

**DEPARTMENT OF BUSINESS OVERSIGHT***Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

**Jan Lynn Owen**  
**Commissioner of Business Oversight**

January 22, 2015

**INVITATION FOR COMMENTS  
ON PROPOSED RULEMAKING UNDER THE  
CORPORATE SECURITIES LAW OF 1968  
(PRO 04/14)**

**BACKGROUND**

The Department of Business Oversight (“Department”) licenses and regulates investment advisers under the Corporate Securities Law of 1968 (“Corporate Securities Law”)<sup>1</sup>. Under the Corporate Securities Law, it is unlawful for an investment adviser to conduct business without first applying for and securing a certificate from the Commissioner unless the adviser is specifically exempt from licensure.<sup>2</sup>

Under current law, certain real estate brokers and finance lenders (collectively referred to as “fund advisers”) licensed by the Bureau of Real Estate or the Department of Business Oversight (“Department”) establish and advise private mortgage funds for the purpose of originating real estate loans.<sup>3</sup> Fund advisers will typically capitalize these private mortgage funds through the offer and sale of equity interests in the fund, usually in the form of promissory notes secured by deeds of trust.

Until recently, fund advisers to private mortgage funds had avoided the issue of qualifying as an investment adviser by claiming a state exemption that exempted an investment adviser from registration if the adviser had less than 15 clients.<sup>4</sup> (“15-or-fewer-clients exemption”). The state exemption was based on a former federal exemption.

The federal exemption was eliminated in July 2010 by the Dodd-Frank Wall Street Reform and Consumer Protect Act<sup>5</sup> (“Dodd-Frank Act”), which made significant changes

<sup>1</sup> Corp. Code § 25000 et seq.

<sup>2</sup> Corp. Code, § 25230.

<sup>3</sup> Real estate brokers are licensed under the Real Estate Law (Bus. and Prof. Code § 10000 et. Seq.) and finance lenders are licensed under the California Finance Lenders Law (Fin. Code § 22000 et.seq.).

<sup>4</sup> Former Cal. Code Regs., tit. 10 § 260.204.9.

<sup>5</sup> 12 U.S.C §§ 5301-5641.

to the regulatory scheme that governs investment advisers managing private funds, including hedge funds, private equity funds, and certain real estate funds. Consequently, many previously unregistered advisers under the federal 15-or-fewer-clients exemption, particularly those to hedge funds and private equity funds, would be required to register with the Securities and Exchange Commission (“SEC”) and be subject to its regulatory oversight, rules and examination.

Pursuant to the Dodd-Frank Act, the SEC promulgated new rules for investment advisers, including exemptions to investment adviser registration under limited circumstances. Advisers solely to private funds with less than \$150 million in assets under management were exempt from registration, but were required to file and periodically update reports with the SEC.

To conform with federal law, California amended the 15-or-fewer-clients exemption in 2012.<sup>6</sup>

#### REASON FOR CHANGES TO THE REGULATIONS

The Department is seeking comments and information from interested parties and those that who would be subject to the proposed regulations, that would allow the Commissioner to make a determination on whether or not changes to regulations that impact fund advisers to private mortgage funds are necessary.

The Department is seeking comments on the proposed adoption of section 260.204.1.1 and amendments to sections 260.204.1 and 260.204.6 of title 10 of the California Code of Regulations. The proposed changes would create a regulatory exemption for real estate brokers from investment adviser certification if one of two conditions are met:

1. A real estate broker is operating under the course and scope of a real estate license issued by the Bureau of Real Estate and who is also a certified broker-dealer under the Corporate Securities Law; or
2. A real estate broker is operating under the course and scope of a real estate license issued by the Bureau of Real Estate and who only offers or sells qualified securities under Corporations Code section 25113.

The amendments to Sections 260.204.1 and 260.204.6 would require a real estate broker or finance lender that relies on either exemption to submit a notice filing with specific information to the commissioner.

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<sup>6</sup> Cal. Code Regs., tit. 10, § 260.204.9.

## INVITATION

In accordance with Government Code section 11346(b), the Department seeks to involve parties who would be subject to the regulations and other interested parties in discussions regarding the proposed regulations. The Commissioner invites interested parties to review the accompanying draft text and provide comments.

In addition, the Commissioner invites interested parties to answer the following questions:

1. What are the burdens imposed to industry by existing law?
2. Why is the exemption for investment advisers to private funds under CCR § 260.204.9 insufficient for industry?
3. What is the specific purpose of each proposed adoption or amendment?
4. What is the problem that each proposed adoption or amendment intends to address?
5. Why is each proposed adoption or amendment reasonably necessary to carry out the purpose and address the problem for which it is proposed?
6. Please enumerate the benefits anticipated from the regulatory action. These benefits may include, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things.
7. Please identify each technical, theoretical, and empirical study, report, or similar document, if any, that supports the proposed regulations.
8. Please assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements.
9. Please provide information about the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states.

10. Please address the following in relation to the proposed adoption or amendments:
- (A) The creation or elimination of jobs within the state.
  - (B) The creation of new businesses or the elimination of existing businesses within the state.
  - (C) The competitive advantages or disadvantages for businesses currently doing business within the state.
  - (D) The increase or decrease of investment in the state.
  - (E) The incentives for innovation in products, materials, or processes.
  - (F) The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits.
11. What is the potential economic impact of the proposed regulations on industry?
12. What is the potential impact of the proposed regulations on industry operations?

### TIME FOR COMMENTS

Accordingly, the Department is providing the attached text of draft regulations to interested parties, and invites interested parties to submit comments on these documents by March 8, 2015. Comments from interested persons will assist the Department in determining whether the proposed regulations are necessary and appropriate.

This solicitation for comments from interested parties is not a proposed rulemaking action under Government Code section 11346, and the public will have an additional opportunity to comment on proposed changes if, after consideration of the comments from interested parties, the Department proceeds with a notice of a proposed rulemaking action.

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Comments Requested by March 8, 2015

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WHERE TO SUBMIT COMMENTS

You may submit comments by any of the following means:

Electronic

Comments may be submitted electronically to [regulations@dbo.ca.gov](mailto:regulations@dbo.ca.gov). Please identify the comments as PRO 04/14.

Mail

California Department of Business Oversight  
Legal Division  
Attn: Dan Warren (PRO 04/14)  
1515 K Street, Suite 200  
Sacramento, CA 95814-4052

Fax

(916) 322-5875.

CONTACT PERSONS

Questions regarding this invitation for comments may be directed to Salony Mehrok, Senior Counsel, at (916) 322-6927 or [Salony.Mehrok@dbo.ca.gov](mailto:Salony.Mehrok@dbo.ca.gov).