

PUBLICATION UPDATE

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PRACTICE UNDER THE CALIFORNIA SECURITIES LAWS (Marsh & Volk)

Publication 552

Release 46

June 2018

HIGHLIGHTS

- New Finders' Exemption
- Misleading Statements in Registration Statement
- Market Manipulation Liability and Misleading Statements
- Nationally Traded Securities and Class Actions
- Revised Fees

Exemption from Broker-Dealer Registration—Finders. New 10 Cal. Code Reg. §§ 260.211.4–260.211.7 implement the exemption for finders set forth in Corp. Code § 25206.1, and set forth requirements regarding the statement of information form, annual renewal, notification of withdrawal, and maintenance of records. *See Ch. 13, Regulation of Agents, Broker-Dealers, and Investment Advisers, § 13.02[4][e].*

California Financing Law—Name Change. Finance Code § 22000 *et seq.*,

formerly called the “California Finance Lenders Law,” was renamed the “California Financing Law” in 2017 [*see* Stats. 2017, ch. 475, § 4]. *See Ch. 5, Problems Relating to Special Types of Issuers and Securities, §§ 5.12[5], 5.18[2]; Ch. 13, Regulation of Agents, Broker-Dealers, and Investment Advisers, § 13.02[1], [4].*

Securities Act of 1933—Misleading Statements in Registration Statement. In *Cal. Pub. Employees' Ret. Syst. v. ANZ Sec. Inc.* (2017) 137 St. Ct. 2042, the Supreme Court held that the three-year time bar in 15 U.S.C. § 77m for bringing an action is a statute of repose, which offers defendants full and final security after three years and is not subject to equitable tolling; thus it did not permit the filing of an individual complaint more than three years after a securities offering when the plaintiff opted out of a timely-filed class action. *See Ch. 14, Civil Liabilities, § 14.01[2][c].*

Liability for Market Manipulation—False and Misleading Statements. In *Col-*

man v. Theranos, Inc. (N.D. Cal. 2017) 2017 U.S. Dist. LEXIS 59254, the district court held that plaintiffs, as indirect purchasers of securities, were entitled to proceed against a corporation and its officers for securities fraud under Corp. Code § 25400(d); that section seeks to protect the market generally from a security sellers' misrepresentations. *See Ch.14, Civil Liabilities, § 14.05[2][e]*.

Class Action Lawsuits Involving Nationally Traded Securities. In *Cyan, Inc. v. Beaver County Employees Retirement Fund* (2018) 200 L. Ed. 2d 332, the Supreme Court held that SLUSA did not strip

state courts of jurisdiction over covered class actions alleging violations of only the Securities Act of 1933; and that SLUSA did not empower defendants to remove such actions from state to federal court. *See Ch.14, Civil Liabilities, § 14.14[2]*.

Fees, Fines, and Penalties—Department of Business Oversight. DBO form ADM-510, setting forth the Department's fees, fines, and penalties, was revised in February 2018. *See Ch. 2, Organization and Administration of the Division (Formerly Department) of Corporations, § 2.09*.

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