

# **Regulation of Securities**

## **Report Prepared for the September 24, 2009 Council Meeting**

By Jerry Schwartz

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

Our most recent meeting was held on August 24, 2009. We expect to schedule another meeting in a few months, when the next draft of the rules for the new Michigan Uniform Securities Act (2002) has been completed and is available from the State of Michigan for our Committee's review.

### **2. Council Approval.**

No approvals are being requested.

### **3. Membership**

We have created a current Committee membership of about 70 persons, including men and women with experience ranging from very little to extensive, members of law firms of all sizes, attorneys from private and public companies, attorneys from the Michigan Securities Division, and from a law school. The Committee has some diversity, and we are looking for opportunities to expand the Committee's diversity.

### **4. Accomplishments Toward Committee Objectives**

During the past two months, our Committee has reviewed and provided comments to the Michigan Office of Financial and Insurance Regulation ("OFIR") on its draft of new rules for Michigan's new Uniform Securities Act (2002). The new Act becomes effective October 1, 2009. In addition, the Committee meets periodically for presentations on recent developments in federal and Michigan securities law, the Michigan legislature and Michigan Securities Division. Previously, Committee members wrote articles for the securities law edition of *The Michigan Business Law Journal*.

### **5. Meetings and Programs**

Our most recent meeting was held on August 24, 2009. Its purpose was to discuss the rules that had been proposed by OFIR to implement the new Michigan Uniform Securities Act (2002). Several attorneys attended from OFIR, as well as members of our Committee who had expressed an

interest in reviewing and commenting on the proposed rules. Prior to the meeting, written comments on the proposed rules were provided to OFIR.

**6. Publications**

Three members of the Committee wrote articles for the Fall 2007 issue of *The Michigan Business Law Journal*

**7. Legislative/Judicial/Administrative Developments**

The Uniform Securities Act (2002), designated Act No. 551 of the Public Acts of 2008, was signed by the Governor on January 15, 2009, and becomes effective October 1, 2009.

On September 1, 2009, the Michigan Office of Financial and Insurance Regulation issued Bulletin 2009-14-SEC and Transition Order Administering the Michigan Uniform Securities Act, 2008 PA 551, Order No. 09-049-M. The Transition Order is intended to address issues that are expected to arise under the new Michigan Uniform Securities Act (2002) between when it becomes effective on October 1, 2009, and when new rules are promulgated to implement the new Act.

**8. Miscellaneous**

Nothing to report.

If I can be of help to you, please let me know. My contact information is Jerry Schwartz, Dickinson Wright PLLC, 500 Woodward Avenue, Suite 4000, Detroit, Michigan 48226. Phone: 313-223-3628. Email: [jschwartz@dickinsonwright.com](mailto:jschwartz@dickinsonwright.com).

Date: September 16, 2009

**Minutes of the August 24, 2009 Meeting  
of the Rules Subcommittee of the  
Regulation of Securities Committee  
of the Business Law Section of the State Bar of Michigan**

A meeting of the Rules Subcommittee (the "Subcommittee") of the Regulation of Securities Committee of the Business Law Section of the State Bar of Michigan was held at 1:30 p.m., local time, at the offices of Dickinson Wright PLLC at 500 Woodward Avenue, Suite 4000, Detroit, Michigan 48226.

The following members of the Rules Subcommittee were present in person:

Jonathan Berg	Patrick Haddad
Ed Lukas	Cy Moscow
Jerry Schwartz	David White

The following members of the Rules Subcommittee participated by telephone:

Loren Andrulis	Diane Bissell
Dorothy Cherry	Daniel Feinberg
Shane Hansen	Tim Horner
Iris Linder	Lisa Martinuzzi
Mel Moseley	Vince Pecora

**Call Meeting to Order and Introductory Comments**

Mr. Schwartz called the meeting to order and acted as Chairman and Secretary of the meeting. Mr. Schwartz welcomed everyone to the meeting, and specially noted that Ms. Bissell, Ms. Cherry and Mr. Feinberg, who are attorneys representing the Michigan Office of Financial and Insurance Regulation ("OFIR"), were in attendance at the meeting.

Mr. Schwartz indicated that the purpose of the meeting was to discuss the comments received from members of the Subcommittee regarding the draft of the proposed rules (the "Draft Rules") for the new Michigan Uniform Securities Act (2002). The Draft Rules had been provided to Mr. Schwartz by Mr. Feinberg on July 8, 2009; and the next day Mr. Schwartz forwarded them to the Subcommittee for review. Members of the Subcommittee provided comments on the Draft Rules during the past few weeks.

**Discussion of Draft Rules**

The Subcommittee discussed a number of issues relating to the Draft Rules, including the following:

- Adding an exemption from registration for offers and sales of securities by professional services entities.
- Adding an exemption from registration for offers and sales of securities to accredited investors.
- Providing that Form Ds need not be filed with OFIR as a condition of NSMIA preemption, as they are not required federally under Regulation D as a condition of a Rule 506 exemption from registration unless required of a specific issuer by court order.
- Whether to define the term "purchaser" for purposes of the 25 purchaser exemption from registration, and whether to utilize the definition in Regulation D regarding when you count owners of an entity purchaser as separate purchasers.
- The comments set forth in Mr. Hansen's August 13, 2009 comment memo.
- The comments set forth in Mr. Schwartz's August 13, 2009 comment memo.
- Matters relating to family offices.

Mr. Schwartz thanked everyone for their very thoughtful comments, and especially thanked Mr. Hansen and his colleagues for their extensive comments set forth in their August 13, 2009 memo.

### **Discussion of Schedule for Finalizing the Draft Rules**

Ms. Bissell and Ms. Cherry advised the Subcommittee of the likely schedule for completing the Draft Rules, including that they would not be completed by October 1, 2009 when the new Michigan Uniform Securities Act (2002) becomes effective. They indicated that a transition order is being prepared to help with the transition from the old to the new act, until the rules are completed. The rules are not expected to be completed and adopted for many months. Ms. Bissell indicated that she would provide a draft of the transition order to Mr. Schwartz for distribution to the Subcommittee before the draft is finalized.

### **Adjournment**

On motion duly made, seconded, and unanimously approved, the meeting was adjourned at 4:00 p.m., local time.

/s/ Jerome M. Schwartz  
Jerome M. Schwartz  
Chairman and Secretary of the Meeting