



**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 2022**



**PROTECTING CONSUMERS**  
FOSTERING TRUST & INNOVATION

**DFPI**   
DEPARTMENT OF FINANCIAL  
PROTECTION & INNOVATION

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## **DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION LEADERSHIP**

### **Clothilde V. Hewlett, Commissioner**

Department of Financial Protection and Innovation

### **Avy Mallik, General Counsel**

Department of Financial Protection and Innovation

### **Colleen Monahan, Deputy Commissioner**

Legal Division, Department of Financial Protection and Innovation

### **Brynly Llyr, Assistant Chief Counsel**

Legal Division, Department of Financial Protection and Innovation



*December 2023*

Dear External Partners:

At the DFPI we continue in our mission to advance a regulatory framework that encourages economic development and responsible innovation in California, while balancing the need for consumer and investor protection.

In our last report covering 2021, 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 to adapt to the dynamic securities landscape. We also began to develop robust engagement with stakeholders and to increase efforts to develop educational materials and programs for prospective investors to help Californians build generational wealth.

I am pleased to offer this report of substantial results in these areas, which reinforce California as a global leader in innovation and industry. In addition to data required by Corporations Code section 25113 subdivision (d), we outline our ongoing efforts to improve responsible investment opportunities for Californians, including a number of new initiatives that we believe will support diverse investors and enable new avenues for generating wealth and participation in capital markets.

I hope you find our report informative, useful, and encouraging. California's values, entrepreneurial spirit, optimism, and hard work continue to fuel innovation, growth and change. And our goal at the DFPI is to support this unique innovation and enable more Californians to responsibly participate in this growth through investment opportunity.

Please do not hesitate to contact our Assistant Chief Counsel of the Securities Program, Brynly Llyr at [Brynly.Llyr@dfpi.ca.gov](mailto:Brynly.Llyr@dfpi.ca.gov), or our Deputy Commissioner of Legal, Colleen Monahan at [Colleen.Monahan@dfpi.ca.gov](mailto:Colleen.Monahan@dfpi.ca.gov), with questions or concerns. This report can also be found on the DFPI website at [dfpi.ca.gov](https://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.<sup>1</sup> To qualify a security, a prospective securities issuer must submit application documents for review before money may be raised from investors. Securities that are exempt under state law do not need to be qualified by the DFPI, provided that issuers adhere to the rules that apply to the exemption under which they are operating.<sup>2</sup>

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.

