

FINAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE
CALIFORNIA DEFERRED DEPOSIT TRANSACTION LAW

As required by Section 11346.2 of the Government Code, the California Corporations Commissioner (“Commissioner”) sets forth below the reasons for the nonsubstantive amendment of Section 250.51 and the adoption of Sections 2020 and 2021 to Article 2 of Subchapter 13 of Chapter 3 of Title 10 of the California Code of Regulations. (10 C.C.R. Sections 250.51, 2020 and 2021.)

The California Legislature enacted Senate Bill 898 (Chapter 777, Statutes 2002) to provide for regulation of persons engaged in the business of deferred deposit transactions and to transfer the corresponding responsibilities from the Department of Justice to the Department of Corporations (“Department”). SB 898, known as the California Deferred Deposit Transaction Law (“CDDTL”), became effective on January 1, 2003 and will become operative on March 1, 2004. The California Corporations Commissioner (“Commissioner”) has the power and authority to implement provisions of the CDDTL prior to March 1, 2004. (Financial Code Section 23104.)

California Code of Regulations Section 250.51 contains a chart of permit processing times of the programs regulated by the Department. The Department seeks to amend Section 250.51 to include the permit processing time for the long and short form applications under the CDDTL based on statutory guidelines. (Financial Code Section 23011(c).)

Under the CDDTL, the Department licenses and regulates persons engaged in the business of deferred deposit transactions conducted within this state. The CDDTL provides that no person shall engage in the business of deferred deposit transactions without obtaining a license from the Commissioner. (Financial Code Section 23005, subdivision (a).) The CDDTL further provides that the application for a deferred deposit transaction license shall be in the form and contain the information that the Commissioner may by rule require. (Financial Code Section 23005, subdivision (b).) Proposed Section 2020 contains the long form application complying with the provisions of the CDDTL.

The Commissioner may also establish a short form application and procedure for use by a licensee with one or more licensed locations who is seeking an additional location license. (Financial Code Section 23005, subdivision (c).) The short form application for an additional license under the CDDTL proposed by the Department would be added as Section 2021.

The Department’s application form is used by applicants seeking to become licensed to engage in the business of deferred deposit transactions. The form is available to the public either at the Department’s offices or on its web site at

www.corp.ca.gov. However, this form has not been formally adopted as a regulation pursuant to the Administrative Procedure Act (“APA”). (Government Code Section 11370, et seq.) Nor has a short form application been adopted as a regulation.

Accordingly, in order to comply with the APA, the Department proposes to amend Section 250.51 to this title and chapter to add the permit processing times for the long and short form applications. Additionally, the Department proposes to add Section 2020 to Title 10, Chapter 3, Subchapter 13, Article 2 of the California Code of Regulations, the text of which will be the “Application For a License Under the California Deferred Deposit Transaction Law.” Finally, the Department proposes to add Section 2021 to this title and chapter, to enable applicants who qualify to file a short form application for licensure with the Department.

It is noteworthy that the application forms set forth in the proposed regulations were presented to industry and consumer groups for review and input, in January 2003.

SECTION 250.51

Section 250.51 sets forth the listing of processing times for permit applications. The Department proposes to make a nonsubstantive amendment to Section 250.51 to include the processing times of the CDDTL long form and short form on the already existing chart of permit processing times of programs regulated by the Department.

SECTION 2020

Section 2020 contains the application form entitled “Application for a License Under the California Deferred Deposit Transaction Law” (“Application”). The Application needs to be added to the regulations because it has not been adopted as required by the APA, and is not contained elsewhere in the CDDTL or regulations. More specific reasons for the necessity of the provisions in the proposed form are discussed below.

In order for a person to engage in business of deferred deposit transactions under the CDDTL, an application for licensure must first be filed with the Department. (See Financial Code Section 23005, subdivision (a).) This rule adopting the Application is necessary to ensure that the Department obtains the information needed to make a determination that the applicant meets the specified requirements for licensure under the CDDTL, and to provide the applicant notice of the information that will be necessary for the Department to make such a determination. Additionally, Financial Code Section 23005, subdivision (b) expressly authorizes the Department to set forth the form of the Application by regulation.

