



# California Corporate & Securities Law

## Is Privity Required Or Not Required Under Section 25500?

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California Corporations Code Section 25400 lists a variety of acts that are considered to manipulate the price of securities. Section 25400 was modeled on Section 9(a) – (e) of the Securities Exchange Act of 1934. Although Section 25400 declares these acts to be “unlawful”, the statute does not technically impose liability. The legislature left that duty to Corporations Code Section 25500 which imposes liability on any person who willfully participates in any act or transaction in violation of Section 25400. Under Section 25500, liability extends to “any other person who purchases or sells any security at a price which was affected by such act or transaction”.

In this January [post](#), I discussed the Court of Appeal’s decision in *Viterbi v. Wasserman*, 191 Cal. App. 4th 927 (2011) holding that privity is required to maintain an action for rescission under Sections 25504 and 25504.1. Neither of those statutes, however, imposes liability for violations of Section 25400. Thus, the decisions leaves unanswered the question of whether privity is required under Corporations Code Section 25500.

The leading treatise on California’s securities laws unambiguously asserts that in contrast to Sections 25501 and 25502 privity of contract is not required under Section 25500. Harold Marsh Jr. & Robert H.Volk, *Practice Under the California Securities Laws* § 14.05[5]. Recently, however a U.S. District Court Judge has concluded otherwise.

In *Louisiana Pacific Corp. v. Money Mkt. 1 Institutional Inv. Dealer*, Fed. Sec. L. Rep. (CCH) P96,262 (March 28, 2011), U.S. District Court Judge Jeffrey S. White held that privity is required in an action against an underwriter of auction rate securities. In support of this proposition, the court cited *SEC v. Seaboard Corp.*, 677 F.2d 1289 (9th Cir. 1982). However, that case considered the question of privity in the context of Sections 25401 and 25501. Thus, the case does not support Judge White’s conclusion with respect to Section 25500.

n.b. – I am a practice consultant to *Practice Under the California Securities Laws* (No, I don’t receive a commission on sales, but I do receive a flat fee for consulting annual updates.).

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