



# Commissioner's Report

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



December 2016



California Department of Business Oversight

## Introduction

Corporations Code section 25113, subdivision (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 the DBO (Commissioner).

## 2015 Data and Summary

### **Permits**

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 140 permits were issued under Corporations Code section 25113 in 2015.

### **General Categories of Investment**

In 2015, the DBO issued securities permits in the following categories of investment: agriculture, church debt, church extension fund, cooperative, education, energy, financing, food and drink, mobile home park, mortgage, multi-lender, mutual water company, nonprofit, oil and gas, real estate, real estate investment trust (REIT), sports and recreation, technology, transportation, and others.

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

<b>Category of Investment</b>	<b>Number of Permits Issued</b>
Agricultural	2
Church Debt	12
Church Extension Fund	28
Co-op*	8
Education	1
Energy	1
Financing	4
Food and drink	3
Mobile home parks	11
Mortgage	1
Multi-lender	10
Mutual water companies	11
Nonprofit	12
Oil and gas	2
Real Estate	9
Real Estate Investment Trust	2
Sports and recreation	12
Technology	5
Transportation	1
Other**	5
<b>Total</b>	<b>140</b>

\*The category “cooperative” includes hardware retailers, grocers, and professional services providers.

\*\*The category “Other” includes multi-business companies, mortuary, alternative tobacco product company, and crowdfunding platform.

## **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 in 2015. 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 for each category of investment the least and most stringent suitability standards imposed by the Commissioner in 2015.

<b>Category of Investment</b>	<b>Least Stringent Standard</b>	<b>Most Stringent Standard</b>
Agriculture	Producer of agricultural products	\$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	Must be affiliated with the church
Cooperative*	Must be affiliated with the cooperative	Must be affiliated with the cooperative
Education	\$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
Energy	\$500,000 net worth + \$65,000 gross income, or \$250,000 net worth	\$500,000 net worth + \$65,000 gross income, or \$250,000 net worth
Financing	No suitability standard imposed	\$500,000 net worth + \$65,000 gross income, or \$250,000 net worth
Food and Drink	Must be an employee	\$150,000 net worth + \$65,000 gross income, or \$250,000 net worth plus 10% net worth cap
Mobile home park	Must be a current resident of the mobile home park	\$150,000 net worth + \$50,000 net income
Mortgage	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth plus 10% net worth cap	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth plus 10% net worth cap

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

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

Multi-lender	No suitability standard imposed	\$500,000 net worth + \$65,000 gross income, or \$250,000 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
Nonprofit	No suitability standard imposed	\$500,000 net worth + \$65,000 gross income, or \$250,000 net worth plus 10% net worth cap
Oil and Gas	Must be an existing shareholder	Must agree to contract with issuer
Real Estate	\$250,000 net worth + \$65,000 gross income, or \$500,000 net worth plus 10% net worth cap	\$500,000 net worth + \$65,000 gross income, or \$250,000 net worth plus 10% net worth cap
Real Estate Investment Trust	\$250,000 net worth + \$75,000 gross income, or \$75,000 net worth plus 10% net worth cap	\$250,000 net worth + \$75,000 gross income, or \$75,000 net worth plus 10% net worth cap
Sports & Recreation	Must be a member	\$500,000 net worth + \$100,000 net income, or \$300,000 gross income, or \$1,000,000 net worth
Technology	Current shareholders	Must be a company employee
Other**	No suitability standard imposed	\$70,000 net worth + \$70,000 gross income, or \$250,000 net worth plus 10% net worth cap

\*The category “cooperative” includes hardware retailers, grocers, and professional services providers.

\*\*The category “Other” includes multi-business companies, mortuary, alternative tobacco product company, and crowdfunding platform.

## **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 issuers 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

<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.

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

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, however, generally does not require specific net worth or minimum capital requirements for 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>6</sup> *Id.* While nonconforming standards are viewed with disfavor, the guidelines contained in the regulations promulgated by DBO may be modified or waived by the Commissioner where good cause is shown. Modification will be accommodated where warranted by individual characteristics of a specific program and in a manner consistent with the guidelines. (Cal. Code Regs., tit. 10, § 260.140.110.1.)

<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 2015:

<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>
Agricultural	5,226,006	23,461,152	14,343,579
Church Debt	136,733	24,786,647	4,972,872
Church Extension Fund	383,360	193,385,000	38,779,118
Co-op*	184,959	449,800,000	97,667,965
Education***	769,043	769,043	769,043
Energy***	-23,040	-23,040	-23,040
Financing	5,227,770	32,090,261	13,895,474
Food and drink	55,923	2,747,531,541	917,141,138
Mobile home parks	-602,063	23,073,934	3,569,487
Oil and gas	2,016,740	7,691,234	4,853,987
Real Estate	31,716	1,728,008	758,150
REIT	398,670	2,436,356	1,417,513
Sports and recreation	-27,687,217	49,823,000	8,414,112
Technology	19,532,920	1,221,988,600	559,814,288
Transportation***	-50,028	-50,028	-50,028
Other**	-424,877	12,991,210,800	2,658,206,619

\*The category “cooperative” includes hardware retailers, grocers, and professional services providers.

\*\*The category “Other” includes multi-business companies, mortuary, alternative tobacco product company, and crowdfunding platform.

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

## **Total Dollar Amount Sought to be Raised**

Below is a summary of the minimum, maximum and total dollar amount issuers requested to raise in applications filed in 2015, by category:

<b>Category of Investment</b>	<b>Minimum Dollar Amount (in dollars)</b>	<b>Maximum Dollar Amount (in dollars)</b>	<b>Total Dollar Amount in CA (in dollars)</b>
Agricultural	200,000	400,000	600,000
Church Debt	100,000	5,175,000	10,175,000
Church Extension Fund	2,191,000	750,000,000	2,228,291,000
Co-op*	18,792	3,000,000	8,973,792
Education***	450,000	450,000	450,000
Energy***	20,000,000	20,000,000	20,000,000
Financing	10,000,000	50,000,000	120,000,000
Food and drink	600,000	66,374,995	70,724,995
Mobile home parks	80	21,000,000	25,123,222
Mortgage***	200,000,000	200,000,000	200,000,000
Multi-lender	500,000	105,000,000	589,500,000
Mutual water companies	23	492,000	1,294,080
Nonprofit	100,000	500,000,000	738,761,000
Oil and gas	20,000	5,118,000	5,138,000
Real Estate	17,000,000	90,000,000	392,000,000
Real Estate Investment Trust	25,000,000	25,000,000	50,000,000
Sports and recreation	1,200,000	320,450,000	1,226,425,000
Technology	47,700	525,950,400	816,199,820
Transportation***	3,000,000	3,000,000	3,000,000
Other**	100,000	17,836,500	28,242,500

\*The category "cooperative" includes hardware retailers, grocers, and professional services providers.

\*\*The category "Other" includes multi-business companies, mortuary, alternative tobacco product company, and crowdfunding platform.

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

## **Enforcement Actions**

The DBO took no new enforcement actions taken against any of the issuers who received a permit in 2015 under Section 25113.