

**REGULATION OF SECURITIES COMMITTEE  
ANNUAL REPORT PREPARED FOR THE  
DECEMBER 4, 2010 ANNUAL MEETING**

Please discuss in detail the activities of your committee during the 2009-2010 year toward achievement of the goals outlined in the Section's Strategic Plan listed below:

1. Article I, 3, of the Strategic Plan.

3. *Goal: Continue to sponsor programs for Continuing Legal Education within the Section and Committees.*

Objective: Present continuing legal education programs via a means that is accessible to Section Members.

The Section will sponsor continuing legal education for Section members, and other interested persons, as part of its efforts to enhance the quality of practice of business law in Michigan. Section members have indicated that educational programs, particularly subject specific seminars, are very important resources that are provided by the Section. While individual members of the Section have long been involved in continuing legal education and seminars, the opportunity exists to further enhance the level of such continuing legal education, as well as the structure and accessibility of seminars.

In light of the high value placed by the members of the Section on the substance of continuing legal education programs, Section committee chairs should actively seek to increase the number of continuing legal education programs that are offered via media that does not require Section members to incur substantial travel cost or time, such as via webinars or teleconference. At least once a year, each committee should provide its members with an educational program by doing one or more of the following: (1) hold a seminar open to committee members and others, including webinars; (2) hold educational sessions at committee meetings; (3) provide e-mail alerts on important issues; (4) provide written communications to committee members to discuss upcoming or recent legislation or case law of interest; and/or (5) organized group discussions on issues.

Technical support is available through the use of the Section's teleconference line and third party vendors that provide webinar and similar functionality. There are a variety of capabilities currently available with additional methods coming in the future.

Measurable Outcomes: Section Committee Chairs should hold at least one yearly continuing legal education program, which may include in person meetings or methods that do not require travel, such as through a teleconference, webinar, program broadcast available on demand or other accessible technology. Chairs should continue to seek out opportunities for continuing legal education programs in their subject area to enhance this highly-valued service to Section members, and be cognizant of presenting these programs via a means that is most accessible and beneficial to the members.

Estimated Cost: Variable, depending upon the type of, and attendance at, continuing legal education programs. Council will work with the State Bar of Michigan, the Institute of Continuing Legal Education and third party vendors to coordinate the most cost effective means to offer continuing legal education programs through these means.

A. The Business Law Section co-sponsored an ICLE seminar on October 1, 2009 on the new Michigan Uniform Securities Act. Several of the speakers, including the Committee Chairperson, are members of our Committee. The seminar was held at the St. Johns Conference Center in Plymouth. The seminar was well attended in person, and was available on the internet.

B. Our August 19, 2010 meeting of the Committee included significant educational programming, and was available for attendance in person and by conference telephone. The educational programming included the following presentations:

1. Rules and Transition Orders under the new Michigan Uniform Securities Act--by Diane Bissell, now Deputy Commissioner of the Michigan Office of Financial and Insurance Regulation.

2. Investment Adviser Performance Fees and Custody of Customer Funds--by Shane Hansen of Warner Norcross & Judd LLP.

3. The recently adopted Dodd-Frank Wall Street Reform and Consumer Protection Act--by Jonathan Berg, now of Bodman LLP.

4. Poison Pills, as construed by the Delaware Court of Chancery the week prior, in Yucaipa American Alliance Fund II, L.P. v. Leonard Riggio--by Stuart Sinai of Kemp Klein Law Firm.

2. Article I, 4, of the Strategic Plan.

4. *Goal: Address Substantive Legal Issues for Committee Members.*

Objective: Hold regular committee meetings.

Section members have indicated that substantive law committees are important to them. To serve our members with their strong interest in committee activities, it is important that the committees regularly communicate with their members and hold meetings. It is recommended that each committee meet at least two times a year, although one meeting per year is acceptable. While in-person meetings are preferred, conference calls, virtual meetings or web- based conferences can also serve as meetings. Each meeting should be publicized to Section members in the monthly e-newsletter, and on the Section's website. It should also be publicized on the committee listserv (if a committee listserv is available) or by e-mail, telephone or other methods as appropriate. If at all feasible, in-person meetings should include arrangements for members to participate by telephone.

