

# If The Shares of a Chinese Company Are Delisted, What Happens to Trading in California?

Article By:

Keith Paul Bishop

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Yesterday's *Wall Street Journal* includes a story about the possible delisting of shares of Chinese companies. Shares of companies that are listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) are classified as "covered securities" under Section 18(b)(1) of the Securities Act of 1933. As such, state laws requiring registration or qualification are preempted. Therefore, delisting will result in covered security status. What does this mean for California?

Section 25130 of the California Corporations Code makes it unlawful for any person to offer or sell any security "in this state" (Section 25008) in any "nonissuer transaction" (Section 25011) unless it is qualified for sale or exempt from qualification. Thus, the immediate consequence of delisting will be that secondary trading of shares of the delisted companies will require either qualification or an exemption.

Following delisting, licensed broker-dealers to effect offers or sales but only if they are made pursuant to an unsolicited order or offer to buy. Cal. Corp. Code § 25104(b). For purposes of this exemption, an inquiry regarding a written bid for a security or a written solicitation of an offer to sell a security made by another broker-dealer within the previous 60 days is not considered a solicitation of an order or offer to buy. *Id.* A rule, 10 CCR § 260.104, establishes a presumption that an order or offer to buy is *not* unsolicited if the broker-dealer knows, or has reason to know, that the order or offer to buy is in response to one or more activities specified in the rule.

Bona fide owners may also offer or sell a security for their own account if the sale is (i) not accompanied by the publication (Section 25014) of any advertisement (Section 25002); and (ii) is not effected by or through a broker-dealer in a public offering.

It is also possible that other exemptions from Section 25130 will be available depending upon the particular circumstances (e.g., 10 CCR § 260.105.11).

The bottom line is that if a company is delisted from a national securities exchange, the company and those trading in the companies shares will need to consider applicable California requirements and exemptions.

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