Code section 25113, subdivision (d), mandates that DFPI report on the “minimum, maximum, and average net worth required of those persons to whom permits are issued for each category.” DFPI, however, generally does not require specific net worth or minimum capital requirements for the issuer or sponsor unless required to do so by rule. As such, regulations governing Real Estate Investment Trusts (REIT),¹⁵ real estate programs,¹⁶ and oil and gas interests¹⁷ specify net worth requirements.

Issuer’s Net Worth by Investment Type

Type of Investment	Minimum Net Worth	Maximum Net Worth	Average Net Worth
Agriculture	\$10,654,494	\$30,720,445	\$20,687,470
Banking	\$22,589,000	\$22,589,000	\$22,589,000
Church Debt	\$1,156,190	\$120,338,760	\$34,897,815
Church Extension Funds	\$1,651,811	\$330,407,547	\$59,941,041
Cooperatives	\$12,770,854	\$378,075,000	\$109,872,182
Country Clubs	-\$3,778,952	\$37,678,319	\$16,949,684
Educational Services	\$77,712,194	\$81,155,880	\$79,434,037
Financing	\$49,980	\$22,685,065,000	\$1,782,189,687
Hard Money Lenders	\$767,118	\$23,958,957	\$7,846,924
Manufacturing	\$10,273,594,312	\$10,273,594,312	\$10,273,594,312
Mobile Home Parks	\$762,361	\$22,962,902	\$9,148,846
Mutual Water Companies	\$82,752	\$50,703,830	\$14,605,038
Pharmaceutical	\$7,968,000,000	\$35,852,976,250	\$21,910,488,125
REIT	\$5,966,764	\$5,966,764	\$5,966,764
Retail	\$891,800,000	\$891,800,000	\$891,800,000
Technology	\$11,281,107	\$11,281,107	\$11,281,107
Transportation	\$22,545,000,000	\$22,545,000,000	\$22,545,000,000

¹⁵ Cal. Code Regs., tit. 10, § 260.140.91.

¹⁶ Cal. Code Regs., tit.10, § 260.111.2.

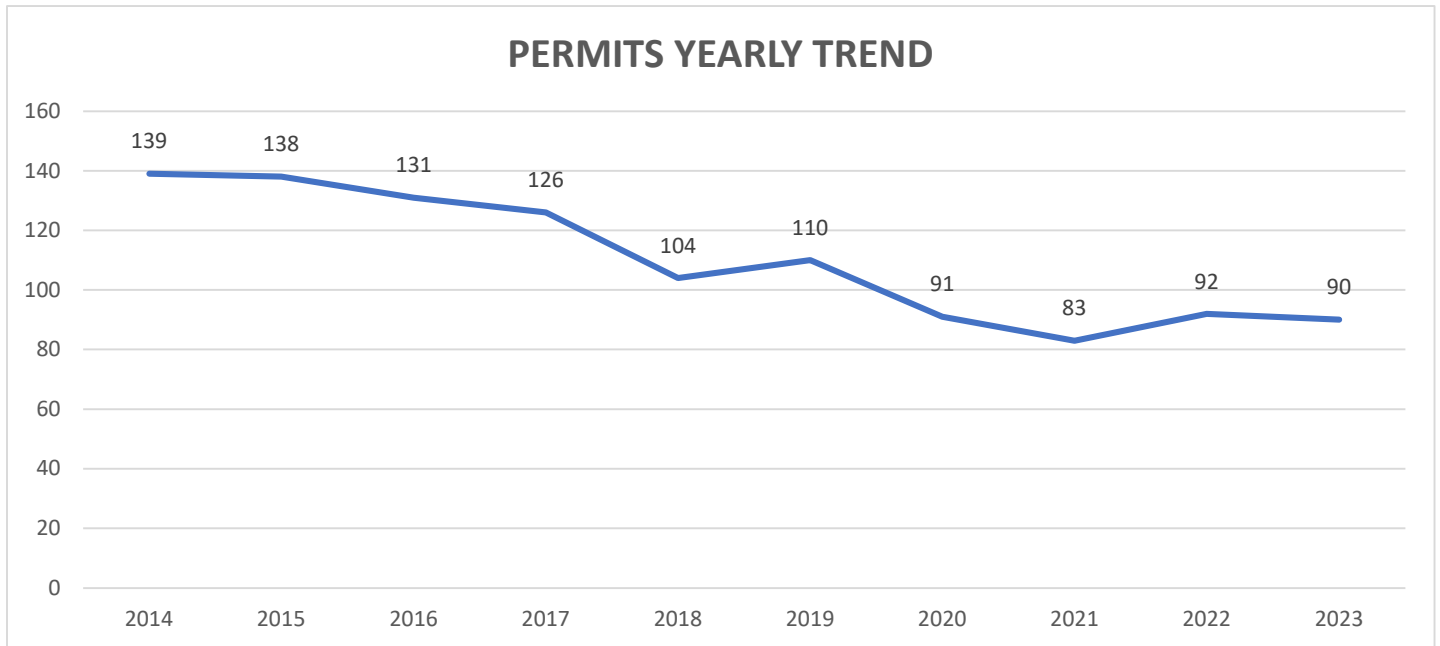
¹⁷ Cal. Code Regs., tit.10, § 260.140.122.2.