Measurable Outcomes: Each committee should hold meetings at least once a year. Failure to hold at least one meeting each year will be a factor in whether committee leaders retain leadership positions; and (2) committee chairs must report on the committee meetings in the committee reports to the Council.

Estimated Costs: The budgets for committees which do not presently hold meetings will be increased to cover meeting expenses, but costs for social programs will decrease. Thus there should be no overall change in the aggregate Section budget.

A. Our Committee held meetings on June 28, 2010 and August 19, 2010. Both meetings were held in person with attendance by conference telephone utilized by some members. Minutes of both meetings were prepared, submitted to the section administrator, and made available to members. The June 28 meeting was for the purpose of reviewing and commenting on drafts of rules for the new Michigan Uniform Securities Act, and the attendees were members of our Committee who had volunteered to review draft rules and provide comments to the Michigan Office of Financial and Insurance Regulation. The August 19, 2010 meeting was a general meeting of our Committee, focused on (i) identifying topics for articles on securities related matters for the Michigan Business Law Journal, and (ii) educational presentations on current securities related matters. Invitations for both meeting were by email directed to Committee members, and I believe at least one of the meetings was publicized in the Section newsletter.

3. Article I, 5, of the Strategic Plan

5. *Goal: Promote Committee Involvement.*

Objective: Make committees more responsive to members.

There have been complaints that Section members from time to time express an interest in getting involved in committees but do not know how to do that, or receive no response when they contact committee leadership about information or participation.

To correct this perceived lack of responsiveness, each committee shall be required to designate a contact person for prospective members. To expand committee participation, committees are encouraged to designate

someone other than one of their chairpersons as the contact person but a chairperson may be the contact person. The contact person list shall be maintained by the Section Administrator. The contact person's name, address, telephone number and e-mail address shall be:

- a.) posted on each committee's page on the State Bar of Michigan website;
- b.) included in the list of Committees and Directorships of the Business Law Section which is published in each issue of the Michigan Business Law Journal;
- c.) available as a hand-out at Business Law Section and committee events; and
- d.) included in Business Law Section and committee published materials such as seminar outlines.

The contact person for prospective members shall be responsible for responding to member inquiries and reporting to the committee chairpersons about the contacts received and responses made.

Measurable Outcomes: The contact list will be maintained and distributed so prospective members know who to contact. The committee chairpersons will be informed of contacts and responses

Estimated Costs: There should be no cost, or any cost would be minimal.

A. To date, our Committee Chairman has been the contact person for new members, and has received requests from numerous Section members to join our Committee. Each request has been promptly responded to with a warm and friendly welcome to the Committee, and by adding the new member to our Committee roster and email list. Upon reading the strategic plan provisions above, I have asked Jonathan S. Berg of our Committee to serve as our Committee's contact person for new members. His contact information is as follows:

Jonathan S. Berg  
Bodman LLP  
Suite 500  
201 W. Big Beaver Road  
Troy, Michigan 48084  
office: 248-743-6061  
fax: 248-743-6002  
email: jberg@bodmanllp.com

#### 4. Article II, 1, of the Strategic Plan.

##### 1. Goal: To:

(A) monitor and raise awareness of laws or developments in laws that affect Michigan businesses and, when appropriate, to make recommendations for updates and improvements;

(B) provide assistance to appropriate state government personnel with respect to business-related legislation and rule making;

(C) as appropriate, provide amicus curie briefs related to business-related issues being addressed by the courts, and

(D) educate Michigan businesses, their owners and employees about changes to Michigan's laws in order to maintain Michigan's ability to attract and retain new business enterprises and enable existing businesses to remain competitive.

Objective: Committees should monitor legal developments related to their substantive area, undertake efforts to improve and update business-related legislation and report not less than annually to the Council. The Section and its Committees should liaise with appropriate departments in State government, business and trade associations on legal developments.

The Section frequently reviews and assists in drafting proposed legislation. Some of this legislation may be viewed as critical to the maintenance of a progressive scheme of business regulation and to maintain the competitiveness of the State as a place to do business. Examples include amendments to the Michigan Business Corporation Act, the Michigan Limited Liability Company Act or the Michigan Uniform Securities Act. In these situations, the Section may determine it to be in the best interests of its members and Michigan businesses to engage lobbying assistance to educate legislators regarding the issues presented by the legislation and to urge its adoption or rejection. In addition, the Section should be cognizant of and be prepared to comment on and facilitate the adoption of appropriate uniform state laws affecting business law promulgated through the National Conference of Commissioners on Uniform State Laws (NCCUSL) to keep these statutes current with contemporary legal trends and

theory. The Section and the appropriate substantive Committees should also establish liaison relationships with Michigan NCCUSL representatives involved with uniform laws affecting business.

