

**Mississippi Secretary of State  
2008 Business Reform Committees  
Minutes of Securities Laws Study Group, Meeting #4  
August 21, 2008**

This meeting of the Securities Law Study Group was called to order on Thursday, August 21, 2008 at 11:00 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of the persons who were present in person or by telephone is attached at Exhibit A.

**Introduction**

Cheryn Baker, Assistant Secretary of State for the Secretary of State's Policy and Research Division, welcomed the members to the meeting and called roll to verify everyone who was present. She informed the members that Chairman Cliff Hodge had experienced a family emergency and would not be attending.

**Approval of Minutes**

The members unanimously approved the minutes of the July 24, 2008 meeting.

**Business Regulation and Enforcement Suggestions and Comments**

Tricia Melvin of the Secretary of State's Business Regulation and Enforcement Division ("BRE") responded to comments and questions from the Broker-Dealers Sub-Group. She also discussed certain provisions of the Uniform Securities Act of 2002 (the "USA") and BRE's suggested changes to these provisions. The Group discussed BRE's suggested changes, which are summarized below.

- BRE suggested the addition of trust companies to the definition of "bank" as a means to prevent persons who are not qualified to give investment advice from forming a trust company to evade registration as an investment adviser. Members of the Group expressed concerns with this change. Ms. Melvin stated that she would meet with the BRE staff to work out another alternative to resolve this issue.
- USA § 102(11)(O). The Group discussed whether the dollar amount of \$10,000,000 in the definition of "institutional investor" should be raised, but ultimately agreed not to raise the amount.
- USA § 201(3)(B). The Group discussed whether certificates of deposit issued by financial institutions should be exempt securities only up to the amount of the certificate of deposit insured by the FDIC. This would mean that any amount over the insured amount would not be exempt. There was a lengthy discussion about how this could be accomplished, but the Group decided not to incorporate this suggested change.

- USA § 202. The Group discussed whether to add a requirement to the mortgage secured unit transactions exemption which would require that the outstanding value of the notes not exceed the underlying value of the secured property. Maine has added this requirement to this exemption.
- USA § 202(14). This provision exempts offers and sales of securities to less than twenty-five (25) (unaccredited investor) persons. Ms. Melvin recommended that this provision be conformed to Mississippi's existing limited-offering provision, which provides an exemption for offerings to less than ten (10) purchasers. The Group discussed the advantages of both provisions and which provision was preferable, but came to no conclusion.
- USA § 202(19). The Group discussed BRE's suggestion to require notice filings for rescission offers. The Group agreed that issuers should be encouraged to correct mistakes by making rescission offers, and thus decided not to require notice filings, fearing that such a requirement would have a "chilling effect" on the making of rescission offers.
- USA § 204(b). This provision states that a person does not violate an order issued by the Secretary of State if the person did not know and in the exercise of reasonable care could not have known of the order. BRE suggested adding language to the new Act that knowledge of the order would not be required if the Secretary of State's Office had attempted service of process on the person. The Group agreed that it would study this issue further. One member suggested that the Secretary of State's Office could post orders on its website as a form of notice.
- USA § 302(c). The Group discussed whether there should be a late fee, and the amount of such fee, for a late filing of notice of a federally covered security sold in this state. Currently, the late fee is one percent (1%) of the dollar amount of the securities sold in the state, up to a maximum late fee of \$25,000. The Definitions, Issuer Registration and Exemptions Sub-Group suggested that the late fee be a set fee of \$300. No decision was made on this issue, which the Group agreed would be studied further.
- The Broker-Dealer Sub-Group inquired about the need to include bonding requirements for broker-dealers in the new Act. Ms. Melvin stated that the Secretary of State's Securities Act Rules 605 and 607 addressed bonding requirements for investment advisers, and that these rules would stay in place if a new act were adopted.
- USA § 403(b)(2). According to this provision, out-of-state investment advisers are not required to register in Mississippi if they have had five (5) or fewer clients in the previous twelve (12) month period. The Broker-

Dealers Sub-Group suggested that a rule be adopted to address how clients are counted for purposes of this provision, such as whether family members within one physical household count as one client. Ms. Melvin stated that BRE currently treats family members within one household as one client, and that a rule could be adopted to formalize this policy were the new act to be adopted.

