

FINANCIAL INSTITUTIONS COMMITTEE

REPORT PREPARED FOR THE May 21, 2010 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee

The Committee's most recent meeting was held on April 28, 2010. The next meeting has not been scheduled but likely will be held in the Fall.

2. Council Approval

None.

3. Membership

The Committee has approximately 70 members. A detailed agenda for each meeting is sent to each member of the Committee.

We regularly request that Committee members identify women or minority attorneys who might be interested in joining the Committee.

Two new women members of the Committee attended our most recent meeting.

4. Accomplishments Toward Committee Objectives

The primary Committee objective is to provide to members information on statutory, regulatory and judicial developments that affect financial institutions. This objective is accomplished by periodic Committee meetings.

Following is a summary of highlights of our most recent meeting, which was held on April 28:

- Hon. Kenneth M. Ross, Commissioner of the Office of Financial and Insurance Regulation and members of his staff described OFIR's regulatory and legislative initiatives and other matters of interest to the Committee, including the following:
 - OFIR is the agency responsible for implementing the Health Care Reform Act in Michigan. Among OFIR's duties will be to create a high risk pool and to provide an ombudsman.
 - Debt settlement businesses. They engage in questionable activities, such as requiring \$4-5,000 up front, and only about 10-15% of participants do not drop out of the program. OFIR may seek legislation to regulate these activities. But a regulatory regime is more likely.

- Credit Scoring. Insurance companies sued OFIR, challenging its prohibition of this activity. The case is in the Michigan Supreme Court.
 - Payday lending case in on appeal to the Michigan Supreme Court.
 - The revision of the Michigan Securities Act has increased the "population" of licenses under the Act. This consists primarily of 5-10,000 investment representatives.
 - Condition of Michigan banks. The downward movement in the CAMEL ratings is less than in the past couple of years.
 - Loan officer regulation. Registration will replace licensing, under the Michigan SAFE Act. The scope of the Act is very broad.
 - Enforcement.
 - OFIR has 10 rule sets in process. The largest is the rules under the Michigan Securities Act. Another relates to P & C actuarial decisions
- Trust Account Overdraft Notice Rule. Linda K. Rexler, Executive Director of the Michigan State Bar Foundation, and Dawn M. Evans, Director of Professional Standards, State Bar of Michigan, explained the Trust Account Overdraft Notice Rule that takes effect on September 15, 2010. Under this Rule, in order to receive and hold trust funds, a financial institution must be approved by the State Bar and must sign an agreement, in form and substance satisfactory to the Bar, as to the handling of overdrafts.
 - Dick Lavolette, General Counsel and Director of Legal and Regulatory Affairs of the Michigan Bankers Association, described MBA's position on a number of recently-enacted statutes and proposed legislation. Dick also discussed the new federal overdraft rules and the potential problems that they present for banks. Dick also described a proposed MSHDA Michigan lending program based on TARP funds.
 - Mike Defors, Director of Regulatory and Legal Affairs of the Michigan Credit Union League and Veronica Madsen, General Counsel of the League, reported on current state and federal legislative and regulatory proposals that are of concern to the League and on the League's activities, including its legislative and regulatory initiatives.
 - Jim Breay distributed materials to the Committee, including an article on *Political Spending by Banks after Citizens United v Federal Election Commission*, a Report from the Office of the General Counsel of the American Bankers Association on the status of important banking cases and the Legal Opinion Newsletter of the Committee on Legal Opinions of the American Bar Association Section of Business Law.
 - Debbie Minton of the Michigan Bankers Association reported that a committee of interested bankers and attorneys have agreed to cease efforts to enact the Uniform Power of Attorney Act. Proponents instead will re-introduce the 2008 bill (HB 5729) and seek to enact provisions of it on a piecemeal basis.

- The Committee discussed the opportunities presented by the Fall issue of the *Michigan Business Law Journal*, which will focus primarily on financial institutions law and practice. This presents a great opportunity for Committee members to display their expertise to the over 3,500 members of the Business Law Section.
 - An article does not need to deal with banking issues. Shane Hansen, for example, will write on securities regulation of private insurance funds under the Michigan Uniform Securities Act.
 - An article should be 10-15 double spaced MS Word or WordPerfect pages (inclusive of endnotes). Deadline is July 31, 2010.

5. Meetings and Programs

The agenda for the April 28 meeting is typical for the Committee's meetings.

James H. Breay
Warner Norcross & Judd LLP
616-752-2114
jbreay@wnj.com