Editor's Note

The year 2019 is upon us and there are big plans for the State Regulation of Securities Committee. Leading off this January issue is a message from our Committee Chair, Richard Alvarez, introducing the Committee's new strategic plan. Next, we have an analysis regarding the efforts to have a federal securities regulator for Canada, which may be a topic of conversation at the upcoming Business Law Section Spring Meeting in Vancouver, British Columbia.

State enforcement efforts, especially against fraudulent or unregistered offerings of securities utilizing or claiming to utilize blockchain technologies, is detailed in our next article. Additionally, we have an update to a previously run article regarding state registration requirements as an issuer-dealer for issuers undertaking public securities offerings under Regulation A under the Securities Act without engaging a broker-dealer. Finally, we have an introduction to, and a draft whitepaper of a proposed model rule to be submitted to NASAA regarding regulation of investment adviser solicitors.

As part of the State Regulation of Securities Committee strategic plan, I intend to increase the number of issues of the Blue Sky Bugle that are published each year. However, I cannot do that without you, our committee members who are all qualified to share insights and opinions by submitting articles for publication in the Bugle. If you have any questions about submitting articles, feel free to contact me at andrew@crowdchecklaw.com.

Message from the Chair

Each year, leadership of the ABA's Business Law Section asks its committee chairs to develop a strategic plan that sets out the long term objectives for each committee. The plan is expected to take into account six 'strategic goals' for each committee, including two or three key action steps that are planned for the next year to help achieve a committee's long term plan.

At our committee meeting held during the recent Fall Business Law Section conference, I presented a summary of our committee strategic plan. The principal categories comprising the strategic plan include:

**Creation** - of expert content on topics related to the subject matter of the committee;

**Access** - to publication and distribution of blue sky specific content;

**Collaboration** - promote engagement with and among committee members through the use of technology;

**Membership Enhancement** - to improve the 'value proposition' of committee membership;

**Engagement** - to increase participation of committee members, as well as non-members, in committee activities; and

**Professional Growth** - to provide opportunities to committee members to
develop as professionals.

The State Regulation of Securities Committee has long been the principal source of information concerning blue sky issues and topics, including recommendations on and advocacy in support of new and proposed state legislation and regulation, collaboration and cooperation with our regulator colleagues and a forum for discussing issues of importance to blue sky practitioners.

In order to continue and enhance the work and influence of the committee on all issues relating to blue sky regulation, it is vital that we committee members work to improve the work and impact of our committee so that it remains the go-to source for blue sky learning.

The strategic plan lays out what I hope is a realistic game plan to sustain this influence, through achievable short-term action steps that will support the long term goals of the committee. Some examples of short-term action steps that can be taken by the committee/committee members include:

- support and promote the Blue Sky Bugle as the source of substantive blue sky information by encouraging members to write one article on a particular blue sky topic per quarter;

- participate in CLE programs and presentations with other Business Law Section committees; and

- encourage more frequent postings on our committee ListServ.

The complete strategic plan is attached for your review: I encourage you to review it and to email me with any comments on the plan and any suggestions on how to improve the plan and, by extension, our committee.

We are all busy and it is often hard to carve out the extra time to devote to outside activities such as the committee but I continue to believe that committee membership - and more active involvement in the committee - can be a valuable part of our professional life. It can increase our awareness of important issues and developments in our practice area, can expose us to other practitioners who would benefit from our collective experience thereby potentially enhancing our own practices and provides a forum for committee members to demonstrate expertise to the larger legal community that impacts many corporate and securities practices across the country. I encourage you to join me in working to improve our committee and our committee experience through greater participation in committee activities by supporting the initiatives set out in the committee strategic plan.

My warmest wishes to all for a Happy, Healthy and prosperous New Year!

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**Committee Strategic Plan**

Following is the Committee’s main long-term objectives, with related short-term action steps designed to reach the stated long-term objectives.

Read more...

