

REGULATION OF SECURITIES COMMITTEE
REPORT PREPARED FOR THE MARCH 6, 2025 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee/Directorship.

The next meeting of the Committee will be scheduled for the Spring or Fall of 2025, unless there is business requiring the Committee to meet sooner. The Committee typically meets once or twice annually. Depending on need, the Committee may meet more frequently.

2. Council Approval.

No approval is requested at this time.

3. Membership.

Members are added periodically. The Committee encourages diversity.

4. Accomplishments Toward Committee/Directorship Objectives.

The Committee met on February 13, 2024 and after that on various dates through May 6, 2024 relative to filing an amicus curiae brief in the Michigan Supreme Court in *LA Developers LLC and David Byker, Petitioners-Appellants, v Department of Licensing and Regulatory Affairs—Corporations, Securities, and Commercial Licensing Bureau, Respondent-Appellee*, (SC: 165824; COA: 358656; Kent CC: 20-002976-AA). The filing of an amicus brief was approved by the Council at its March 7, 2024 meeting. The amicus brief was filed with the Michigan Supreme Court on May 10, 2024. The position taken was to uphold the decision of the Michigan Court of Appeals. The State Bar staff will post the amicus brief on the Business Law Section webpage. The Michigan Supreme Court held arguments for December 4, 2024.

The filing of the amicus brief follows from the Michigan Supreme Court's order for the parties to file supplemental briefs addressing: (1) whether the five-factor test of MCL 451.2102c(c)(i)(A)-(E) is to be applied when determining whether a promissory note is a "security" as that term is defined under MCL 451.2102c or, alternatively, (2) whether the test to be applied is the "family resemblance test" announced in *Reves v Ernst & Young*, 494 US 56 (1990). The Court's order invited the North American Securities Administrators Association, Inc. and the Business Law Section of the State Bar of Michigan to file amicus briefs.

On January 17, 2025, the Michigan Supreme Court issued an order stating that the application for leave to appeal is denied, because the Court is not persuaded that the question presented should be reviewed by

this Court. This order upholds the position taken by the Michigan Court of Appeals, which the Regulation of Securities Committee supported.

I wish to acknowledge the contributions of Committee members Matt Allen, Shane Hansen, and Cy Moscow, together with our pro bono legal counsel Jason Killips.

5. Meetings and Programs.

See No. 4, above.

6. Publications.

Committee members frequently publish articles on various securities topics. The theme of *The Michigan Business Law Journal*, Spring 2023 edition was the Regulation of Securities Committee. Committee members contributed articles to this publication.

7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action

The Committee discusses legislative, judicial and administrative developments on Michigan securities law issues and continues to discuss monitoring in a more formalized manner.

8. Miscellaneous.

There are no miscellaneous matters to report.

Respectfully submitted,

Patrick J. Haddad, Chair, Regulation of Securities Committee
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