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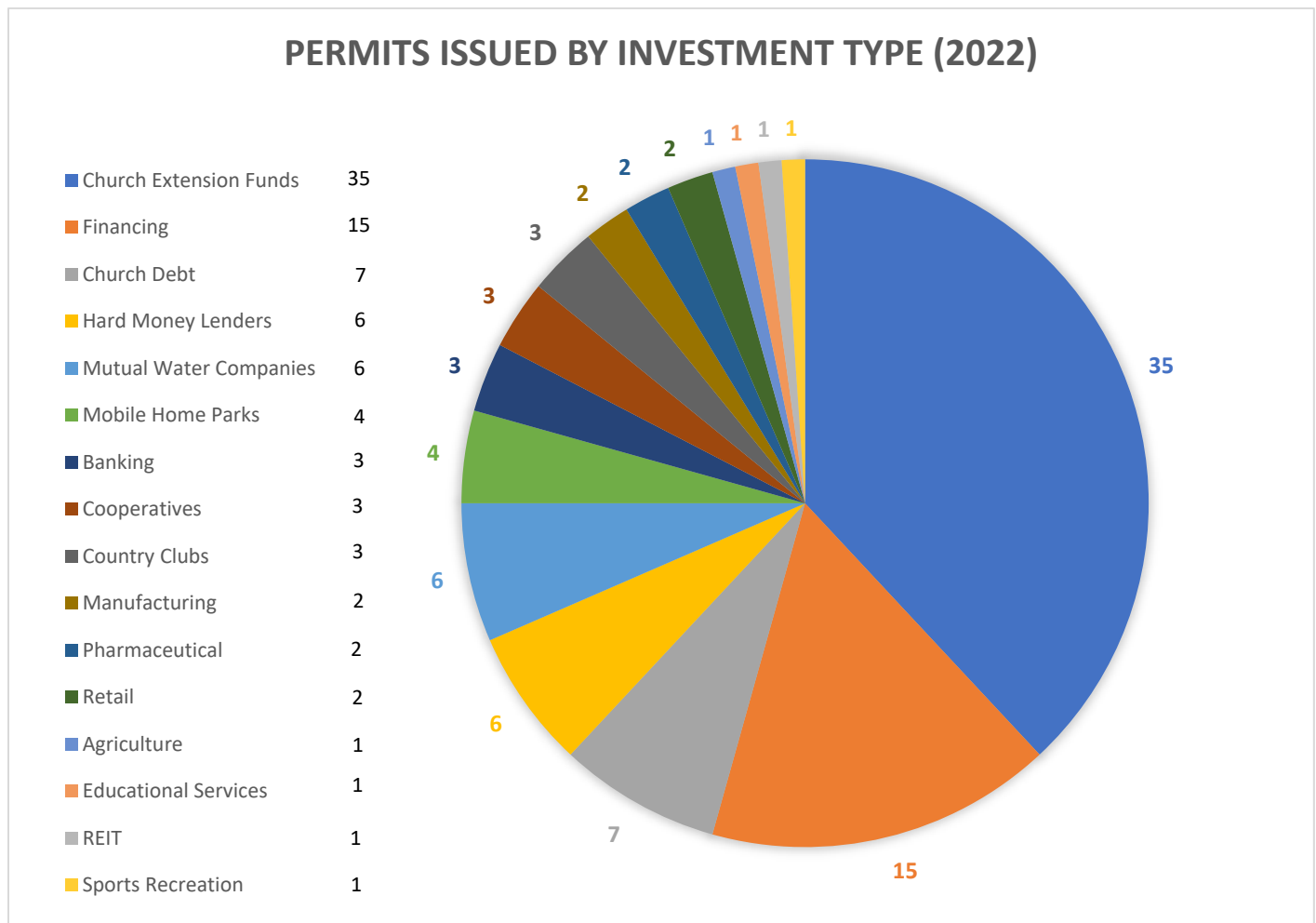
<sup>1</sup> See Corporate Securities Law of 1968 (Corp. Code, § 25000 *et seq.*; Cal. Code Regs., tit. 10, § 260.140 *et seq.*).

<sup>2</sup> *Id.*

# 2022 Permit Summary under Corporations Code section 25113

## General Categories of Investment

In 2022, the DFPI issued 92 permits under Corporations Code section 25113 in the following categories of investment: agriculture, banking, church debt, church extension funds, cooperatives,<sup>3</sup> country clubs, educational services, financing,<sup>4</sup> food and drink, hard money lenders,<sup>5</sup> manufacturing, mobile home parks, mutual water companies, pharmaceuticals, real estate investment trusts (REITs), retail, and sports and recreation.



<sup>3</sup> Cooperatives include hardware retailers, grocers, and professional services providers.

<sup>4</sup> Financing includes non-profit 501(c)(3) and for-profit companies financing through debt.

<sup>5</sup> Hard money lenders include mortgage pools and fractional interest investments.

## 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.<sup>6</sup> 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.<sup>7</sup> 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 2022. For some investment categories, the suitability standard imposed was limited to California residents.<sup>8</sup> 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	None
Banking	Employees of the Issuer only	Institutional Investor
Church Debt	None	Church Members Only
Church Extension Funds	None	Church Members Only
Cooperatives	None	Church Members Only
Country Clubs	\$500,000 net worth, with an investment cap of 10 percent of net worth <b>or</b> \$250,000 net worth and \$65,000 gross income, with an investment cap of 10 percent of net worth	\$1,000,000 net worth <b>or</b> \$500,000 net worth and \$100,000 gross income <b>or</b> \$200,000 gross income
Educational Services	None	None
Financing	None	\$250,000 net worth, with an investment cap of 10 percent of net worth <b>or</b> \$100,000 net worth and \$70,000 gross income, with an investment cap of 10 percent of net worth

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

<sup>7</sup> Cal. Code Regs., tit. 10, § 260.140.01.