**Will Canada Finally End Up with a Securities and Exchange Commission**

*By Michel Gélinas and Cara Cameron, Davies Ward Phillips & Vineberg LLP*

The Supreme Court of Canada ("SCC") has paved the way to a national
securities regulator with its recent unanimous decision finding that the proposed federal *Capital Markets Stability Act* is constitutional because its primary purpose is to regulate systemic risk across Canada's capital markets and, as a result, falls within the Canadian Parliament's general trade and commerce powers under the *Canadian Constitution Act*, 1867.

Read more...

**State Regulatory Authority Over Digital Assets**

*By Greg Strong and Jacob Shulman, DLx Law LLP*

State securities regulators have been the first line of defense for investors in fraudulent investment schemes involving digital assets. A recent series of coordinated enforcement actions brought by state securities regulators, with the possibility of additional actions, in connection with fraudulent offers of digital assets has resulted in a number of scams being shuttered. State securities regulators, in tandem with state consumer protection authorities, have the tools needed to protect investors and consumers from fraud and other misconduct in connection with digital assets. Stamping out fraud and protecting investors and consumers is critical to allowing legitimate entrepreneurs, developers, and business pursue to develop and implement blockchain technology-based solutions and platforms and for those solutions to flourish within the confines of state laws.

Read more...

**Update: State Issuer-Dealer Registration Requirements**

*By Sara Hanks and Jeanne Campanelli, CrowdCheck Law LLP*

The Securities and Exchange Commission's ("SEC") amendments to Regulation A went into effect on June 19, 2015. Those amendments provided companies with greater access to capital through the ability to raise up to $50 million in public offerings exempt from SEC registration, and an expanded ability to "test the waters" and ascertain investor interest.

Regulation A does not require that a company use an intermediary such as a broker-dealer to market the offering. However, companies issuing securities in a public offering without the involvement of a registered broker-dealer should be aware that the company itself may be required to register in certain states as an issuer-dealer.

Read more...

**State Regulation of Investment Adviser Solicitors**

*By Shane Hansen, Richard Alvarez, Robert Boresta, and Matthew Boos*

IA solicitors - persons who, for a fee, refer clients to investment advisory firms - play an important role in matching investors seeking professional investment advice with persons/firms that provide professional investment management services.

While federal law easily handles regulation of these relationships - through the application of SEC Rule 206(4)-3 - state regulation of IA solicitors is a confusing
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A hodgepodge of statutory definitional exemptions, inconsistent and non-uniform rules and orders, or no regulation at all, leaving solicitors to navigate a treacherous state regulatory landscape in order to engage in solicitation activities. According to the SEC, states are not preempted from regulating third-party solicitors for SEC-registered investment advisers that are not its "supervised persons"—most are not.

NASAA had—in 2009—attempted to address the regulation of IA solicitors by drafting a proposed model rule covering the activities of IA solicitors. Unfortunately, it never moved beyond a draft proposal stage due to the lack of consensus among state regulators.

Against this backdrop, we have formed a working group to encourage NASAA's development of a model rule to address these recurring concerns. We have produced a whitepaper framing the state regulatory issues facing IA solicitors and identifying important public policy considerations. The whitepaper serves as a predicate for further discussions with NASAA, with the goal of developing a new proposed model rule that, hopefully, builds consensus among state regulators and industry participants.

A preliminary working draft of the white paper was delivered to Andrea Seidt and Linda Cena, Chair and Vice Chair, respectively, of NASAA's Investment Adviser Section at a recent meeting of the Section held in New Orleans. The IA Section has requested additional input about current solicitors' relationships and context to further support their deliberations. In order for our Committee to finalize the whitepaper we are publishing the latest draft in this edition of the Bugle. We welcome any and all comments, questions, suggestions, and your experiences in advising IAs and/or solicitors about state regulation about these activities. Our contact included at the bottom of this issue of the Blue Sky Bugle.

Model State Solicitors Rule Whitepaper - Draft

This whitepaper has been prepared for the Investment Adviser Section of the North American Securities Administrators Association ("NASAA") to summarize what we believe to be important public policy considerations, policy-making objectives, and the current status of state regulation of solicitors for registered investment advisers ("RIAs"). It is intended to frame a discussion with the goal of developing a proposed model solicitor's rule that could enable greater clarity and uniformity among the states' regulation of solicitors.

Read more...

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