



# Commissioner's Report

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



California Department of Business Oversight

December 2014

## Introduction

Section 25113(d) of the Corporate Securities Law of 1968 (Corporations Code section 25000, et seq.) requires the Department of Business Oversight (Department) 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 the Department (Commissioner).

## Data and Summary from 2013

Generally, under the Corporate Securities Law of 1968, the offer and sale of a security requires either a permit from the Department or an exemption from the permit requirement. A total of 115 permits were issued under Corporations Code section 25113 in 2013.

## General Categories of Investment

In 2013, the Department issued securities permits in the following categories of investment: agriculture, church debt, church extension fund, cooperative, employee compensation, manufacturing, membership, microlender, minerals, mobilehome park, mortgage, mutual water company, real estate, real estate investment trust (REIT), 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	12
Church Extension	28
Cooperative	4
Employee Compensation	3
Manufacturing	1
Membership*	11
Microlender	12
Mineral	1
Mobile home park	8
Mortgage	7
Mutual Water Company	6
Real Estate	8
Real Estate Investment Trust	1
Technology	4
Other**	8
Total	115

\*The category “membership” includes home improvement stores as well as social and sports club memberships.

\*\*The category “other” includes charity, derivative contracts, mortuary, music production, pharmaceutical, project management, investment, 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.<sup>1</sup> 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.<sup>2</sup> 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 income and minimum net worth, or limited the percentage of net worth a person could invest. The table below sets out by category of

<sup>1</sup> Cal. Code Regs., tit. 10, § 260.140.01.

<sup>2</sup> Cal. Code Regs., tit. 10, § 260.001, subd. (f).

investment the least and most stringent suitability standards imposed by the Commissioner in 2013.

Category of Investment	Least Stringent Standard	Most Stringent Standard
Agriculture*	\$75,000 net worth + \$50,000 gross income, or \$150,000 net worth plus 10% net worth cap	\$75,000 net worth + \$50,000 gross income, or \$150,000 net worth plus 10% net worth cap
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
Cooperative	No suitability standard imposed	\$50,000 net worth + \$75,000 gross income, or \$150,000 net worth plus 10% net worth cap
Employee Compensation	Must be an employee of the company	Must be an employee of the company
Manufacturing*	\$65,000 net worth + \$50,000 gross income, or \$250,000 net worth	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth
Membership**	No suitability standard imposed	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth
Microlender	No suitability standard imposed	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth
Mineral*	Mineral rights	Mineral rights
Mobile home park	No suitability standard imposed	\$50,000 net worth + \$150,000 gross income
Mortgage	\$65,000 net worth + \$500,000 gross income, or \$250,000 net worth; or accredited investor plus 10% net worth cap	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth plus 10% net worth cap
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
Real Estate	\$75,000 net worth + \$50,000 gross income, or \$150,000 net worth plus 10% net worth cap	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth
Real Estate Investment Trust	\$75,000 net worth + \$75,000 gross income, or \$250,000 net worth plus 10% net worth cap	\$75,000 net worth + \$75,000 gross income, or \$250,000 net worth plus 10% net worth cap
Technology	No suitability standard imposed	\$70,000 net worth + \$70,000 gross income, or \$250,000 net worth plus 10% net worth cap
Other***	No suitability standard imposed	\$70,000 net worth + \$70,000 gross income, or \$250,000 net worth plus 10% net worth cap

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

\*\* The category "membership" includes home improvement stores, as well as social and sports club memberships.

\*\*\*The category "other" includes charity, derivative contracts, mortuary, music production, pharmaceutical, project management, investment, and wholesaler.

## Standards for Issuers or Sponsors

- Experience Requirements for Persons Issued Permits

The securities permit application requires the issuer to provide the Department an explanation of the applicant's business experience. The Department evaluates the applicant's business experience 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 set experience standards for issues or sponsors in the Real Estate Program<sup>3</sup> and in oil and gas offerings.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

- Net Worth Requirements for Persons Issued Permits

Although 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 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),<sup>9</sup> Real Estate Programs,<sup>10</sup> and Oil and Gas Interests<sup>11</sup> specify net worth requirements.

