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FINANCIAL CODE - FIN

DIVISION 1. FINANCIAL INSTITUTIONS [99 - 819] (*Division 1 repealed and added by Stats. 2011, Ch. 243, Sec. 2.*)

CHAPTER 1. Definitions [99 - 217] (*Chapter 1 added by Stats. 2011, Ch. 243, Sec. 2.*)

99. This division, Division 1.1 (commencing with Section 1000), Division 1.2 (commencing with Section 2000), Division 1.6 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), and Division 15 (commencing with Section 31000) shall be known, and may be cited, as the "Financial Institutions Law."

(*Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.*)

101. If and to the extent that any provision of the Financial Institutions Law is preempted by federal law, the provision does not apply and shall not be enforced.

(*Amended by Stats. 2013, Ch. 334, Sec. 6. (SB 537) Effective January 1, 2014.*)

103. The word "bank" as used in the Financial Institutions Law means any incorporated banking institution that shall have been incorporated to engage in commercial banking business, industrial banking, or trust business.

(*Amended by Stats. 2013, Ch. 334, Sec. 7. (SB 537) Effective January 1, 2014.*)

105. Banks are divided into the following classes:

- (a) Commercial banks.
- (b) Industrial banks.
- (c) Trust companies.

(*Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.*)

107. "Commercial bank" means a corporation organized for the purpose of engaging in the commercial banking business.

(*Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.*)

109. "Commercial banking business" includes, but is not limited to, the business of soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing, provided that nothing herein shall apply to or include money or its equivalent left in escrow, or left with an agent pending investment in real estate or securities for, or on account of, his or her principal. In addition, "commercial banking business" means to lend money on the security of real or personal property or without security; to discount or deal in bills, notes, or other commercial paper; to buy and sell for the account of customers, and, if eligible for investment, for its own account, securities, gold and silver bullion, foreign coins, and bills of exchange; and generally to transact a commercial banking business.

(*Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.*)

111. "Industrial bank" means a corporation organized for the purpose of engaging in the industrial banking business.

(*Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.*)

113. "Industrial banking business" includes the making of loans and acceptance of deposits, including deposits evidenced by investment or thrift certificates, but excluding demand deposits.

(*Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.*)

115. “Trust business” means the business of acting as executor, administrator, guardian or conservator of estates, assignee, receiver, depository or trustee under the appointment of any court, or by authority of any law of this or any other state or of the United States, or as trustee for any purpose permitted by law.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

117. “Trust company” means a corporation, industrial bank, or a commercial bank that is authorized to engage in the trust business.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

119. “Bank” or “banks” includes a public bank, as defined in Section 57600 of the Government Code, commercial banks, industrial banks, and trust companies unless the context otherwise requires. However, “bank” does not include a savings association or a credit union.

(Amended by Stats. 2019, Ch. 442, Sec. 4. (AB 857) Effective January 1, 2020.)

121. (a) “Office” includes head office, branch office, and any other authorized place of business of a licensee.

(b) “Head office” means the principal place of business of a licensee.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

123. “Real property” and “personal property” have the meanings defined in and shall be construed in accordance with Title 1 (commencing with Section 654) of Part 1 of Division 2 of the Civil Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

125. “Commissioner” means the Commissioner of Business Oversight and “department” means the Department of Business Oversight.

(Amended by Stats. 2013, Ch. 352, Sec. 80. (AB 1317) Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

127. “Person” means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, joint stock company, limited liability company, unincorporated association, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

129. Unless the provision or the context otherwise requires, the definitions set forth in this chapter govern the construction of the Financial Institutions Law.

(Amended by Stats. 2013, Ch. 334, Sec. 8. (SB 537) Effective January 1, 2014.)

131. References in this division to the voting of shares shall be construed in accordance with Section 111 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

133. If the articles of a bank provide for more or less than one vote for any share on any matter, the references in Sections 139 and 141 to a majority or other proportion of shares means, as to such matter, a majority or other proportion of the votes entitled to be cast. Whenever, under Division 1 (commencing with Section 100), Title 1 of the Corporations Code, this division, or Division 1.1 (commencing with Section 1000), shares are disqualified from voting on any matter, they shall not be considered outstanding for the determination of a quorum at any meeting to act upon, or the required vote to approve action upon, such matter under any provision of Division 1 (commencing with Section 100), Title 1 of the Corporations Code, of this division, Division 1.1 (commencing with Section 1000), or of the articles or bylaws.