<sup>8</sup> Cal. Code Regs., tit. 10, § 260.001, subd. (e).

Hard Money Lenders	\$250,000 net worth, with an investment cap of 10 percent of net worth <b>or</b> \$70,000 net worth and \$65,000 gross income, with an investment cap of 10 percent of net worth	\$500,000 net worth, with an investment cap of 10 percent of net worth <b>or</b> \$250,000 net worth and \$65,000 gross income, with an investment cap of 10 percent of net worth
Manufacturing	None	None
Mobile Home Parks	Residents of the Park	
Mutual Water Companies	None	Members Only
Pharmaceutical	Employees of the Issuer only	Employees of the Issuer only
REIT	None	None
Retail	None	None
Sports Recreation	\$1,000,000 net worth <b>or</b> \$500,000 net worth and \$100,000 gross income <b>or</b> \$200,000 gross income	\$1,000,000 net worth <b>or</b> \$500,000 net worth and \$100,000 gross income <b>or</b> \$200,000 gross income

## Standards for Issuers or Sponsors

The securities permit application requires an issuer to explain the business experience. The 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 the DFPI set experience standards for issuers or sponsors in a real estate program<sup>9</sup> and oil and gas offerings.<sup>10</sup>

In a real estate program, 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.<sup>11</sup> Additionally, any affiliate providing service to the program must have no less than four years of experience or otherwise demonstrate knowledge and experience to render the proposed services.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

<sup>9</sup> Cal. Code Regs., tit. 10, § 260.140.111.1.

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

<sup>11</sup> Cal. Code Regs., tit. 10, § 260.140.111.1.

<sup>12</sup> *Id.*

<sup>13</sup> Cal. Code Regs., tit. 10, § 260.140.122.1.

<sup>14</sup> *Id.*



## Net Worth Requirements

Corporations Code section 25113, subdivision (d), mandates that the DFPI report on the “minimum, maximum, and average net worth required of those persons to whom permits are issued for each category.” The 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 REITs,<sup>15</sup> real estate programs,<sup>16</sup> and oil and gas interests<sup>17</sup> specify net worth requirements.

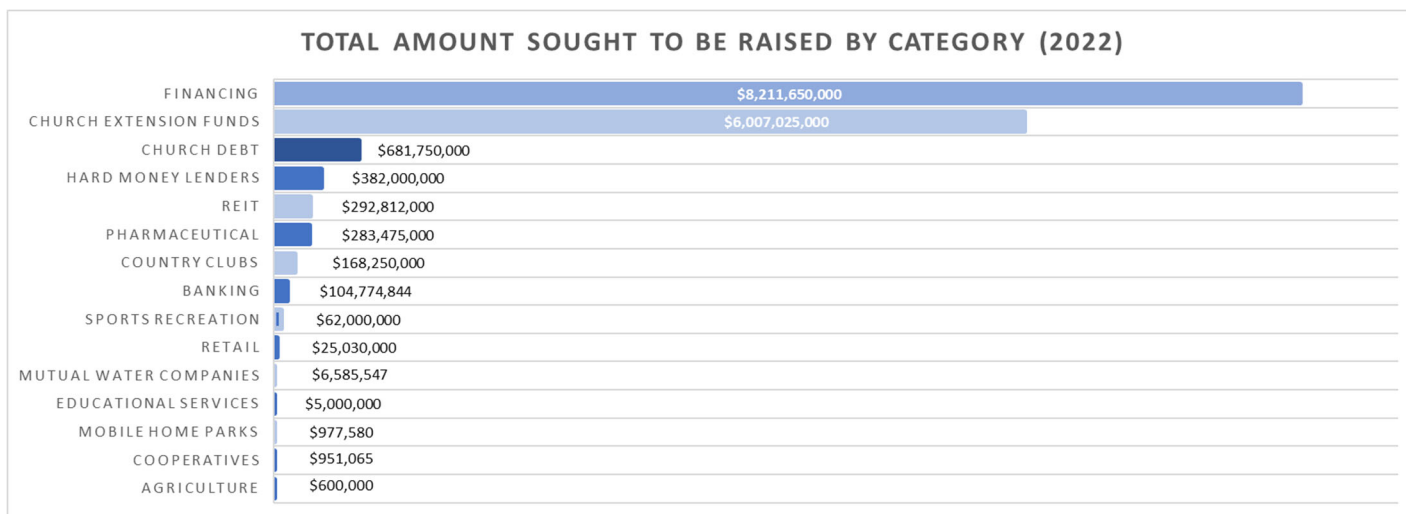
### Issuer’s Net Worth by Investment Type

