

MSBA BUSINESS LAW SECTION, SECURITIES LAW COMMITTEE

MINUTES FROM MEETING OF JANUARY 11, 2007

Ken Abel called the meeting to order at approximately 12:30 p.m. at the offices of Whiteford Taylor

I. INTRODUCTIONS

The following people were in attendance: Scott Freed, Tim Cox, Assistant AG (Maryland Securities Division), Joy Sakamoto-Wengel, Assistant AG (Maryland Securities Division), Joe Ward, Julie Tewey, Assistant AG (Maryland Securities Division), June Hooper, and Ken Abel.

The following people participated via telephone: Bill Carlson, Paula Miller, Chris Roberts, George Lawler, Jennifer Porter, Rodney Miulescu, and Melanie Lubin, Maryland Securities Commissioner.

There were no objections to the minutes from the last meeting.

II. NEW BUSINESS

New Proposed Regulations

Tim Cox discussed the draft of the newly proposed regulations, adding that the Maryland Securities Division does not intend to substantially change Chapters 3 and 4, but rather to clarify the Maryland Securities Division's position by codifying certain interpretations and orders of the Maryland Securities Division, such as the 1999 Order providing for the Maryland Accredited Investor Exemption and questions frequently asked of the Maryland Securities Division.

K. Abel asked whether the Maryland Securities Division intended to formally revoke the existing orders and no-action letters that relate to the issues subject to the proposed regulations. Mr. Cox said the regulations will adopt the Maryland Securities Division's position in the 1999 Order regarding the Maryland Accredited Investor Exemption, but it is unknown whether the Maryland Securities Division will revoke related no-action letters.

Mr. Cox also advised the group that the revisions restructure existing Chapters 3 and 4 as 3A, 3B, and 4, with the intent to make issues easier to find. Chapter 5 is being internally considered for revision, and Chapters 1, 2, and 8 have been proposed for revision. The Maryland Securities Division has no intent to revise Chapters 6, 7, and 9 at this time, but is likely to revise Chapter 9 in the future.

Mr. Cox emphasized the regulations are a working draft and not proposed at this time, and that Maryland Securities Division welcomes feedback from the Committee.

The Committee discussed how securities of small cap companies (Nasdaq National Market securities) being included in the definition of "covered securities" under Section 18 of the Securities Act might impact the Maryland Securities Division (this is a pending rule proposal before the SEC). Commissioner Lubin and Mr. Cox advised the Committee it would likely have a nominal

effect because of the 61 registrations filed in 2006, only about 10% of those were by small-cap companies.

K. Abel questioned the Amendment and Notice of Termination provisions in the MLOE provisions of the new proposed regulations. The Maryland Securities Division advised the Committee that it keeps all filings “shelved” for 18-months and then the filing automatically closes, so the notice of termination would close the filing sooner. The Committee discussed how easy it might be to inadvertently overlook the termination notice filing and the potential implications for such an oversight.

The Committee briefly discussed the insignificant deviation provision that was added as a separate rule to the proposed rules.

The Committee discussed the dollar increase in MLOE from \$150,000 to \$250,000. Commissioner Lubin informed the Committee that the Maryland Securities Division might consider raising the \$250,000 cap if a substantive argument is made, and reminded the Committee that it was increased from \$100,000 to \$150,000 in 1996.

B. Carlson raised the issue as to whether a Maryland entity or a foreign qualified entity must file a Form U-2. The Maryland Securities Division takes the position that a Form U-2 contains more specific information than any filing an entity might make with the SDAT, and the Maryland Securities Division does not want to risk losing its jurisdiction in the event the issuer relocates and does not update its charter.

K. Abel raised the issue of accepting copies of documents for filing, as opposed to originals. Commissioner Lubin said the Maryland Securities Division would consider incorporating that type of proposal into these regulations. She added that since the Maryland Securities Division permits franchise filings to be filed electronically, it is considering permitting the electronic filing of securities materials.

There were no more questions from the Committee regarding the new proposed regulations.

The Committee agreed to address the proposed changes to Chapter 04 (Exemptions) and the general provisions of Chapter 03A that relate to exemptions at the February meeting, and to discuss the proposed changes to Chapter .03B (Registrations) and the general provisions of Chapter 03B that relate to registrations at the March meeting. Mr. Abel said he would circulate an email that describes what the Committee will discuss at the February meeting.

SEC Proposed Release: “Prohibition of Fraud by Advisors to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles”

The Committee discussed the substance of the SEC Proposed Release and discussed creating a subcommittee to prepare comments to the Proposed Release. Commissioner Lubin advised the Committee that NASAA intends to submit comments on the Proposed Release, so she asked to be included in any such subcommittee.

III. OLD BUSINESS

Ocean City Program

There was brief discussion about the Ocean City Program. The Committee decided to limit the subject matter to a general discussion of the securities laws, general exemptions and perhaps some enforcement issues. K. Abel and S. Fried volunteered to map a broad outline of the program based on the Committee's discussion.

IV. NEXT COMMITTEE MEETING

The Committee agreed to schedule the next meeting on February 8, 2007 at 8:30 a.m. at the offices of Ober Kaler.

V. AJOURN

With no further items to discuss, the meeting was adjourned.