

# 37<sup>th</sup> Annual Conference on Securities Regulation and Business Law

## February 12-13, 2015 • Cityplace Conference Center • Dallas, TX

### Thursday Morning, Feb. 12, 2015

#### Presiding Officer:

**J.R. Morgan**, J.R. Morgan LLP - Austin, TX

7:30 am	<b>Registration Opens</b> Includes continental breakfast.
8:20 am	<b>Welcoming Remarks</b>
8:30 am 1.00 hr	<b>Non-Registered Offerings: Updates on Regulation D and Regulation A</b>  Updates on the requirements of Rule 506(b) and (c); Reg. A and Reg. A+, as well as opportunities for resales. How are issuers using the new tools? What is on the regulatory horizon for issuers in non-registered offerings?  Moderator: Gerald J. Laporte, Securities Regulation Consultant, Former Chief, Office of Small Business Policy, U.S. Securities and Exchange Commission - Arlington, VA Panelists: Faith L. Anderson, Washington Department of Financial Institutions, Securities Division - Olympia, WA Marty Dunn, Morrison & Foerster LLP - Washington, DC
9:30 am 0.75 hr	<b>Crowdfunding</b>  Crowdfunding has captured the imagination of entrepreneurs. In 2012, the JOBS Act required the SEC to create an exemptive rule to cover crowdfunding offerings. While the SEC has proposed rulemaking and has sought comment on its proposal, it has not issued final regulations (as of press time) and many believe the proposed regulation is too cumbersome. Twelve states, including Texas, have proposed or enacted their own intrastate crowdfunding rules and are looking to coordinate their efforts through NASAA. What is the current crowdfunding landscape and what is needed to create effective regulation in this area? What tools are available for you to use now?  Moderator: John Morgan, Securities Commissioner, Texas State Securities Board - Austin, TX Panelists: Bjorn J. Hall, General Counsel, Fundrise - Washington, DC Marty Dunn, Morrison & Foerster LLP - Washington, DC
10:15 am	<b>Break</b>

10:30 am  
0.75 hr

### **M&A Brokers and Their Exemptions**

For decades, all intermediaries between issuers and potential investors have been required to become registered brokers and have been regulated the same way. In the 1990s, efforts coalesced to convince the SEC and the states to regulate brokers in private transactions differently. Finally, in response to proposed federal legislation, the SEC issued a no-action letter in early 2014 which exempts brokers involved in M&A transactions from federal broker-dealer registration and FINRA membership. What are the contours of that exemption and what does it mean for M&A brokers and the buyers and sellers of private businesses?

Shane B. Hansen, Warner Norcross & Judd LLP - Grand Rapids, MI  
Stephanie M. Tourk, Texas State Securities Board - Austin, TX

11:15 am  
1.00 hr

### **How to Do a Texas Public Offering**

In order for a Texas issuer to use Reg. A and its provisions which allow for testing the waters and communicating with potential investors, that issuer must pair Reg. A with a Texas public offering. Until the offering limit for Reg. A was raised to \$50 million by the JOBS Act, we saw very few Reg. A offerings in Texas. At the same time, while state registration was originally required whenever an issuer initiated a federally-registered offering, that is no longer the case. Since 1996, Congress has preempted state securities law in a number of areas, including public offerings where issuers become listed on an exchange. Consequently, a generation of Texas lawyers has not done a Texas public offering. Become reacquainted with the requirements of this type of offering which may soon become more widely used.

Moderator:

Ryan R. Cox, Haynes and Boone, LLP - Dallas, TX

Panelists:

Nick Bhargava, GROUND FLOOR - Atlanta, GA

Patricia Louterback, Texas State Securities Board - Austin, TX

12:15 pm

### **Pick Up Lunch**

Included in registration.

## **Thursday Afternoon, Feb. 12, 2015**

### **Presiding Officer:**

**Nathan G. Roach**, RAM Law Firm PLLC - San Antonio, TX

### **LUNCHEON PRESENTATION**

12:35 pm  
1.00 hr

### **Private Funds: Their Exams and Enforcement Issues**

In the wake of the 2008 financial crisis, the SEC sought and was granted the authority to regulate all investment advisers to private (or “exempt”) investment funds. The agency also began to create special expertise within its enforcement division to better understand asset managers and prosecute them in a smarter way. After all, Bernie Madoff was a subadviser to primary advisers of private investment companies. That enforcement division effort has now been ongoing for almost seven years. More recently, the SEC has established a private fund unit within its Office of Compliance, Inspections and Exams (OCIE). What have the regulators learned about investment advisers and their private funds from these efforts? How do investment advisers to private funds and their counsel view the enhanced examinations and potential for enforcement actions?