(Amended by Stats. 2013, Ch. 334, Sec. 9. (SB 537) Effective January 1, 2014.)

135. Any requirement in this division for a vote of each class of outstanding shares shall be construed in accordance with Section 117 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

137. “Approved by (or approval of) the board” means approved or ratified by the vote of the board or by the vote of a committee authorized to exercise the powers of the board, except as to any matter not within the competence of the

committee under Section 311 of the Corporations Code or any matter for which this division also requires approval of the shareholders or approval of the outstanding shares.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

139. “Approved by (or approval of) the outstanding shares” has the meaning set forth in Section 152 of the Corporations Code and shall include approval by the affirmative vote of a majority of the outstanding shares of each class or series entitled, by any provision of the articles, of this division, or of Division 1 (commencing with Section 100), Title 1 of the Corporations Code, to vote as a class or series on the subject matter being voted upon, and shall also include approval by the affirmative vote of such greater proportion (including all) of the outstanding shares of any class or series if such greater proportion is required by the articles, by this division, or by Division 1 (commencing with Section 100), Title 1 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

141. “Approved by (or approval of) the shareholders” has the meaning set forth in Section 153 of the Corporations Code and shall include approval or ratification by the affirmative vote or written consent of such proportion (including all) greater than a majority of the shares of any class or series as may be provided in the articles, in this division, or in Division 1 (commencing with Section 100), Title 1 of the Corporations Code for all or any specified shareholder action.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

143. “Articles” has the meaning set forth in Section 154 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

145. “Board” has the meaning set forth in Section 155 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

147. “California” means:

(a) When used with respect to a bank, in the case of a state bank, a bank that is organized under the laws of this state and, in the case of a national bank, a national bank that maintains its main office in this state.

(b) When used with respect to an office of a bank, an office which is located in this state.

(c) When used with respect to any corporation other than a bank, a corporation that is organized under the laws of this state.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

149. “CAMELS composite rating” shall have the meaning set forth in Section 327.8(j) of Title 12 of the Code of Federal Regulations.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

151. “Certificate of correction” means a certificate executed and filed with the Secretary of State pursuant to Section 109 of the Corporations Code, subject, however, to the provisions of Section 1105.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

153. “Certificate of determination” has the meaning set forth in Section 156 of the Corporations Code, subject, however, to the provisions of Section 1104.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

155. “Certificate of revocation” means a certificate executed and filed with the Secretary of State pursuant to the second and third sentences of subdivision (c) of Section 110 of the Corporations Code, subject, however, to the provisions of Section 1106.

(Amended by Stats. 2013, Ch. 334, Sec. 10. (SB 537) Effective January 1, 2014.)

157. “Common shares” has the meaning set forth in Section 159 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

159. (a) “Confidential information” means any information regarding a licensee contained in, or related to, any of the following:

(1) Applications filed with the commissioner.

(2) Examination, operating, condition, or any other reports prepared by, on behalf of, or for the use of, the commissioner.

(3) Information received in confidence by the commissioner.

(b) Confidential information is the property of the commissioner.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

161. “Constituent corporation,” when used with respect to a corporation:

(a) In the case of a merger, has the meaning set forth in Section 161 of the Corporations Code.

