



# California Corporate & Securities Law

## More on Secondary Trading in Private Company Securities

Posted In [California Securities Laws, Enforcement & Investigations](#)

1/4/2011

Last April, I wrote this brief [piece](#) for the *Daily Journal* regarding the emerging phenomenon of secondary trading in securities of issuers not subject to the reporting requirements of the Securities Exchange Act of 1934. Since that time, interest has continued to grow in the issue. In December, Kerry Dolan quoted me in this Forbes.com [article](#) concerning whether it was possible to stay below the 500 or more threshold for registration of a class of securities under Section 12(g) of the Exchange Act. Then just last week, [Peter Lattman](#), a reporter with *The New York Times* wrote a story reporting that the Securities and Exchange Commission has sent information requests to persons trading in the shares of Facebook, Inc. and three other companies.

In addition to any federal and state securities law concerns, an increasing number of shareholders in a corporation that does not have an outstanding class of securities registered under Section 12 of the Exchange Act can trigger requirements under the California General Corporation Law, including:

- Specific content requirements for proxies and written consents pursuant to Section 604.
- Annual and quarterly report requirements pursuant to Section 1501.

In each case, the number of holders of record must be determined in accordance with Corporations Code § 605.

Notably, Section 1501 is one of California's outreach statutes. The statute expressly applies to any foreign corporation (as defined in Cal. Corp. Code § 171) that has its principal executive office in California or customarily holds meetings of its board of directors in California. Cal. Corp. Code § 1501(g). The statute also applies to "pseudo-foreign corporations" pursuant to Cal. Corp. Code § 2115.

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