Moderator:

David R. Woodcock, Director, Fort Worth Regional Office, U.S. Securities and Exchange Commission - Fort Worth, TX

Panelists:

Marc E. Elovitz, Schulte Roth & Zabel LLP - New York, NY

Toby M. Galloway, Kelly Hart & Hallman LLP - Fort Worth, TX

Igor Rozenblit, Co-head Private Funds Unit, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission - Washington, DC

1:35 pm

### **Break**

1:50 pm  
1.00 hr

### **Activist Campaigns and Proxy Contests Initiated by Private Funds against Public Companies**

Activist investors typically are large equity holders of private investment funds. They use these funds to invest in publicly-held companies that are facing challenges and then demand that the management and boards of the target company take their management advice—or else. Typical activist tactics include public shaming and proxy contests for control of the board. However, more recently, activists have teamed up with hostile bidders to go against their targets. What are the risks and benefits of activist investors for the overall marketplace? What are the key legal and business issues for an activist investor? How does a target company determine it has an activist investor in its stock and how does it develop a strategy for dealing with the activist? What are the key legal and business issues from the target’s point of view?

Moderator:

David E. Rosewater, Schulte Roth & Zabel LLP - New York, NY

Panelists:

Jason M. Daniel, Akin Gump Strauss Hauer & Feld LLP - Dallas, TX

Kai H. Liekefett, Vinson & Elkins LLP - Houston, TX

Candice J. Wells, General Counsel, LINN Energy, LLC - Houston, TX

Janet B. Wright, Senior Corporate Counsel, Dell Inc. - Round Rock, TX

2:50 pm  
1.00 hr

### **The Legal Landscape after *Ritchie v. Rupe*: Where Will the Battle Lines Be Drawn in Future Disputes between Majority and Minority Shareholders?**

In 2014, the Texas Supreme Court held that minority shareholder oppression is not a separate cause of action under Texas common law and that the remedy for oppression under the applicable Texas statute is limited solely to appoint a receiver to conduct a rehabilitative receivership. Learn what future legal complaints are likely to be brought by minority shareholders and examine Texas law regarding these claims.

Moderator:

Elizabeth S. Miller, Baylor Law School - Waco, TX

Panelists:

Byron F. Egan, Jackson Walker L.L.P. - Dallas, TX

Ladd A. Hirsch, Diamond McCarthy LLP - Dallas, TX

Marc I. Steinberg, SMU Dedman School of Law - Dallas, TX

3:50 pm	<b>Break</b>
4:00 pm 1.00 hr	<p><b>OTC Markets: A Look at the Present and the Future for OTC Issuers, Brokers and Investors</b></p> <p>Capital markets should foster new capital formation for issuers and liquidity for shareholders. Four pressing issues for OTC companies today are considered: the integral (and frustrating) role of DTC in getting OTC stocks trading; implementation of the prohibition of any "Bad Boys" involvement with OTC companies; legal actions an OTC issuer can take to encourage a rise in its stock price; and key accounting issues.</p> <p>Moderator: Wayne M. Whitaker, Whitaker Chalk Swindle &amp; Schwartz PLLC - Fort Worth, TX</p> <p>Panelists: Jeff Jamieson, PMB Helin Donovan - Dallas, TX Marc Manuel, Magna - New York, NY James M. Turner, Sichenzia Ross Friedman Ference LLP - New York, NY Daniel Zinn, OTC Markets Group Inc. - New York, NY</p>
5:00 pm 0.75 hr	<p><b>OTC Markets: A Look at the Present and the Future Redux</b></p> <p>The current primary method of choice for investing in OTC companies is through PIPEs. Explore how OTC companies can raise equity capital, hedge funds' participation in that process, the current prevailing terms and features of these PIPE deals and requirements for OTC companies to "uplist" from OTC Markets to NASDAQ.</p> <p>Moderator: Wayne M. Whitaker, Whitaker Chalk Swindle &amp; Schwartz PLLC - Fort Worth, TX</p> <p>Panelists: Jeff Jamieson, PMB Helin Donovan - Dallas, TX Marc Manuel, Magna - New York, NY James M. Turner, Sichenzia Ross Friedman Ference LLP - New York, NY Daniel Zinn, OTC Markets Group Inc. - New York, NY</p>
5:45 pm	<p><b>Adjourn to Reception</b></p> <p>Join us for drinks and hors d'oeuvres with program faculty and attendees.</p> <p><i>Note: The Texas State Securities Board, the U.S. Securities and Exchange Commission, FINRA and NASAA are not sponsoring the reception and their participation is not intended as an endorsement of the sponsors.</i></p>