The information requested in items 1 through 4 of the Application relates to general information about the applicant, including the applicant's name and fictitious business name, the form in which the applicant plans to transact business, the location of the applicant's place of business and vehicle identification for mobile unit locations. Existing law does not require applicants to submit this information to the Department. This general information is necessary to provide a means by which the Department may obtain identifying information about the applicant and information about the form and location of the applicant's business. (As examples, see Financial Code Sections 23009 [name of Licensee, address, whether applicant is corporation or partnership]; 23021 [change of place of business]; and 23023 [name of business].)

The information in item 5 is requested for an applicant operating as a partnership, and concerns the date of organization of the applicant, the state in which it was organized, and the names and addresses of each general partner. Existing law does not require applicants to submit this information to the Department. The requested items are necessary to provide the Department with identifying information about the applicant and about those persons responsible for the operation and management of the applicant, so that the Department can conduct a meaningful investigation of such persons prior to their engaging in business with consumers in this state. The items requested are also necessary to provide the Department with information needed to facilitate communication with the applicant and those in charge of its operations and management. (See Financial Code Section 23009, for example.)

The information in item 6 is requested for an applicant operating as a corporation, trust, limited liability company, or other entity, and concerns the date of organization of the applicant and the state in which it was organized. Item 6 further requests the names of the officers, directors, managers/members, trustees, and persons owning or controlling ten percent or more of the applicant, and the name, business address, telephone number and e-mail address of each person who will be in charge of the place of business. Existing law does not expressly require applicants to submit this information to the Department. The requested items are necessary to provide the Department with identifying information about the applicant and about those persons responsible for the operation and management of the applicant, so that the Department can conduct a meaningful investigation of such persons prior to their engaging in business with consumers in this state. The items requested are also necessary to provide the Department with information needed to facilitate communication with the applicant and those in charge of its operations and management. (See, e.g., Financial Code Section 23009.)

Item 7 requests information concerning whether the applicant has been subject to any administrative action in California or in another state. Financial

Code Section 23011 allows the Department to deny an application based on violations of any similar regulatory scheme in California or a foreign jurisdiction, or for any act involving dishonesty, fraud, or deceit that is substantially related to the qualifications, functions, or duties of a person engaged in the business of deferred deposit transactions. The requested information is needed to provide the Department with information concerning the background of the applicant to enable the Department to fully evaluate the suitability of the applicant for a license under the statutory provisions of the CDDTL.

Item 8 requests the name, address, and telephone number of the bonding agent to whom the Department can direct questions regarding the surety bond required in Exhibit B below. Existing law does not require applicants to submit this information to the Department. This information is necessary to enable the Department to communicate with the bonding agent to ensure that the applicant is in compliance with the bonding requirements of the CDDTL. (See Financial Code Section 23013.)

Item 9 requests a short description of the applicant's proposed business plan. Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with information concerning the way in which the applicant proposes to transact its business, so that the Department can ensure that the applicant is in compliance with, and is transacting its business appropriately under, the CDDTL. (For example, see Financial Code Section 23026 [reports by licensee].)

Item 10 concerns the Exhibits that are required to be submitted with the Application. The Exhibits contain information necessary for the Department to conduct a thorough investigation and to ensure that the applicant meets the requirements of the CDDTL. Existing law does not expressly require applicants to submit this information to the Department. The Exhibits required to be attached to the Application and the more specific reasons the Exhibits are necessary are set forth below:

EXHIBIT A: Financial statements, including a balance sheet, of the applicant as of a date not more than ninety days prior to the date this Application is filed, that indicates a minimum net worth of \$25,000. This information is necessary for the Department to make a determination that the applicant meets the minimum net worth requirements of Financial Code Section 23007.

EXHIBIT B: A "Surety Bond of Deferred Deposit Transaction Law Licensee" form, along with copies of any and all riders and endorsements for a surety bond in the amount of \$25,000 to be filed with the Commissioner. The bond must be in effect prior to the issuance of a license. The form is attached to the Application along with instructions. This requirement is necessary to notify applicants of their obligation to submit a bond and to enable the Department to

determine whether the bond requirements of Financial Code Section 23013 have been satisfied.

EXHIBIT C: A "Statement of Identity and Questionnaire" form, for each person named in Items 4, 5, and 6 of the Application, to be filed with the Application along with a fingerprint card obtained from the Department of Corporations and the cost of fingerprint processing. The form, with instructions, is attached to the Application. Persons that already have fingerprint information on file with the California Department of Justice as a check casher, that held a valid permit prior to January 1, 2003 and made deferred deposits prior to January 1, 2003, need only provide a Statement of Identity and Questionnaire without fingerprint information. Existing law does not expressly require applicants to submit this information to the Department. This information is necessary for the Department to investigate such persons and determine whether the applicant meets the requirements of Financial Code Section 23008.

