

**REGULATION OF SECURITIES COMMITTEE REPORT  
PREPARED FOR THE JUNE 2, 2016 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee.**

Date: Tuesday, October 11, 2016, 4 pm – 5:30 pm  
Location: Jaffe, Raitt, Heuer & Weiss, Southfield

**2. Council Approval.**

No approval is being requested at this time.

**3. Membership.**

Members are added periodically, including women and minorities.

**4. Accomplishments Toward Committee Objectives.**

The Committee last met on April 12, 2016 (see attached meeting minutes). Committee members presented on various substantive topics including the status of the proposed Michigan securities rules (which the Committee commented on in February, 2015) and other Michigan regulatory developments, such as Administrative Order 2016-1 addressing fairness determinations under MCL § 451.2202(1)(i) (see attached); M&A broker update; the Michigan Court of Appeals opinion in *Pransky vs Falcon Group* and related issues; and the SEC crowdfunding rule effective May 16, 2016 and proposed amendments to Rule 147. Committee members discussed participation in MLARA's seminars/webinars on *Understanding Your Options for Raising Capital in Michigan*; the November 30, 2016 deadline for submitting articles for publication in the Spring 2017 edition of the *Michigan Business Law Journal* (Regulation of Securities Committee); and planning for the Committee's October 11, 2016 meeting.

**5. Meetings and Programs.**

See No. 4, above.

**6. Publications.**

The theme of *The Michigan Business Law Journal*, Spring 2017 edition, will be the Regulation of Securities Committee. Committee members will be encouraged to submit articles for publication. Securities articles by Committee members were published in *The Michigan Business Law Journal*, Spring 2014 edition which had as its theme the Regulation of Securities Committee.

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

The Committee monitors developments relative to securities law issues and continues to discuss monitoring in a more formalized manner. Recent examples include Michigan House Bill 5273 (Public Act 355 of 2014) on local stock exchanges. See also No. 4, above, regarding the February, 2015 review of draft proposed Michigan securities rules at the request of the Corporations, Securities and Commercial Licensing Bureau of the Michigan Department of Licensing and Regulatory Affairs and continued monitoring thereof by the Committee as well as of other Michigan regulatory developments.

**8. Miscellaneous.**

No miscellaneous matters to report.

Respectfully submitted, Patrick J. Haddad, Kerr, Russell and Weber, PLC  
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**Meeting Minutes**  
**Regulation of Securities Committee**  
**Business Law Section, State Bar of Michigan**

Meeting Date/Time: Tuesday, April 12, 2016, 4-5 p.m.

Meeting Location: Teleconference Meeting

**1. Welcome and Introductions**

Patrick Haddad called the meeting to order at approximately 4 p.m. and welcomed everyone. The following attended via teleconference:

- a. Patrick Haddad – Kerr, Russell and Weber, PLC
- b. Kathleen Westfall – Kerr, Russell and Weber, PLC
- c. Ray Henney – Honigman, Miller, Schwartz & Cohn, LLP
- d. Michael Marsalese – Marsalese Law Group
- e. Mark Metz – Dykema Gossett, PLLC
- f. Shane Hansen – Warner Norcross & Judd, LLP
- g. Pete Long – Butzel Long
- h. Max Barnes – Miller Johnson
- i. Pete Sugar – Jaffe, Raitt, Heuer & Weiss, PC
- j. John Siebers—Rhoades McKee
- k. Rick McDonald—Dykema Gossett, PLLC
- l. Robert Hudson—Butzel Long
- m. Barbara Bowman—Bodman PLC
- n. Steve Bray—MLARA Corporations, Securities & Commercial Licensing Bureau
- o. Carrie Leahy—Bodman PLC
- p. Nick Ortell—Foster, Swift, Collins & Smith, P.C.

**2. Update on Proposed Michigan Securities Rules**

**Patrick Haddad**

- In January 2015, Committee members provided comments and suggestions on draft proposed rules.
- The Committee's comments were incorporated and sent to the Office of Policy and Affairs which provided feedback.
- The proposed administrative rules are currently under review by the Office of Regulatory Reform (ORR).
- The Committee discussed concerns regarding the possible simplification or "scaling back" of the administrative rules by the ORR, which may affect uniformity of the rules.

**3. MLARA Online Filing System**

**Patrick Haddad**

- MLARA will be introducing a new online filing system, which will be used for corporate filings and enable users to submit requests 24/7.
- Once implemented, the current Michigan ELF filing system will be discontinued.

