



# California Corporate & Securities Law

## Broker-Dealer Safe Harbor Rule Nears Adoption

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In 2007, the California Court of Appeal fired what I called at the time “a shot not heard” when it issued its opinion in *People v. Cole*, 156 Cal. App. 4th 452 (2007). Seemingly, a key holding of that case was that corporate officers and directors of issuers are required to be licensed as broker-dealers *unless they receive a commission for the sale of securities!*

Fortunately, the Commissioner of Corporations heard the shot and issued this [release](#) “to provide some clarity regarding licensure requirements for directors and officers of issuers who do not receive commissions for effecting securities transactions”. The Commissioner also initiated rulemaking at the request of the Corporations Committee of the [Business Law Section](#) of the California State Bar to create a non-exclusive safe harbor for associated persons of issuers. Now, at long last, the rulemaking package has been submitted to the California [Office of Administrative Law](#) which will review the package for compliance with the rulemaking provisions of the California Administrative Procedure Act. The OAL’s deadline for completing this review is May 4, 2011.

For more about the *People v. Cole* decision, see my article, “A Shot Not Heard – The Court of Appeals Holds that an Issuer’s Directors and Officers Must be Licensed as Securities Broker-Dealers”, *Business Law News* (Issue No. 3, 2008). The title of my article is an allusion to Ralph Waldo Emerson’s poem, “Concord Hymn”, about the Revolutionary War battle at Concord Bridge. The poem contains these lines: “Here once the embattled farmers stood, And fired the shot heard round the world.” Today, at the foot of the “rude bridge that arched the flood”, you will find the grave of two British soldiers from the 4th (King’s Own) Regiment of Foot’s light company. The gravestone contains some of my favorite lines penned by James Russell Lowell:

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

<http://www.calcorporatelaw.com/>

*They came three thousand miles, and died,  
To keep the Past upon its throne;  
Unheard, beyond the ocean tide,  
Their English mother made her moan.*



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