Type of Investment	Minimum Net Worth	Maximum Net Worth	Average Net Worth
Agriculture	\$24,920,149	\$24,920,149	\$24,920,149
Banking	\$28,107,000	\$150,657,000	\$82,160,333
Church Debt	\$2,206,670	\$117,278,038	\$29,560,277
Church Extension Funds	\$220,189	\$317,113,925	\$50,632,797
Cooperatives	\$4,766,146	\$366,010,000	\$136,083,048
Country Clubs	-\$4,716,077	\$37,678,319	\$11,800,083
Educational Services	\$77,712,194	\$77,712,194	\$77,712,194
Financing	\$50,000	\$7,878,845,212	\$564,910,089
Hard Money Lenders	\$976,413	\$29,150,551	\$12,560,593
Manufacturing	\$9,823,000,000	\$11,210,204,060	\$10,516,602,030
Mobile Home Parks	-\$371,754	\$11,415,370	\$4,160,548.50
Mutual Water Companies	\$89,230	\$43,317,450	\$18,130,994
Pharmaceutical	\$9,823,000,000	\$33,020,000,000	\$21,421,500,000
REIT	\$39,029,926,000	\$39,029,926,000	\$39,029,926,000
Retail	\$4,672,069	\$808,100,000	\$406,386,034
Sports Recreation	\$37,678,319	\$37,678,319	\$37,678,319

<sup>15</sup> Cal. Code Regs., tit. 10, § 260.140.91.

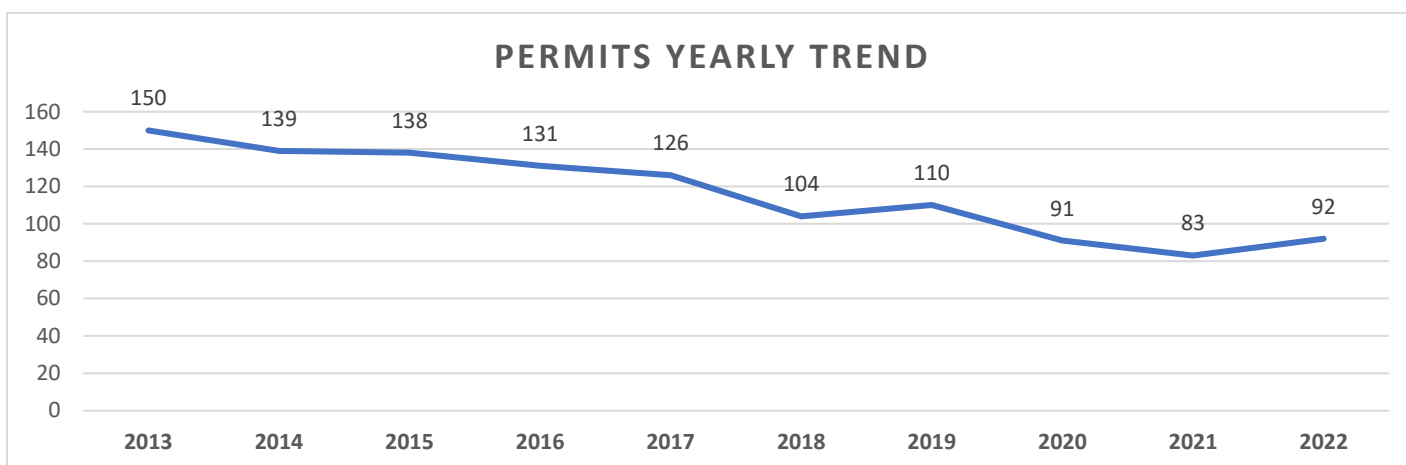
<sup>16</sup> Cal. Code Regs., tit. 10, § 260.111.2.