(b) In the case of a consolidation, means a corporation that is consolidated with one or more other corporations.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

163. “Contributed capital” means all of shareholders’ equity other than retained earnings. However, nothing in this section shall prohibit a bank from transferring amounts from time to time from its retained earnings to its contributed capital, subject to any applicable statutes, regulations, and generally accepted accounting principles.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

165. “Credit union” means a corporation of the type described in Section 14002 organized under the laws of this state or a corporation of similar type organized under the laws of the United States or of any state of the United States other than this state.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

167. “Directors” has the meaning set forth in Section 164 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

169. “Disappearing,” when used with respect to a corporation, means a constituent corporation that is not the surviving corporation.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

171. “Distribution to its shareholders” has the meaning set forth in Section 166 of the Corporations Code. However, in Division 1 (commencing with Section 100), Title 1 of the Corporations Code, in this division, and in Division 1.1 (commencing with Section 1000), “distribution to its shareholders” does not include any purchase of shares by a bank or by a majority-owned subsidiary of a bank which is necessary to reduce or avoid loss to such bank or to such subsidiary on an extension of credit previously made in good faith. Also, in this division and in Division 1.1 (commencing with Section 1000), “distribution to its shareholders” includes any distribution made by a bank or by a majority-owned subsidiary of a bank to the shareholders of any corporation of which such bank is a majority-owned subsidiary.

(Amended by Stats. 2013, Ch. 334, Sec. 11. (SB 537) Effective January 1, 2014.)

173. (a) “Foreign,” when used with respect to a bank, an office of a bank, or any corporation other than a bank, means foreign (other nation) or foreign (other state).

(b) “Foreign banking corporation” means a foreign bank.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

175. “Foreign nation” means any nation other than the United States, including, without limitation, any subdivision, territory, trust territory, dependency, colony, or possession of any nation other than the United States. “Foreign nation” includes Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

177. (a) The definition of “state of the United States” in Section 207 does not apply to this section. In this section, “state of the United States” means any state of the United States or the District of Columbia.

(b) “Foreign (other nation)”:

(1) When used with respect to a bank, means any bank (including, without limitation, any commercial bank, merchant bank, or other institution that engages in banking activities that are usual in connection with the business of banking in the nation in which the institution is organized or operating) other than (A) a bank that is organized under the laws of a state of the United States or (B) a national bank that maintains its main office in a state of the United States.

(2) When used with respect to an office of a bank, means an office that is located in a place other than a state of the United States.

(3) When used with respect to any corporation other than a bank, means a corporation that is organized under the laws of a foreign nation.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

179. “Foreign (other state)”:

(a) When used with respect to a bank, means a bank that is organized under the laws of any state of the United States other than this state, or a national bank that maintains its main office in any state of the United States other than this state, and includes any savings bank, as defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(g)), that is organized under the laws of a state other than this state.

(b) When used with respect to an office of a bank, means an office that is located in a state other than this state.

(c) When used with respect to a corporation other than a bank, means a corporation that is organized under the laws of any state of the United States other than this state or under the laws of the United States.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

181. “Insured”:

(a) When used with respect to a bank or an office of a bank, means a bank or office the deposits of which are insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(b) When used with respect to a deposit, means a deposit that is insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

183. “Law of the domicile” means:

(a) When used with respect to a national bank, the law of the United States.

(b) When used with respect to a state bank, the law of the state of the United States under which the bank is organized.

(c) When used with respect to a foreign (other nation) bank, the law of the foreign nation under which the bank is organized.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

185. “Licensee” has the following meanings:

(a) Any bank authorized by the commissioner pursuant to Section 1042 to transact banking or trust business.

(b) Any industrial bank authorized by the commissioner pursuant to Section 1042 to transact industrial banking business.

(c) Any trust company authorized by the commissioner pursuant to Section 1042 to transact trust business.

(d) Any foreign (other nation) bank that is licensed under Article 2 (commencing with Section 1780) of Chapter 20 or under Article 3 (commencing with Section 1800) of Chapter 20.

(e) Any person licensed by the commissioner as a money transmitter pursuant to Division 1.2 (commencing with Section 2000).

(f) Any person authorized by the commissioner to conduct the business of a savings association pursuant to Division 2 (commencing with Section 5000).

(g) Any credit union authorized by the commissioner to conduct business pursuant to Section 14154.

(h) Any foreign (other state) credit union licensed by the commissioner to conduct business pursuant to Chapter 11 (commencing with Section 16000) of Division 5.

(i) Any foreign (other nation) credit union licensed by the commissioner to conduct business pursuant to Chapter 12 (commencing with Section 16500) of Division 5.

