

REGULATION OF SECURITIES COMMITTEE
REPORT PREPARED FOR THE SEPTEMBER 13, 2011 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee

We are planning a committee meeting for late September, subject to the availability of representatives of the Michigan Office of Financial and Insurance Regulation ("OFIR"), who we have invited to attend.

2. Council Approval

No approvals are being requested.

3. Membership

We have been providing our Committee members with proposed rules and transition orders relating to the new Michigan Uniform Securities Act. Attendees at our August 16 meeting were provided with state securities law and case law materials in connection with the substantive presentations made at that meeting.

This year we have added several new members to our Committee, including two women members, one of whom is a member of a minority group.

4. Accomplishments Toward Committee Objectives

Members of our Committee have been assisting OFIR with issues relating to the Michigan Uniform Securities Act, and investment adviser matters.

5. Meetings and Programs

We held a meeting of our Committee on August 16, 2011. The program included the following presentations:

A. **Diane Bissell**, Deputy Director of OFIR, provided a status report on the proposed rules under the new Michigan Uniform Securities Act, as well as information relating to the Department of Licensing and Regulatory Affairs, OFIR (which is part of the Department), and its Securities Division.

B. **Shane Hansen** provided a summary of recent changes to Federal and Michigan law applicable to investment advisers, including a discussion of Michigan's Sixth Transition Order issued by OFIR on March 11, 2011, and provisions of the Dodd-Frank Act.

C. Jonathan Berg made a presentation on the case of *Janus Capital Group Inc. v. First Derivative Traders*, decided June 13, 2011 by the U.S. Supreme Court. The case addressed who can be liable in a private action under SEC Rule 10b-5 as a maker of a statement.

6. Publications

Two securities articles were included in the Spring 2011 edition of The Michigan Business Law Journal:

- *A Brief Overview of Michigan Securities Regulation*, by Diane L. Bissell, and
- *The New Form ADV Part 2 and the "Plain English" Movement of the SEC, FINRA, and Michigan's OFIR*, by Michael B. Coakley and Matthew P. Allen.

Also, Brad Wyatt is working on an article for a future edition of The Michigan Business Law Journal, which is expected to be titled *Michigan Opens Doors to Venture Capital and Private Equity Funds*.

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

The new Michigan Uniform Securities Act (designated Act No. 551 of the Public Acts of 2008) became effective October 1, 2009. OFIR has issued six transition orders to address issues that are expected to arise under the new Act between when it became effective and when rules are promulgated to implement the new Act. OFIR has also issued drafts of some of the rules for the new Act. Diane Bissell of OFIR has been doing an excellent job keeping us up to date on drafts of the transition orders and rules as they become available, and on the transition orders as they are issued.

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, 2600 West Big Beaver Road, Suite 300, Troy, Michigan 48084. Phone: 313-223-3628. Email: jschwartz@dickinsonwright.com.

Date: August 24, 2011

**Minutes of the August 16, 2011 Meeting
of the Regulation of Securities Committee
of the Business Law Section of the State Bar of Michigan**

A meeting of the Regulation of Securities Committee of the Business Law Section of the State Bar of Michigan was held at 4:00 p.m., local time, on Tuesday, August 16, 2011 at the offices of Dickinson Wright PLLC, at 2600 West Big Beaver Road, Suite 300, Troy, Michigan 48084.

The following members of the Committee were present:

Matthew Allen	Lawrence Elkus
Loren Andrulis (by phone)	Shane Hansen (by phone)
Maxwell Barnes (by phone)	Dave Millar (by phone)
Jonathan Berg	Jerry Schwartz
Dianne Bissell (by phone)	Brad Wyatt
Bob Dindoffer	Nathan Soendker (by phone)
Marguerite Donahue	

Call Meeting to Order

Mr. Schwartz called the meeting to order and acted as Chairman and Secretary of the meeting. Each attendee introduced him or herself, and Mr. Schwartz welcomed everyone to the meeting.