EXHIBIT D: For individual applicants only, the attached form "Statement of Citizenship, Alienage, and Immigration Status for Application of Department of Corporations License or Certificate" to be filed with the Application. This information is needed to enable the Department to determine the citizenship status of the applicant. (See Financial Code Section 23008.)

EXHIBIT E: The attached form, "Licensee Authorization of Disclosure of Financial Records," to be completed and returned upon receipt of the license. A person named in Items 4, 5, or 6 of this Application who is authorized to sign on behalf of the applicant must sign this form. This form will enable the Department to have access to the Licensee's financial information that is under the control of third parties, such as banks. This information is necessary in order for the Department to thoroughly investigate the Licensee's financial standing to meet the requirements of Financial Code Section 23024. Additionally, timely access to such financial records can be crucial in certain enforcement actions the Department may be pursuing.

EXHIBIT F: For an applicant that will be doing business under a fictitious business name, a copy of the Certificate of Filing and Proof of Publication, both of which bear the County Clerk's filing stamp, to be filed with the Application. The Certificate of Filing and Proof of Publication are to be filed pursuant to the requirements of the Unfair Practices Act, Business and Professions Code Section 17000, et seq. This information is needed to enable the Department to determine whether the applicant is doing business under a fictitious business name and is meeting the requirements of Financial Code Section 23023.

EXHIBIT G: For an applicant incorporated in the State of California (domestic corporation), the following items, pursuant to the Department's authority

under Financial Code Sections 23005, subdivision (b) and 23015, to be filed with the Application:

1. An original certificate of good standing or qualification duly executed not more than sixty days before filing this Application by the Secretary of State of California showing that the applicant is authorized to do business in this State. The certificate must also indicate the original date of incorporation. This information is necessary for the Department to determine whether the applicant is permitted to transact its business in the State of California.
2. A copy of the notice filed with the Department indicating that the initial issuance of shares of stock was entitled to an exemption pursuant to Section 25102 of the Corporations Code or was qualified for issuance in some other manner, as required by Corporations Code Section 25110. This information is needed to ensure that the applicant has complied with the requirements of both the CDDTL and the California Securities Law of 1968 regarding the issuance of shares of stock.

EXHIBIT H: For an applicant incorporated outside the State of California (foreign corporation), the following items, pursuant to the Department's authority under Financial Code Sections 23005, subdivision (b) and 23015, to be filed with the Application:

1. A certificate of good standing or qualification duly executed not more than sixty days before filing this Application by the Secretary of State of the foreign state, or other proper authority, showing that the applicant is authorized to do business in that state. The certificate must also indicate the original date of incorporation. This information is necessary for the Department to determine whether the applicant is permitted to transact its business in the state in which it is incorporated.
2. A certificate of good standing or qualification duly executed not more than sixty days before filing this Application by the Secretary of State of California showing that the applicant is authorized to do business in California. This information is necessary for the Department to determine whether the applicant is permitted to transact its business in the State of California.
3. A "Consent to Service of Process" form, provided in the Application packet. Service made pursuant to the terms of the "Consent to Service of Process" shall have the same force and validity as if served personally on the applicant. This form is necessary to enable the Department to accept service of process on behalf of an applicant if the applicant is unable to be located.

4. The name and address of the principal agent in California. This information is necessary in order to provide the Department with a primary contact person in this state who is authorized to act for and on behalf of the applicant.

EXHIBIT I: For an applicant that is a Trust, Limited Partnership or Limited Liability Company (domestic business entity), an original certificate of good standing or qualification, or other document duly executed not more than sixty days before filing this Application by the Secretary of State of California, pursuant to the Department's authority under Financial Code Sections 23005, subdivision (b) and 23015, to be filed with the Application. The certificate must also indicate the original date of incorporation. This information is necessary for the Department to determine whether the applicant is permitted to transact its business in the State of California.