- MLARA is targeting to implement the new filing system on June 20, 2016, but this date may be pushed back.
- Resident Agents of Michigan corporations and foreign corporations registered in Michigan will receive written notifications of the new filing system, which will include new corporate ID and pin numbers for online filings.
- Basic information regarding the new online filing system will be circulated to Committee members.

#### **4. Michigan Regulatory Developments**

**Patrick Haddad**

- On January 8, 2016, Administrative Order 2016-1 was issued and entered which addresses fairness determinations under MCL §451.2202(1)(i).
- The Administrative Order was circulated as part of the Committee meeting materials.

#### **5. Update on M&A Broker Issues**

**Steve Bray**

- There have been efforts at state and federal levels to create a registration exemption for M&A brokers.
- In 2014, the SEC issued a no-action letter which resolved federal M&A broker issues.
  - Congress has attempted to pass legislation to incorporate this into the 1934 Securities Exchange Act. The legislation was passed by the House before experiencing issues in the Senate. The White House also issued a veto notice.
- NASAA adopted a model rule which would harmonize the Senate bill with a few minor changes.
  - Michigan has included the model rule in its rule package.
  - Other states, such as Illinois, Vermont and Florida have taken steps to incorporate the model rule with certain variations.
- Overall, progress is being made mostly at the state level rather than the federal level.

#### **6. Michigan COA opinion in *Pransky v Falcon Group, Inc.***

**Shane Hansen**

- In June 2015, the Michigan Court of Appeals issued its opinion in *Pransky v Falcon Group, Inc.* which addressed the issue of individuals functioning as M&A brokers and "finders."
- The opinion represents the issues that may arise from drafting oversights, as the court found that "finders" are not required to be registered under the Securities Act.
- A copy of the Court of Appeals opinion was circulated with the Committee meeting materials.

#### **7. SEC Crowdfunding Rule and Related Developments**

**Rick McDonald**

- Federal crowdfunding final rules were approved at end of October 2015 and are effective May 16, 2016.
- There were a few changes in the final rules from what was originally proposed.
- The most significant change permits an issuer to use reviewed financial statements rather than audited financial statements for first-time offerings up to \$1

Million, which will be useful for startups which typically cannot afford audited financials. If it is not the first offering, an issuer may only use reviewed financial statements for offerings up to \$500,000.

- Proposed Amendments to Rule 147
  - Rule 147 currently requires both an offer and the sale to be with in-state residents in order for the safe harbor to apply. The current rule limits the ability to access the internet for state crowdfunding offerings because if capital is inadvertently sold to a non-Michigan resident the Rule 147 safe harbor no longer applies.
  - To address this issue, the SEC has proposed to amend Rule 147 to require that only sales be to in-state residents. Offers would not be required to be to in-state residents.
  - Although Rule 147 would still limit who can purchase capital, it avoids the unlikely misstep where an offer is inadvertently made to someone outside of the state.
  - Overall, the proposed change will facilitate the use of in-state crowdfunding while continuing to limited sales to in-state residents

**8. Participation in MLARA's Seminars/Webinars Patrick Haddad**

- MLARA has requested comments on whether Committee members would be willing to attend live seminars/webinars on *Understanding Your Options for Raising Capital in Michigan* if MLARA continued to host them.
- Attendance has been lower than registration, which is not unusual for seminars.
- Committee members provided positive comments on the seminars. Members would still be willing to participate, but the State should consider using webinars rather than seminars to avoid resource exhaustion.

**9. Article Submission—Michigan Business Law Journal Patrick Haddad**

- The deadline for submitting articles for publication in the Spring 2017 edition of the *Michigan Business Law Journal* (Regulation of Securities Committee) is November 30, 2016.

**10. Fall Meeting—October 11, 2016, TBD Patrick Haddad**

- The Committee's next meeting is Tuesday, October 11, 2016.
- The meeting will be an in-person meeting with participation available by conference call.
- Meeting location is TBD.
- If any Committee member or a colleague is interested in presenting a topic at a Committee meeting, please contact Patrick Haddad. The Committee encourages attorneys at all levels of experience to participate and to take advantage of the opportunities to present at Committee meetings.

**11. Adjournment Patrick Haddad**

- The meeting adjourned at approximately 4:55 p.m.