<sup>17</sup> Cal. Code Regs., tit. 10, § 260.140.122.2.



## Yearly Trends in Permit Issuance

In 2022, the number of permits issued under Corporations Code section 25113 increased by 9.7 percent from the prior year. However, the number of permits issued has declined approximately 39 percent over the past 10 years and is approximately 21 percent below the average number of permits issued during the same time period.



## Enforcement Actions

In 2022 the DFPI issued 42 enforcement actions against 62 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. None of these actions involved DFPI securities permit holders.

## Notices of Exempt Filings in California

In the U.S. in 2022, there were 62,721 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.<sup>18</sup>

In the same time period, the DFPI reports 24,433 filings pursuant to Corporate Securities Law of 1968 Section 25102.1(d), which requires issuers of Exempt Offerings to file copies of their Form D with the DFPI when either the Issuer or Investors are in California. Importantly, California is indicated in nearly 39 percent of these nationwide Exempt Offerings. In addition, of all Exempt Offering Issuers, as published by the Securities and Exchange Commission, approximately 13 percent are California entities.

The number of 25102.1(d) filings in 2022 was down slightly from 2021, when approximately 24,806 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 2022, the DFPI reports 16,213 exemption notices, a decrease of 23 percent from the reported 21,133 exemption notices received in calendar year 2021.

### 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 2022, the DFPI reports 4,486 such notices, a 9 percent increase from the 4,095 notices reported in 2021.

## Looking to the Future: California 2024 and Beyond

California leads innovation. California accounts for 30.5 percent of the total research and development in the United States with a staggering \$218 billion, more than 4 times greater than the next highest state.<sup>19</sup> We know that California is the consistent home of tech leaders, but the sheer breadth, volume, and consistency of our innovation expands beyond our borders. California is an undeniable global leader, and investment is a key part of that success.

In 2024, our Securities Program will elevate work in three key areas.

- (1) **Investor and markets outreach and facilitating investment opportunities.** We have an opportunity to help shape responsible innovation to protect capital markets, consumers, investors, and communities. Through public/private engagement we can collectively develop long term solutions for sustained and responsible market inclusion.

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<sup>18</sup> [SEC.gov | Form D Data Sets](#)

<sup>19</sup> Following California's hundreds of billions in investment is Washington state at \$46.4 billion and Massachusetts at \$44.9 billion. *California Leads in Innovative Capacity of U.S. States as Measured by U.S. R&D Expenditures*, Derek Hill, Muluken Muche, [California Leads in Innovative Capacity of U.S. States as Measured by U.S. R&D Expenditures \(nsf.gov\)](#), June 14, 2023 (Last visited September 4, 2023).

- (2) ***Policy leadership.*** California is a leader in technology and innovation, just as we lead in thoughtful and proactive regulation. Our engagement with national organizations such as the North American Securities Administrators Association and Federal regulators, including the SEC, are critically important to our policy leadership.
- (3) ***Improvements to Infrastructure, Process, and Operations.*** We will be replacing our self-service portal for securities filings with an improved electronic system. For information about our new Franchise and Securities Electronic Submission System (FRANSES), estimated to launch in Q4 2024, sign up for email or SMS notifications ([FRANSES Updates](#)) to receive information and future engagement opportunities.



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**California Department of Financial Protection and Innovation**

Toll-Free: 1-866-275-2677

TTY: 1-800-735-2922

Online: [www.dfpi.ca.gov](http://www.dfpi.ca.gov)