EXHIBIT J: For an applicant that is a Trust, Limited Partnership or Limited Liability Company organized outside of the State of California (foreign business entity), the following items, pursuant to the Department's authority under Financial Code Sections 23005, subdivision (b) and 23015, to be filed with the Application:

1. A certificate of good standing or qualification duly executed not more than sixty days before filing this Application by the Secretary of State of the foreign state, or other proper authority, showing that the applicant is authorized to do business in that state. The certificate must also indicate the original date of incorporation. This information is necessary for the Department to determine whether the applicant is permitted to transact its business in the state in which it is incorporated.
2. A certificate of good standing or qualification duly executed not more than sixty days before the filing of this Application by the Secretary of State of California showing that the applicant is authorized to do business in California. This information is necessary for the Department to determine whether the applicant is permitted to transact its business in the State of California.
3. A "Consent to Service of Process" form, provided in the Application packet. Service made pursuant to the terms of the "Consent to Service of Process" shall have the same force and validity as if served personally on the applicant. This form is necessary to enable the Department to accept service of process on behalf of an applicant if the applicant is unable to be located.
4. The name and address of the principal agent in California. This information is necessary in order to provide the Department with a primary contact

person in this state who is authorized to act for and on behalf of the applicant.

EXHIBIT K: A “Declaration Regarding Law and Rules for California Deferred Deposit Transaction License” form, attached to the Application. Only one responsible officer or director is required to complete this form regarding the applicant’s knowledge of the law and rules. This information is necessary to demonstrate that the applicant is familiar with the laws with which the applicant must comply as a licensee.

EXHIBIT L: A “Declaration Pursuant to Financial Code Section 23037(i) of the California Deferred Deposit Transaction Law” form, attached to the Application. Only one responsible officer or director is required to complete this form. This information is necessary to demonstrate that the applicant is familiar with the laws that are applicable to how the applicant will transact business and with which the applicant must comply as a licensee. Additionally, the identification of those applicants who will be engaging in activities with a financial institution pursuant to Financial Code Section 23037, subdivision (i), will enable the Commissioner to determine whether the licensee is complying with that provision of the CDDTL.

The Execution Section requests the name, address, title and telephone number of the person who should be contacted for information regarding this Application. Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with a contact person who is authorized to respond to the Department’s inquiries, if any, concerning the Application.

This section further sets forth the applicant’s declaration, to be signed under penalty of perjury, stating that the applicant agrees to comply with the requirements of the CDDTL, rules, and orders as adopted by the Department; and to provide the Department with information concerning changes in officers, directors, or other persons named in the Application. The declaration also states that the person signing the Application is authorized by the applicant to do so, and agrees that the Application and all exhibits not designated as confidential are subject to public inspection. Existing law does not require applicants to submit this information to the Department. This information is needed to ensure that the applicant understands and agrees to comply with the provisions of the CDDTL under which the applicant is licensed, and that the applicant agrees to keep the Department informed of changes in officers, directors, and other named persons who may be responsible for operating the applicant’s business, to enable the Department to fully evaluate the suitability of such persons under the CDDTL.

SECTION 2021

Section 2021 contains the short form application entitled “Short Form Application for a License Under the California Deferred Deposit Transaction Law” (“Short Form Application”). The Short Form needs to be added to the regulations because it has not been adopted as required by the APA, and is not contained elsewhere in the CDDTL or regulations. More specific reasons for the necessity of the provisions in the proposed form are discussed below.

Financial Code Section 23005, subdivision (c) provides that a Licensee who has one or more licensed locations and is seeking an additional location may file a short form application as the Department may establish under Section 23005, subdivision (b). This rule adopting the Short Form is necessary to ensure that the Department obtains the information needed to determine whether the applicant meets the requirements to obtain a subsequent license using the Short Form Application, as provided by Section 23005, subdivision (c).

Additionally, this rule is necessary to provide CDDTL applicants with an efficient means by which they may add additional business locations without duplicating the original application process. The regulation will therefore result in immediate costs savings to applicants, which in turn will enable applicants to add additional business locations more quickly and efficiently and will provide consumers with more options and greater access to products offered by these Licensees. The expedited application process will benefit not only applicants and consumers, but also the Department, as the costs of processing the Short Form applications will be less than if a new complete application was required each time a licensee opened an additional location.

The information requested in items 1 and 2 of the short form relates to general information about the applicant, including the applicant’s name and fictitious business name, and the location of the applicant’s place of business, and vehicle identification for mobile unit locations. Existing law does not require applicants to submit this information to the Department. This general information is necessary to provide a means by which the Department may obtain identifying information about the applicant and information about the location of the applicant’s business. (See, e.g., Financial Code Sections 23009 [name of Licensee, address, whether applicant is corporation or partnership]; 23021 [change of place of business]; and 23023 [name of business].)