Total Amount Sought to be Raised by Category (2023)

Financing	\$55,715,020,000
Church Extension Funds	\$6,182,025,000
Transportation	\$879,350,000
Church Debt	\$625,500,000
Manufacturing	\$536,500,000
Hard Money Lenders	\$352,000,000
Pharmaceuticals	\$287,444,696
Country Clubs	\$107,000,000
Technology	\$106,000,000
Retail	\$20,030,000
Educational Services	\$10,000,000
Mutual Water Companies	\$6,179,000
Mobile Home Parks	\$5,416,625
Cooperatives	\$4,827,650
Banking	\$1,751,400
Agriculture	\$1,250,000
Real Estate	\$49,854

Yearly Trends in Permit Issuance

In 2023, the number of permits issued under Corporations Code section 25113 decreased by two permits from the year before. A chart of the annual permits issued by DFPI for the last ten years is provided below.



Enforcement Actions

In 2023, DFPI issued 72 enforcement actions against 93 entities and individuals for violations related to the offer or sale of securities. The types of actions included consent orders, desist and refrain orders, requests for penalties, and requests for ancillary relief. The majority of the actions also included allegations of the offer or sale of securities by means of untrue statements of material fact. Nine of these actions involved DFPI securities permit holders.

Notices of Exempt Filings in California

In the U.S. in 2023, there were 52,969 Exempt Offerings of Securities reported with the Securities and Exchange Commission by Issuers relying on Rule 504, Rule 506(b), or Rule 506(c) of Regulation D, or on Section 4(a)(5) of the Securities Act of 1933.¹⁸

In the same time period, DFPI reports 17,180 filings under Section 25102.2(d) of the Corporate Securities Law of 1968, which requires issuers of Exempt Offerings to file copies of their Form D with DFPI when either the Issuer or Investors are in California. Importantly, California is indicated in over 32 percent of these nationwide Exempt Offerings. In addition, of all Exempt Offering Issuers, as published by the Securities and Exchange Commission, approximately 12.4 percent are California entities.

The number of 25102.1(d) filings in 2023 totaled 21,188, down from 2022 when 24,433 exemption notices were received in California.

25102(f) Filings, Limited Offering Exemption Notices

Corporations Code section 25102(f) allows a limited, private offering exemption. In 2023, DFPI reports 13,800 exemption notices, a decrease from the 16,213 exemption notices reported in 2022.

25102(o) Filings, Employee Plan Exemption Notices

Corporations Code section 25102(o) requires notice filings for the offer or sale of securities issued by corporations or limited liability companies through a purchase plan or agreement or an option plan or agreement where the security is exempt. In 2023, DFPI reports 4,265 such notices, a decrease from the 4,486 25102(o) notices received in 2022.

Looking to the Future

In the 2022 Report DFPI outlined that it would elevate its work in three key areas in 2023 and beyond. These three areas include (1) Investor and markets outreach and facilitating investment opportunities; (2) Policy leadership; and (3) Improvements to Infrastructure, Process, and Operations.

The Commissioner continues to explore areas of public and private partnerships to advance economic mobility for Californians.

California hosted the annual meeting for the North American Securities Administrators Association (NASAA) in San Diego and continues to contribute to several working groups including Corporation Finance, Corporation Finance Policy, Environmental, Social, and Corporate Governance, and Direct Participation Programs. As part of our thought leadership, the Department is an active contributor to NASAA panels and work product.

Finally, DFPI continues its development of the new Franchise and Securities Electronic Submissions system (FRANSES) which was a priority project in 2023 and continues build out in 2024. The Department expects to hold several user sessions and focus group meetings in 2024 as we continue to roll out the new system.

¹⁸ [SEC.gov | Form D Data Sets](https://www.sec.gov/form-d-data-sets)



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