



# California Corporate & Securities Law

## **Court Rules That Section 25400 Requires That Manipulative Conduct Occur Within California**

By Keith Paul Bishop on January 13, 2012

Overstock.com, Inc. filed a lawsuit in the San Francisco Superior Court alleging that various investment firms had caused the price of its shares to decline by manipulating the securities markets. Earlier this week, Judge John E. Munter granted summary judgment to four of the defendants. *Overstock.com, Inc. v. Morgan Stanley & Co., Inc.*, Superior Court Case No. CGC-07-460147 (Jan. 10, 2012).

California Corporations Code Section 25400 prohibits market manipulation and Section 25500 provides the remedy. Section 25400 begins as follows: "It is unlawful for any person, directly or indirectly, in this state . . .". In today's electronic world, it is becoming increasingly difficult to identify where anything occurs. Rather than occurring in physical space, things seem to occur in cyberspace.

Here, Judge Munter found in an 11 page order that the plaintiff could not establish that any defendant "in California" effected wash sales, matched orders or engaged in any other transaction proscribed by Section 25400(a). He also found that plaintiff could not establish that any defendant "in California" effected transactions of the plaintiff's securities in violation of Section 25400(b).

For an extensive discussion of when an offer or sale of a security occurs "in this state", see my article, *California's Blue Sky Law Problems for Foreign Issues and Issuers*, 27 Insights No. 7, p. 28 (July 2009).

### **Extension of Rule 260.204.9 Is Official**

The [Office of Administrative Law](#) has approved the Department of Corporation's emergency readoption of Rule 260.204.9. This emergency action will be effective as of January 18, 2012 and will expire on April 17, 2012. For more on this topic, see [Department of Corporations News for the New Year](#) and [Commissioner Proposes Successor to Rule 260.204.9](#).

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