- USA § 409. The Broker-Dealer Sub-Group also inquired about the need for a provision in the act to address the treatment of abandoned applications for registration and notice filings. Ms. Melvin stated that the Secretary of State's Securities Act Rule 111 provides for the handling of abandoned applications, and that this rule would stay in place if the new act were adopted.
- USA § 410(g). This provision allows a person who is registered as an investment adviser and broker-dealer to pay only one registration fee instead of fees for both registrations. In Mississippi, dual registration and dual fees are currently required. Ms. Melvin expressed BRE's concern about the loss of revenue to the Secretary of State if this provision were adopted. The Group agreed to study this issue further.
- USA § 412(d)(3). This provision deals with monetary penalties against broker-dealers or investment advisers who have been convicted of certain felonies. BRE suggested that the maximum amount of penalty under this provision be set at the current maximum of \$25,000, as provided under the current Mississippi Securities Act.
- USA § 508(a). This subsection addresses civil and criminal penalties against persons who willfully violate the Securities Act. BRE suggested that this provision be revised to clarify that the criminal penalty amount specified would be assessed "per violation."
- USA § 508(b). This provision allows the Attorney General to commence criminal proceedings against willful violators of the securities laws. BRE suggested that additional language be added to this section to allow BRE attorneys to be appointed as special prosecutors for criminal proceedings. Several other states have made this addition to their securities laws.
- USA § 509. This provision addresses the statute of limitations for civil liability under the Act. BRE suggested changing the statute of limitations to two (2) years to conform with the existing Mississippi Securities Act, instead of the one (1) year limitation included in the USA. The Fraud and Civil Liability Sub-Group reviewing Article 5 also had concerns with the length of the statutes of limitation in this provision. The Group agreed to study this issue further.

- USA § 605(e). This provision prohibits any penalties imposed upon “conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the administrator.” BRE suggested that this wording be changed to “in good faith in conformity with any rules” in order to make the exception narrower. The Group did not agree with this suggested change.

## **Sub-Group Reports**

### **Fraud and Civil Liability Sub-Group**

Sub-Group Chair William Ray gave a brief outline of the issues discussed by this Sub-Group. He mentioned that in regard to the statute of limitations for private civil claims, the choice was whether to be inconsistent with the federal or state statute of limitations. He requested that the members consider which statute of limitations they would prefer. Ray stated that the Sub-Group would provide a full report at the next scheduled meeting.


### **Definitions, Issuer Registration and Exemptions Sub-Group**

Sub-Group Chair Keith Parsons stated that his Sub-Group’s comments were ready for review and comment by the Group. Ms. Baker said that she would distribute the Sub-Group’s Report to the full Group.

## **Other Business**

Because another meeting was scheduled for the conference room, the meeting was adjourned at 1:00 P.M. Ms. Baker stated that another meeting would be scheduled in the near future.

Respectfully Submitted,

  
Cheryn Baker  
Assistant Secretary of State  
Policy and Research Division

**Exhibit A**  
**to the August 21, 2008 Minutes of Securities Law Study Group, Meeting #4**

In Attendance:

Jeremy Chalmers  
Felice Dowd Wicks  
Earle Jones  
Keith Parsons  
William Ray  
Felicia Smith  
Barry Cannada  
Tom Ramsey

By Telephone:

Mercer Bullard, Vice-Chair  
Charlie Banks

Secretary of State Personnel Attending:

Cory Wilson, Chief of Staff  
Cheryn Baker, Assistant Secretary of State, Policy and Research  
Dave Scott, Assistant Secretary of State, Business Regulation and Enforcement  
Tricia Melvin, Senior Attorney, Business Regulation and Enforcement  
Phillips Strickland, Division Coordinator, Policy and Research  
Amy Foster, Intern, Policy and Research