(j) Any industrial loan company authorized by the commissioner to conduct insurance premium finance business pursuant to Division 7 (commencing with Section 18000).

(k) Any corporation licensed by the commissioner as a business and industrial development corporation pursuant to Section 31154.

(Amended by Stats. 2013, Ch. 334, Sec. 12. (SB 537) Effective January 1, 2014.)

186. “Majority-owned subsidiary” has the meaning set forth for “subsidiary” in subdivision (a) of Section 189 of the Corporations Code.

(Added by Stats. 2013, Ch. 334, Sec. 13. (SB 537) Effective January 1, 2014.)

187.

“Member of the public” means any person, except an agent, officer, or employee of the department acting within the scope of his or her agency, office, or employment. Member of the public does not include a director, officer, employee, attorney, accountant, or consultant of a licensee, provided that the confidential information in question only pertains to the licensee that employs or utilizes the director, officer, employee, attorney, accountant, or consultant.

(Repealed and added by Stats. 2013, Ch. 334, Sec. 15. (SB 537) Effective January 1, 2014.)

188. “Money transmitter” means a person authorized pursuant to Chapter 3 (commencing with Section 2030) of Division 1.2 to engage in the business of money transmission.

(Added by Stats. 2013, Ch. 334, Sec. 16. (SB 537) Effective January 1, 2014.)

189. (a) “National bank” or “national banking association” means a national banking association organized under the National Bank Act.

(b) For purposes of the Financial Institutions Law, a national bank is deemed to be a corporation.

(Amended by Stats. 2013, Ch. 334, Sec. 17. (SB 537) Effective January 1, 2014.)

190. “Officer” means:

(a) When used with respect to a corporation, any person appointed or designated as an officer of the corporation by or pursuant to applicable law or the articles of incorporation or bylaws of the corporation or any person who performs with respect to the corporation functions usually performed by an officer of a corporation.

(b) When used with respect to a specified person other than a natural person or a corporation, any person who performs with respect to the specified person, functions usually performed by an officer of a corporation with respect to the corporation.

(Added by Stats. 2013, Ch. 334, Sec. 18. (SB 537) Effective January 1, 2014.)

191. “Officers’ certificate” has the meaning set forth in Section 173 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

193. “Resulting,” when used with respect to a corporation, means:

(a) In the case of a consolidation, the corporation into which the constituent corporations are consolidated.

(b) In the case of a conversion, the corporation into which the converting corporation is converted.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

195. “ROCA supervisory rating” shall have the meaning set forth in Section 327.8(k) of Title 12 of the Code of Federal Regulations.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

197. “Savings association” includes a savings association, a savings and loan association, and a savings bank. However, “savings association” does not include any savings bank of the type defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(g)).

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

199. “Series,” when used with respect to shares, has the meaning set forth in Section 183 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

201. “Shares” has the meaning set forth in Section 184 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

203. “Shareholder” has the meaning set forth in Section 185 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

205. “State”:

(a) When used with respect to a corporation, means a corporation that is organized under the laws of a state of the United States.

(b) When used with respect to an office of a foreign (other nation) bank, means an office that the bank is authorized to maintain under the laws of a state of the United States.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

207. “State of the United States” means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

209. “Surviving,” when used with respect to a corporation, means a corporation in which one or more other corporations are merged.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

211. “Uniform Interagency Trust Rating System (UITRS)” shall have the meaning set forth in the policy statement regarding the uniform interagency trust rating system published by the Federal Financial Institutions Examination Council on October 13, 1998 (63 Fed. Reg. 54704).

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

213. “Uniform Rating System for Informational Technology (URSIT)” shall have the meaning set forth in the policy statement regarding the uniform rating system for information technology published by the Federal Financial Institutions Examination Council on January 20, 1999, and implemented on or before April 1, 1999 (64 Fed. Reg. 3109).

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

215. “Vote” has the meaning set forth in Section 194 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)

217. “Voting power” has the meaning set forth in Section 194.5 of the Corporations Code.

(Added by Stats. 2011, Ch. 243, Sec. 2. (SB 664) Effective January 1, 2012.)