



# California Corporate & Securities Law

## Secondary Trading In Private Company Shares

Posted In [Broker-Dealers](#), [California Securities Laws](#)

12-14-2010

In this blog [posting](#) from last June, I mentioned briefly the phenomenon of secondary trading in the shares of companies not subject to the periodic reporting requirements of the Securities and Exchange Commission. In this [article](#) for the *Daily Journal*, I mentioned some legal issues and risks associated with the practice. California, for example, requires qualification of nonissuer transactions unless the security or transaction is exempt or not subject to qualification by reason of federal preemption. Cal. Corp. Code § 25130.

To the extent that sellers are relying on the exemption in Corporations Code § 25104(a) for offers and sales of a security by the bona fide owner for the owner's own account, two conditions must be met. First, the sale must not be accompanied by the publication of any advertisement. Second, the sale must not be effected by or through a broker-dealer in a public offering.

To the extent that sellers are relying on the exemption in Corporations Code § 25104(b) for transactions effected by or through a licensed broker-dealer, the offer or sale must be pursuant to an "unsolicited order or offer to buy". However, an order or offer to buy is NOT presumed to be "unsolicited" if among other things, the broker-dealer has volunteered information about the issuer of the security either to a particular customer who purchases the security or to customers generally. 10 CRR § 260.104.

Issuers with extensive secondary trading run the risk of crossing the threshold for registration under Section 12(g) of the Securities Exchange Act of 1934. Recently, I was asked about funds being formed to acquire shares in privately held companies. These funds are ostensibly being formed to limit the number of shareholders of record. You can read the story by Kerry Dolan on Forbes.com [here](#).

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

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