



Commissioner's Report

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



December 2015



California Department of Business Oversight

Introduction

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

- 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 Business Oversight (Commissioner).

Data and Summary from 2014

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. A total of 139 permits were issued under Corporations Code section 25113 in 2014.

General Categories of Investment

In 2014, the DBO issued securities permits in the following categories of investment: agriculture, church debt, church extension fund, cooperative, employee compensation, food and drink, manufacturing, membership, microlender, mobile home park, mortgage, mutual water company, oil and gas, real estate, technology and other.

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

Category of Investment	Number of Permits Issued
Agriculture	1
Church Debt	13
Church Extension	33
Cooperative*	7
Employee Compensation	1
Food and Drink	2
Manufacturing	3
Membership**	12
Microlender	14
Mobile home park	13
Mortgage	10
Mutual Water Company	7
Oil and Gas	2
Real Estate	9
Real Estate Investment Trust	0
Technology	7
Other***	5
Total	139

*The category “cooperative” includes home improvement stores, grocers and professional services providers.

**The category “membership” includes social and sports club memberships.

***The category “other” includes charity, community development, mortuary, project and stock management, schools and wholesaler.

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” standards are imposed as needed and depend on the securities issued. As reflected in the table below, both the least stringent and most stringent standards varied by category of investment. 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

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

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

having a minimum gross income and minimum net worth, or limited the percentage of net worth a person could invest. The table below sets out by category of investment the least and most stringent suitability standards imposed by the Commissioner in 2014.

Category of Investment	Least Stringent Standard	Most Stringent Standard
Agriculture*	Cooperative	Cooperative
Church Debt	Must be affiliated with the church	Must be affiliated with the church
Church Extension	No suitability standard imposed	\$70,000 net worth + \$70,000 gross income, or \$250,000 net worth plus 10% net worth cap on investment
Cooperative	No suitability standard imposed	\$75,000 net worth + \$50,000 gross income, or \$150,000 net worth
Employee Compensation	Must be an employee of the company	Must be an employee of the company
Food and Drink	No suitability standard imposed	\$75,000 net worth + \$50,000 gross income, or \$150,000 net worth plus 10% net worth cap on investment
Manufacturing*	No suitability standard imposed	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth
Membership**	No suitability standard imposed	\$500,000 net worth + \$100,000 gross income, or \$1,000,000 net worth
Microlender	No suitability standard imposed	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth
Mobile home park	No suitability standard imposed	Must be a current resident of the mobile home park
Mortgage	Must be a California resident plus 10 % net worth cap	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth plus 10% net worth cap on investment
Mutual Water Company	Member or resident who receives water from the mutual water company	Member or resident who receives water from the mutual water company
Oil and Gas	Must be an existing shareholder	Must be a member of the company and a crude oil producer
Real Estate	Must be an accredited investor	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth
Technology	No suitability standard imposed	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth plus 10% net worth cap on investment
Other***	No suitability standard imposed	\$75,000 net worth + \$50,000 gross income, or \$150,000 net worth plus 10% net worth cap on investment

*The category "cooperative" includes home improvement stores, grocers and professional services providers.

**The category "membership" includes social and sports club memberships.

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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 DBO set experience standards for issues 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 its chief operating officers must have at least three years relevant oil and gas experience demonstrating the knowledge and experience to 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

Although Corporations Code section 25113(d) requires the report to include the "...minimum, maximum, and average net worth required of those persons to whom permits are issued for each category," the Commissioner generally does not require specific net worth or minimum capital requirements of 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.

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.* Where good cause is shown, and the individual characteristics of specific programs warrant it, certain guidelines may be modified or waived by the Commissioner. Cal. Code Regs., tit. 10 § 260.140.110.1 subd. (a) and (b).

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.

Below is a summary of the minimum, maximum and average net worth of persons to whom permits were issued in 2014:

Category of Investment	Minimum Net Worth (in dollars)	Maximum Net Worth (in dollars)	Average Net Worth (in dollars)
Agriculture*	22,227,547	22,227,547	22,227,547
Church Debt	190,816	54,473,557	16,108,453
Church Extension	1,022.93	190,195,008	28,434,214
Cooperative**	996,501	168,555,000	54,625,236
Employee Compensation*	11,089,509	11,089,509	11,089,509
Food and Drink	1,000	1,000	1,000
Manufacturing	3,066,962	11,286,666,667	3,766,941,046
Membership***	-28,687,430	3,332,987,000	314,646,874
Microlender	321,587	92,542,471	22,8701,858
Mobile home park	-641,590	22,684,063	3,051,889
Mortgage	130,555	8,532,423	2,271,987
Mutual Water Company	293,217	21,113,398	5,897,392
Oil and Gas	10,160,889	10,160,889	10,160,889
Real Estate	-31,716	7,210,182	1,852,407
Technology	-10,027,000	26,807,000	2,394,861
Other****	-1,767,844	230,846,000	64,049,618

*There was only one permit issued under this category

**The category "cooperative" includes home improvement stores, grocers and professional services providers.

***The category "membership" includes social and sports club memberships.

****The category "other" includes charity, community development, mortuary, project and stock management, schools and wholesaler.

Total Dollar Amount Sought to be Raised

Below is a summary of the minimum, maximum and total dollar amount issuers requested to raise applications filed in 2014, by category:

Category of Investment	Minimum Dollar Amount Raised (in dollars)	Maximum Dollar Amount Raised (in dollars)	Total Dollar Amount Raising in CA (in dollars)
Agriculture*	200,000	200,000	200,000
Church Debt	125,000	100,000,000	227,230,000
Church Extension	2,000,000	750,000,000.00	2,988,115,000
Cooperative**	18,792	3,750,000	10,252,792
Employee Compensation*	2,000,000	2,000,000	2,000,000
Food and Drink	600,000	650,000	1,250,000
Manufacturing	500,000	4,990,000	8,290,000
Membership***	550,000	318,200,000	698,180,000
Microlender	300,000	100,000,000	579,268,000
Mobile home park	60	21,000,000	25,590,360
Mortgage	1,700,000	200,000,000	620,700,000
Mutual Water Company	2,500	162,200	290,333
Oil and Gas	20,000	5,118,000	5,138,000
Real Estate	100,000	100,000,000	350,100,000
Technology	3,000,000	194,210,205	505,466,205
Other****	375,000	21,684,000	27,009,000

*There was only one permit issued under this category

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****The category "other" includes charity, community development, mortuary, project and stock management, schools, and wholesaler.

Enforcement Actions

There were no new enforcement actions taken against any of the issuers who received a permit in 2014 under section 25113.