

Will New SEC Rule 147A Lead To Renaissance In California Permit Applications?

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Yesterday, the **Securities and Exchange Commission** adopted a new intrastate offering exemption under the *Securities Act of 1933*. Significantly, new **Rule 147A** will have no restrictions on offers and will not require that an issuer be organized in the state in which the intrastate offering is being conducted. I was pleased to see that the [adopting release](#) cited my [comment letter](#) more than 15 times. Among other things, the SEC accepted my suggestion that the rule include an instruction with respect to the residency of a trust. See note 141 and accompanying text. The SEC also agreed with my and many others' recommendation that existing Rule 147 be retained. See Note 23 and accompanying text (the SEC is also amending Rule 147). In response to another of my comments, the SEC states in the adopting release that "We note that bona fide gifts are not subject to the limitation on resales in amended Rule 147 or new Rule 147A." See note 159 and accompanying text.

The new rule has the potential to increase permit applications with the California Department of Business Oversight. California has a large population and hence a large pool of potential investors. In addition, many companies, although organized in other states, are resident in California. These companies may therefore find Rule 147A to be an attractive exemption from the Securities Act's registration requirement. These companies will still need to comply with California's securities laws. Because Rule 147A allows for any form of general solicitation and general advertising (as long as the conditions of Rule 147A are met), issuers conducting an offering in California will in most instances need to qualify the offering by permit pursuant to Section 25110. Federal preemption of state securities laws has resulted in many practitioners having little or no experience with qualification of offerings under California's Corporate Securities Law of 1968. The adoption of Rule 147A may cause some practitioners to re-discover the "lost art" of qualification of offerings in California. If there is a renaissance, it will not be immediate. Rule 147A won't take effect for another five months (150 days after publication of in the *Federal Register*).

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