

**REGULATION OF SECURITIES COMMITTEE  
ANNUAL REPORT PREPARED FOR THE  
DECEMBER 3, 2011 MEETING**

Please describe your committee's activities during the 2010-2011 year toward achievement of the goals outlined in the Section's Strategic Plan. Each question below corresponds to a specific Section of the Plan, a copy of which is attached and to which reference may be made for further guidance in providing responses. If the question is not applicable to your particular committee or directorship, please note as such.

**1. Sponsorship of programs for Continuing Legal Education via a means accessible to Section Members, including holding at least one program yearly (Article I, 3).**

Our August 16, 2011 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:

A. Status of proposed rules and transition orders under the new Michigan Uniform Securities Act, and recent restructuring of the Michigan Department of Licensing and Regulatory Affairs, its Office of Financial and Insurance Regulation ("OFIR"), and its Securities Division--**by Diane Bissell**, Deputy Commissioner of OFIR.

B. Recent changes to Federal and Michigan law applicable to investment advisers, including Michigan's Sixth Transition Order, and provisions of the Dodd-Frank Act--**by Shane Hansen** of Warner Norcross & Judd LLP

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

**2. Addressing substantive legal issues for committee members, including holding regular committee meetings (at least once a year) and reporting on the meetings to the Council (Article I, 4).**

The Committee met August 16, 2011. The meeting was held in person, with some members attending by conference telephone. Minutes of the meeting were prepared, submitted to the section administrator and the Council, and made available to members. The meeting focused on education relating to Michigan and Federal securities law matters. Invitations for the meeting were by email directed to Committee members, and publicized in the Section's e-newsletter and on the Section's website.

**3. Promoting involvement in the committee and making the committee more responsive to members including the designation of a contact person (Article I, 5).**

From time to time I am contacted by attorneys wishing to join the Committee. Each attorney is promptly welcomed to the Committee with a warm and friendly response. In addition, Jonathan S. Berg has been designated the Committee's contact person for new members. Jonathan's contact information is:

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

**4. (A) monitoring and raising awareness of laws or developments in laws that affect Michigan businesses and, when appropriate, making recommendations for updates and improvements;**

Several members of the Committee, including the Chairman, took an active role in recommending improvements relating to the Michigan Uniform Securities Act and its transition orders to remove or diminish restrictions on investment advisers to private equity funds. The restrictions required registration of many investment advisers to private equity funds, prohibited them from charging customary performance fees, and subjected them to regulatory burdens under Michigan law relating to custody of customer funds that was in excess of those imposed by federal law. These restrictions were discussed at meetings of the Committee, in conversations with members of private equity firms, and with others who made inquiry, both from within and outside of Michigan. The restrictions were reasonably addressed by the Sixth Transition Order issued by OFIR. Failure to address the restrictions would have had a negative impact on the private equity business in Michigan.

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

The Committee has taken an active role in reviewing and providing comments to 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, including most of the text of the Sixth Transition Order, 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.

**(C) as appropriate, providing amicus curiae briefs related to business-related issues being addressed by the courts, and**

No amicus curiae briefs were requested during the past year.

**(D) educating 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. (Article II, 1).**

Members of the Committee provided information to private equity fund advisers regarding improvements in the treatment of private equity fund advisers contained in OFIR's Sixth Transition Order.

**5. Please comment on your plan regarding succession (Article III, 5).**

The Committee includes a number of members who could succeed me as Chairperson. I am giving thought to what an appropriate succession plan would be.

**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 (Article III, 5).**

- A. Continue holding meetings with educational programming.
- B. Continue providing assistance to OFIR relating to the new Michigan Uniform Securities Act, proposed rules, and transition orders.
- C. Continue providing to 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 the Committee.

Jerome M. Schwartz  
Chairman, Regulation of Securities Committee  
November 29, 2011