Item 3 requests the name of the individual in charge of the licensee’s proposed additional business location. Existing law does not require applicants to submit this information to the Department. The requested information is necessary to provide the Department with identifying information about the applicant and about the person in charge of the new location, so that the Department can conduct a meaningful investigation of such persons prior to their

engaging in business with consumers in this state. The information requested is also necessary to permit the Department to communicate with the individual at the new location. (See Financial Code Section 23009.)

This individual must also submit a Statement of Identity and Questionnaire form, along with a fingerprint card obtained from the Department of Corporations and the cost of fingerprint processing. Another form does not need to be provided if a Statement of Identity and Questionnaire has already been provided to the Department. Persons that already have fingerprint information on file with the Department of Justice as a check casher, that held a valid permit prior to January 1, 2003 and made deferred deposits prior to January 1, 2003, need only provide a "Statement of Identity and Questionnaire" without fingerprint information. Existing law does not expressly require applicants to submit this information to the Department. This information is necessary for the Department to investigate such persons and determine whether the applicant meets the requirements of the CDDTL. (See Financial Code Section 23008.)

Item 4 requests information concerning any change in the applicant's plan of business previously submitted to the Department. Existing law does not require applicants to submit this information to the Department. This information is necessary to inform the Department of the types of transactions the applicant proposes to make, and the way in which the applicant proposes to transact its business, so that the Department can ensure that the applicant is in compliance with, and is transacting its business appropriately under, the CDDTL. (See, e.g., Financial Code Section 23026 [reports by Licensee].)

Item 5 requests the license number and address of one other CDDTL license held by this applicant. Existing law does not require applicants to submit this information to the Department. This information is needed to provide the Department with information concerning the background and qualifications of the applicant based on the information previously submitted to the Department by the Licensee and on the applicant's conduct since becoming licensed under the law, thus enabling the Department to fully evaluate the suitability of the applicant for an additional license. (See Financial Code Sections 23008 and 23020.)

Item 6 requests the name, address, title and telephone number of the person who should be contacted for information regarding this Short Form Application. Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with a contact person who is authorized to respond to the Department's inquiries, if any, concerning the Application. (See Financial Code Section 23009.)

The Execution Section sets forth the applicant's declaration, to be signed under penalty of perjury, stating that the applicant agrees to comply with the requirements of the CDDTL, rules, and orders as adopted by the Department; and

to provide the Department with information concerning changes in officers, directors, or other persons named in the Short Form Application. The declaration also states that the person signing the Short Form Application is authorized by the applicant to do so, and agrees that the Application and all exhibits not designated as confidential are subject to public inspection. Further, the applicant acknowledges that the Short Form Application supplements the information provided in the original CDDTL License Application. Existing law does not require applicants to submit this information to the Department. This information is needed to ensure that the applicant understands and agrees to comply with the provisions of the CDDTL under which the applicant is licensed, and that the applicant agrees to keep the Department informed of changes in officers, directors, and other named persons who may be responsible for operating the applicant's business, to enable the Department to fully evaluate the suitability of such persons under the CDDTL. (See Financial Code Sections 23008 and 23009.)

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, which require reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ALTERNATIVES CONSIDERED

No reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses.

ADDENDUM REGARDING PUBLIC COMMENTS

No request for hearing was received during the 45-day public comment period, which ended on May 12, 2003. Accordingly, no public hearing was scheduled or held.

PUBLIC COMMENT LETTERS

No public comments were received during the 45-day public comment period, which ended on May 12, 2003. However, upon further review of the provisions in the long form and short form pertaining to the applicant's licensed place of business, the Department determined that information regarding mobile unit locations should be added to the Item 3 in Section 2020 and Item 2 in Section 2021. The revised regulations were sent for an additional 15-day comment period which began on September 18, 2003 and ended on October 3, 2003.

One comment letter was received during the 15-day comment period which ended on October 3, 2003.

Commentor: Letter dated September 15, 2003, from Claudia Calaway with Paul, Hastings, Janofsky and Walker LLP.

Comment: Ms. Callaway's comments related to the interpretation of Financial Code Section 23037(i) and did not address the proposed regulations.

Response: Ms. Callaway's comments were outside the scope of this rulemaking project. Consequently, no changes were made to these regulations as a result of the comment letter.

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