

Does the Securities Exchange Act of 1934 Preclude Actions in State Court Under Corporations Code Section 25401?

Article By:

Keith Paul Bishop

Section 25401 of the California Corporations Code declares generally unlawful to make false statements of a material fact or omit material facts when buying or selling a security. It is therefore similar to Rule 10b-5 under the Securities Exchange Act of 1934. As originally enacted, however, Section 15401 was based on Section 12(a)(2) of the Securities Act of 1933.

Several years ago when the California legislature amended Section 25401 to mirror Rule 10b-5 more closely, I [posed](#) the question of whether California had effectively closed the state courthouse door to securities fraud suits because of the federal courts' exclusive jurisdiction over claims under the Securities Exchange Act of 1934. That question became less acute when the legislature [reverted](#) Section 25401 to its original form. Nonetheless, Section 25401 remains similar to Rule 10b-5(b).

Recently, the defendants in a securities lawsuit attempted to remove the suit to federal court in part on this basis:

Defendants contend that Plaintiff “also alleges what would be actionable under [the Exchange Act], which establishes exclusive federal jurisdiction over claims brought under the Act, and therefore compels removal.” *Id.* at 6 (emphasis omitted); 15 U.S.C. § 78aa(a).

1791 Mgmt., LP, v. Energy Vault, Inc., 2024 WL 245625, at *7 (C.D. Cal. Jan. 22, 2024).

Judge [André Birotte Jr.](#) did not bite, however, because the plaintiffs were not seeking to enforce any provision of the Exchange Act or the rules thereunder and federal law was not required to resolve the plaintiffs' claims.

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