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<sup>3</sup> Cal. Code Regs., tit. 10, § 260.140.111.1.

<sup>4</sup> Cal. Code Regs., tit. 10, § 260.140.122.1.

<sup>5</sup> Cal. Code Regs., tit. 10, § 260.140.111.1.

<sup>6</sup> Id.

<sup>7</sup> Cal. Code Regs., tit. 10, § 260.140.122.1.

<sup>8</sup> Id.

<sup>9</sup> Cal. Code Regs., tit. 10, § 260.140.91.

<sup>10</sup> Cal. Code Regs., tit. 10, § 260.111.2.

<sup>11</sup> 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 2013:

<b>Category of Investment</b>	<b>Minimum Net Worth (in dollars)</b>	<b>Maximum Net Worth (in dollars)</b>	<b>Average Net Worth (in dollars)</b>
Agriculture*	3,997,000.00	3,997,000.00	3,997,000.00
Church Debt	189,900.00	4,900,854.00	2,987,532.00
Church Extension	119,925.00	184,797,495.00	33,102,868.82
Cooperative	541,686.00	21,849,000.00	9,050,171.50
Employee Compensation	15,495,410.00	377,652,034.69	144,999,148.23
Manufacturing*	3,066,962.00	3,066,962.00	3,066,962.00
Membership**	-28,803,837.00	3,127,871,000.00	327,701,586.18
Microlender	1,140,000.00	229,655,129.00	33,230,902.33
Mineral*	995.00	995.00	995.00
Mobile home park	-6,944,692.00	1,794,529.00	-526,716.57
Mortgage	117,768.00	14,595,000.00	3,494,599.57
Mutual Water Company	119,551.00	20,425,572.00	5,459,769.40
Real Estate	0.00	26,213,732.00	4,723,778.00
Real Estate Investment Trust*	398,670.00	398,670.00	398,670.00
Technology	-178,805.00	2,978,521,280.00	749,596,097.50
Other***	-328,567.00	5,236,540,000.00	729,007,258.13

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

\*\* The category "membership" includes home improvement stores, as well as social and sports club memberships.

\*\*\*The category "other" includes charity, derivative contracts, mortuary, music production, pharmaceutical, project management, investment, 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 2013, by category:

<b>Category of Investment</b>	<b>Minimum Dollar Amount Raised (in dollars)</b>	<b>Maximum Dollar Amount Raised (in dollars)</b>	<b>Total Dollar Amount Raising (in dollars)</b>
Agriculture*	400,000.00	400,000.00	400,000.00
Church Debt	100,000.00	18,000,000.00	68,685,000.00
Church Extension	500,000.00	750,000,000.00	3,183,000,000.00
Cooperative	800,000.00	4,537,295.00	4,550,000.00
Employee Compensation	3,000,000.00	13,359,918.00	19,359,918.00
Manufacturing*	2,800,000.00	2,800,000.00	2,800,000.00
Membership	2,000,000.00	318,200,000.00	992,375,000.00
Microlender	200,000.00	200,000,000.00	554,300,000.00
Mineral*	672,621.99	672,621.99	672,621.99
Mobile home park	35,580.00	21,000,000.00	24,495,580.00
Mortgage	17,000,000.00	105,000,000.00	442,000,000.00
Mutual Water Company	23.00	225,000.00	349,247.00
Real Estate	4,500,000.00	100,000,000.00	344,500,000.00
Real Estate Investment Trust*	25,000,000.00	25,000,000.00	25,000,000.00
Technology	1,000,000.00	84,167,000.00	91,167,000.00
Other	300,000.00	100,000,000.00	161,729,515.00

\*There was only one permit issued under this category

\*\* The category "membership" includes home improvement stores, as well as social and sports club memberships.

\*\*\*The category "other" includes charity, derivative contracts, mortuary, music production, pharmaceutical, project management, investment, and wholesaler.

## Enforcement Actions

There were no new enforcement actions taken against any of the issuers who received a permit in 2013 under section 25113.