

## [California Office of Administrative Law Disallows Insurance Department Rule on Iranian Investments](#)

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Yesterday afternoon, the [California Office of Administrative Law](#) (“OAL”) issued a decision finding that a rule adopted by [California Department of Insurance](#) (“CDI”) to restrict insurers’ investment in companies that do business with Iran was an improper “underground” regulation. A copy of the OAL’s decision is found [here](#) (pdf).

[As we previously reported in this blog](#), on July 9, 2009, the CDI issued a broadly-drafted Data Call to all insurers admitted in California seeking information on their investments in or related to Iran.

The Data Call not only sought information as to insurers’ direct investments in organizations owned or controlled directly or indirectly by the Iranian government, but also indirect investments, including investments in a company that, in turn, does business with any of the five sectors set forth in the Data Call (defense, nuclear, petroleum, natural gas or banking). The information was due by September 30, 2009.

At the time, it was announced that California Insurance Commissioner Steve Poizner sought such information as a measure to enforce U.S. governmental sanctions against Iran, including restrictions with respect to doing business with companies that do business in Iran.

On May 13, 2010, [we reported](#) that Commissioner Steve Poizner issued a press release advising that more than 1000 insurers licensed to do business in California had agreed to a voluntary moratorium as to future investments in companies that do business in Iran. He also released a list of 296 insurers doing business in California that would not agree to the voluntary moratorium. The press release further advised that, as of March 31, 2010, the CDI “disqualified an estimated \$6 billion in holdings in the 50 Iran-related companies” (based on 2008 data).

Meanwhile, on March 29, 2010, five insurance trade associations (the [American Council of Life Insurers](#), the [American Insurance Association](#), the [Association of California Insurance Companies](#), the [Association of California Life and Health Insurance Companies](#), and the [Personal Insurance Federation of California](#)) filed a petition with the OAL contending that the Commissioner’s rule on Iran investment activity constituted an impermissible “underground” regulation. “Underground” regulations are rules issued by state agencies that meet the definition of a “regulation” under [Government Code section 11342.600](#) and are subject to the [California Administrative Procedure Act](#) (“APA”), but were not adopted pursuant to the APA process.

The OAL found that the CDI’s rule on Iranian investments was indeed a “regulation,” such that it should have been, but was not, adopted pursuant to the procedures set forth in the APA. The OAL specifically advised that it was not evaluating the advisability or wisdom of the underground regulation, nor whether the CDI possessed the authority to issue such a regulation under the proper APA procedure.

Barger & Wolen will continue to follow further developments in this matter.

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