Presentation by Diane Bissell, Deputy Commissioner of the Michigan Office of Financial and Insurance Regulation

Ms. Bissell advised the meeting of the status of the proposed rules under the Michigan Uniform Securities Act (2002) (the "Act"). Work on the rules is still in progress. Proposed rules will eventually be considered by the Insurance and Finance Advisory Rules Committee, appointed under the authority of the Michigan Office of Regulatory Reinvention. Completion of the rules could occur in the second half of 2012. Ms. Bissell expects to continue involving members of our Committee in the review of drafts of rules. She indicated that no new transition orders related to the Act are currently being prepared, though, eventually, the existing six transition orders may be consolidated into one composite transition order. Ms. Bissell briefly reviewed with the Committee the revised structure of the Department of Licensing and Regulatory Affairs, and its Office of Financial and Insurance Regulation ("OFIR"). The Securities Division is part of OFIR. Ms. Bissell introduced Nathan Soendker, an attorney who recently joined the Michigan Securities Division, and previously worked for the Missouri Securities Division. Dan Feinberg, previously in the Michigan Securities Division, now works in OFIR's Office of General Counsel.

Presentation by Shane Hansen Regarding Changes to Investment Adviser Regulation

Mr. Hansen directed the attention of the Committee to the materials he had provided in connection with his presentation. The materials included a May 2, 2011 Securities Liasons Roster and Report of a subcommittee of the ABA Business Law Section Committee on State Regulations of Securities. Mr. Hansen briefly described the materials available from the ABA as well the benefits of membership. Mr. Schwartz congratulated Mr. Hansen on his recent appointment as Chairman of the ABA State Securities Regulation Committee.

Mr. Hansen summarized for the Committee the Sixth Transition Order, issued by OFIR March 11, 2011. The Transition Order addressed matters relevant to investment advisers under the Act, including custody of customer funds, incentive compensation, and an exemption from registration for certain private fund advisers. Mr. Hansen also discussed changes to investment adviser registration and reporting provided for in the Dodd-Frank Act, including allocation of adviser registration and supervision between the SEC and state securities agencies based on assets under management. He also discussed provisions applicable to advisers to venture capital funds and family offices. Michigan has estimated that approximately 140 investment advisers that are now registered with the SEC will switch to state registration under the Act.

Presentation by Jonanthan Berg, Regarding 2011 U.S. Supreme Court Case, Limiting Persons Who Can Be Held Liable for Statements under Rule 10b-5

Mr. Berg gave a presentation on the case of *Janus Capital Group Inc. v. First Derivative Traders*, U.S. Supreme Court (*Decided June 13, 2011*). In this case, the U.S. Supreme Court held that a mutual fund adviser was not liable in a private action under Rule 10b-5 for false statements included in the client fund's prospectus because the adviser did not make the statements. The Court indicated that for purposes of Rule 10b-5, the person who makes a statement is the person with ultimate authority over the statement, including its content and whether and how to communicate it. The case reaffirmed *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.* (U.S. Sup. Ct. 1994) in which the Court held that Rule 10b-5's implied right of action does not include suits against aiders and abettors.

Mr. Schwartz thanked each of Ms. Bissell, Mr. Hansen, and Mr. Berg for preparing and providing their helpful and informative presentations.

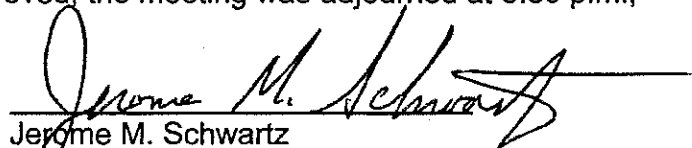
Next Meeting of the Committee

Mr. Schwartz and Mr. Hansen advised the Committee that they are working on scheduling the next meeting of the Committee as a "meet and greet" with officials and staff of OFIR whose responsibilities include securities matters. The Committee expressed interest in the proposed "meet and great," and most members of the

Committee indicated they would be pleased to go to Lansing to attend such a meeting. Ms. Bissell was supportive of the idea; and in correspondence prior to the meeting, Linda Cena, Director of the Securities Division, was also supportive of having such a meeting. The Committee discussed the timing for the meeting. If OFIR attendees are available, the Committee would like to schedule the meeting for a convenient date in September.

Adjournment

There being no further business to come before the meeting, on motion duly made, seconded, and unanimously approved, the meeting was adjourned at 5:30 p.m., local time.


Jerome M. Schwartz
Chairman and Secretary of the Meeting