



# California Corporate & Securities Law

## Are Your Secrets Safe With Your Accountant?

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The California [Board of Accountancy](#) is over 100 years old, having been established in 1901. In California, the accountants are governed by the Accountancy Act, which can be found in the Business and Professions Code (commencing with Section 5000) and regulations adopted by the Board, which can be found in Title 16, Division 1 of the California Code of Regulations.

### Confidentiality is Mandatory, Except . . .

Section 5063.3 of the California Business and Professions Code and [Rule 54.1](#) of the Board's regulations prohibit a licensee from disclosing confidential information concerning a client or prospective client without written permission from the client or prospective client. However, there are seven exceptions, including when disclosure is made pursuant to a summons or subpoena. Another exception is when disclosures are "specifically required by law". Section 10A, which was added to the Securities Exchange Act of 1934 in 1995, is one example of a disclosure specifically required by law. The Securities and Exchange Commission's new whistleblower bounty [regulations](#), on the other hand, don't mandate disclosure to the SEC (they only reward it in specified circumstances).

### The SEC Says It's OK to Reward People For Breaking State Laws

Interestingly, the SEC deliberately chose to ignore state confidentiality statutes and regulations when it adopted its whistleblower bounty [regulations](#). A number of commenters suggested that information obtained in breach of these laws and regulations be excluded. The SEC, however, rejected these recommendations, saying "we are not excluding information that is received in breach of state-law confidentiality requirements, such as those imposed on auditors, because to do so could inhibit important federal-law enforcement interests." (Footnote #117)

Thus, without even purporting to preempt state laws, the SEC has taken the rather remarkable position that it is permissible for a federal agency to reward people who break state laws. This certainly could place staff members in the awkward position of potentially suborning violations of law. SEC lawyers may also run the risk of violating professional ethics standards. For example, Rule 3-210 of the California Rules of Professional Conduct forbids members from advising violations of laws or rulings unless the member believes in good faith

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that the law or rule is invalid. Such a good faith belief would be difficult because the SEC has not asserted that state confidentiality laws and regulations are invalid or preempted.

Whatever the legalities, the SEC's justification is unabashedly utilitarian: the ends justify the means. Jeremy Bentham must be smiling in his auto-icon.

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