



California Corporate & Securities Law

California's General Announcement Exemption

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Issuers offering or selling securities in California must qualify those offers and sales with the Department of Corporations unless they are exempt from, or not subject to, qualification. Cal. Corp. Code § 25110. Since the enactment of the Corporate Securities Law in 1968, the Legislature has added exemptions and Congress has preempted state qualification requirements with respect to many issuers and transactions. Today, the CSL's qualification requirement resembles *Porphyra perforata* as it is similarly pierced with many holes. When I served as Commissioner of Corporations, I liked to say that "we regulate by exemption".

Nonetheless, the qualification requirement remains a real issue – particularly for small businesses trying to raise capital. Because California's limited offering exemption, Cal. Corp. Code § 25102(f) prohibits general advertising, many businesses have found it difficult to locate investors. Recognizing this problem, the Department of Corporations sponsored SB 1951 ([Killea](#)) in 1994 to establish a new transactional exemption from the qualification. That bill added Cal. Corp. Code § 25102(n) to exempt offerings to qualified investors, as defined. Significantly, this exemption allows the issuer to publish a general announcement of the proposed offering. However, there are a number of important conditions and limitations to the exemption. For example, the exemption is not available to "blind pools" and requires the filing of two notices of transaction with the Department. Therefore, anyone relying on the rule should review these conditions and limitations carefully.

The Securities and Exchange Commission supported the Department's efforts to ease capital formation by adopting Rule 1001 which provides an exemption from the registration requirement in Section 5 of the Securities Act of 1933 for offerings of up to \$5 million that comply with § 25102(n). See [SEC Release No. 33-7285](#) (1996). As far as I know, this is the only state specific exemption under the Securities Act.

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