



California Corporate & Securities Law

Offering Securities By General Announcement Without Registration

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Yesterday, the Securities and Exchange Commission issued this [announcement](#) regarding its settlement with two advertising executives who launched a campaign to buy a beer company through a solicitation of investors on Facebook and Twitter without first registering with securities regulators and making the necessary disclosures.

It must be the week for beer offerings because just the day before one of my partners asked me about a general announcement in a newspaper offering membership interests in a limited liability company. According to the announcement, funds would be used for constructing, furnishing and operating a “brewpub” style restaurant. My partner’s question was, of course, whether someone can actually make a general announcement of a securities offering without registration under the Securities Act of 1933 or qualification under the Corporate Securities Law of 1968.

Surprisingly, the answer is that it may be possible. As I explained in this [post](#) from last October, the legislature added Section 25102(n) to the Corporations Code in 1994 to exempt offerings to qualified investors, as defined. In an enlightened innovation, the statute permits, subject to several conditions, a general announcement. The SEC reacted by adopting Rule 1001.

However, these are not exemptions for neophytes. If you’re not a securities lawyer, you should not make any general announcements without first consulting with someone who knows their way around the securities laws. Yesterday’s SEC announcement shows that these can be treacherous waters. For a California example of a brewery offering gone bad, see this [desist and refrain order](#).

The ban on general solicitation has strong roots in the statutory structure of federal and state securities regulation schemes. However, this structurally induced ban imposes a number of significant negative consequences. For a more in-depth analysis, see Professor [William K. Sjostrom, Jr.’s](#) article *Relaxing the Ban: It’s Time to Allow General Solicitation and Advertising in Exempt Offerings*, 32 Fla. St. L. Rev. 1 (2004).

Please contact [Keith Paul Bishop](#) at Allen Matkins for more information kbishop@allenmatkins.com

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