Michigan generally does not regulate business-to-business commerce. In the instances that it does, the Section can play a role in developing rules and regulations, based on the collective expertise of members who deal with specialized practice areas. As the Section becomes aware of matters that have impacted or would impact business in Michigan, including the owners, officers, directors and employees of these businesses, an appropriate Committee Chair should take actions to facilitate communication with governmental personnel and trade and similar groups and make known to them that the resources of the Section are available to assist in rule-making.

The Section has been honored to be asked by the Michigan Supreme Court to file amicus curie briefs on business-related legal issues being faced by the courts, and should continue to weigh in on these issues.

Measurable Outcomes: (1) Committee Chairs will provide in their reports to the Section an update on laws or developments in the law and efforts undertaken with other organizations or governmental personnel related to those developments. (2) If a Committee Chair determines that it is appropriate to make recommendations to affect a particular outcome in the law, it will make such recommendations in its report to the Section. The Vice Chair of the Section will assist Section Committees, if requested, with these liaison efforts as appropriate. (3) If the Section determines that action should be taken, the Section will determine how to efficiently allocate resources to bring the recommendation to a person or persons who can influence the desired outcome.

Estimated Cost: Most efforts require no additional funding outside of the normal activities of the Committees. If exceptional action is necessary to promote legislative changes, the cost to engage lobbying assistance may be authorized on a case by case basis.

A. Our Committee has taken an active role in reviewing and providing comments to the Michigan Office of Financial and Insurance Regulation ("OFIR") on proposed rules and transition orders relating to the new Michigan Uniform Securities Act, including reviewing and commenting on two drafts of proposed rules and several transition orders. Where helpful, we have drafted text for OFIR's consideration, and answered questions regarding aspects of Michigan securities law. We have received periodic updates on OFIR's progress with various rules and proposed transition orders, and have communicated the updates to members of our Committee, or its subcommittee that was formed from volunteers who were interested in commenting on rules and transition orders. In prior years, as the new Act proceeded through the Michigan legislature, we provided updates on its progress in our quarterly committee reports.

5. Please comment on your plan regarding succession per Article III, 5 of the Strategic Plan.

5. *Goal: Establish policies for designating committee chairpersons and evaluating their performance.*

Objective: Annually evaluate committee chairs to ensure that those who do not perform adequately will not continue to serve simply because of Council inaction or inattention.

The Section has been fortunate to have a group of many talented and dedicated committee chairs heading its committees. Much of the most important work of the Section is achieved by its committees, which are generally defined by substantive law emphasis (e.g., UCC Committee, Regulation of Securities Committee, Nonprofit Corporation Committee, etc.). Once a committee chair has been designated, however, the appointment normally lasts until that persons resigns. We believe that even the most effective committee chairs should be encouraged to search for new members for their committees and to plan their own succession. **Committee chairs are also asked to comment in their reports to Council on their plans regarding succession.** The Executive Committee is ultimately responsible for ensuring that each Committee is active and that each Committee has effective leadership.

Measurable Outcomes: **Request a report from each Committee Chairperson regarding the committee's goals and objectives for the next 12 to 24 months, and its needs for additional support from the Section, if any.**

Estimated Cost: None.

A. Our Committee includes members who could succeed me as Chairperson, and I will give some thought to what an appropriate succession plan would look like for our Committee.

6. Please list your Committee's goals and objectives for the next 12 to 24 months and whether you will require additional support from the Section to achieve these goals (per Article III, 5 of the Strategic Plan – see above).

- A. Continue holding meetings with educational programming.
- B. Continue providing assistance to the Michigan Office of Financial and Insurance Regulation relating to the new Michigan Uniform Securities Act, proposed rules, and transition orders.
- C. Continue providing to our Committee members and the Business Law Section Council, as appropriate, updates relating to statutory and regulatory developments.
- D. Continue work to expand and diversify membership in our Committee.

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Chairman of the Regulation  
of Securities Committee