## Friday Morning, Feb. 13, 2015

### Presiding Officer:

**Gregory R. Samuel**, Haynes and Boone, LLP - Dallas, TX

8:00 am	<p><b>Conference Room Opens</b></p> <p>Includes continental breakfast.</p>
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8:30 am 1.50 hrs 1.00 hr ethics	<p><b>How Recent Fiduciary Duty Cases Affect Advice to Directors and Officers of Delaware and Texas Corporations</b></p> <p>Boards of Directors continue to face difficult decisions and seek guidance from counsel as they respond to the challenges of both an economy that is in a slow recovery and new legislative and regulatory initiatives. The panel discusses the fiduciary issues that Directors and Officers face in the current M&amp;A market and considers the lessons to be learned from recent decisions of courts in Delaware and Texas concerning the deference afforded Boards to run a sale process, the competing interests of holders of common and preferred stock and debt, and the duties of controlling stockholders in a sale process. The panel addresses fiduciary issues regarding the executive compensation process, Director oversight duties, and dealings with activist stockholders. The discussion also encompasses fiduciary duties in the context of partnerships and limited liability companies, plus ethical considerations in light of the Courts' decisions.</p> <p>Moderator:        Byron F. Egan, Jackson Walker L.L.P. - Dallas, TX</p> <p>Panelists:        James R. Griffin, Weil, Gotshal &amp; Manges LLP - Silicon Valley, CA        Mark A. Morton, Potter Anderson &amp; Corroon LLP - Wilmington, DE        Myron T. Steele, Potter Anderson &amp; Corroon LLP - Wilmington, DE        Hon. Karen L. Valihura, Supreme Court of Delaware - Wilmington, DE</p>
10:00 am	<p><b>Break</b></p>
10:15 am 1.00 hr	<p><b>How Recent Fiduciary Duty Cases Affect Advice to Directors and Officers of Delaware and Texas Corporations, <i>continued</i></b></p> <p>Moderator:        Byron F. Egan, Jackson Walker L.L.P. - Dallas, TX</p> <p>Panelists:        James R. Griffin, Weil, Gotshal &amp; Manges LLP - Silicon Valley, CA        Mark A. Morton, Potter Anderson &amp; Corroon LLP - Wilmington, DE        Myron T. Steele, Potter Anderson &amp; Corroon LLP - Wilmington, DE        Hon. Karen L. Valihura, Supreme Court of Delaware - Wilmington, DE</p>
11:15 am 1.00 hr	<p><b>Government Enforcement</b></p> <p>Recent cases and current trends among state and federal regulators in enforcing the securities laws.</p> <p>Moderator:        David R. Woodcock, Director, Fort Worth Regional Office, U.S. Securities and Exchange Commission - Fort Worth, TX</p> <p>Panelists:        Kit Addleman, Haynes and Boone, LLP - Dallas, TX        Penelope Brobst Blackwell, FINRA - Dallas, TX</p>
12:15 pm	<p><b>Pick Up Lunch</b></p> <p>Included in registration.</p>

## Friday Afternoon, Feb. 13, 2015

### Presiding Officer:

**Douglas W. Clayton**, Cantey Hanger LLP - Fort Worth, TX

### LUNCHEON PRESENTATION

<p>12:35 pm 0.75 hr</p>	<p><b>Current Developments in SEC Enforcement Policy</b></p> <p>SEC Commissioner Daniel M. Gallagher discusses the latest developments in enforcement policy at the U.S. Securities and Exchange Commission. Since his confirmation in 2011, Commissioner Gallagher has focused on initiatives aimed at strengthening U.S. capital markets and encouraging small business capital formation. Hear his perspective and discern what these issues may mean for your practice.</p> <p>Daniel M. Gallagher, Commissioner, U.S. Securities and Exchange Commission - Washington, DC</p>
<p>1:20 pm</p>	<p><b>Break</b></p>
<p>1:35 pm 1.00 hr</p>	<p><b>Basic-ally the Same? How the Supreme Court's <i>Halliburton II</i> Decision Will Impact Securities Fraud Class Actions</b></p> <p>Both sides of the securities litigation bar eagerly awaited the outcome of <i>Halliburton Co. v. Erica P. John Fund, Inc.</i>, the second of two appeals to the U.S. Supreme Court in the same case. The Court rejected Halliburton's invitation to overrule the "fraud-on-the-market" presumption of reliance established by <i>Basic Inc. v. Levinson</i> and to require plaintiffs to prove reliance without a presumption. However, the Court gave corporate targets of securities class action litigation some pretrial protection: defendants now have an opportunity at the class-certification stage of the litigation to defeat class certification by proving that their alleged misrepresentations had no "price impact." Explore how <i>Halliburton II</i> will affect securities fraud class action litigation, from the plaintiff, defense and expert witness perspectives.</p> <p>Moderator: Zach Wolfe, Zach Wolfe Law Firm, PLLC - The Woodlands, TX Panelists: Paul R. Bessette, King &amp; Spalding - Austin and Houston, TX Roger B. Greenberg, Schwartz, Junell, Greenberg &amp; Oathout, LLP - Houston, TX Sanjay Unni, PhD, Berkeley Research Group, LLC - Emeryville, CA</p>
<p>2:35 pm 0.75 hr</p>	<p><b>ERISA Basics and Tax Considerations in Three Areas Important to Corporate Lawyers</b></p> <p>What do you need to know in representing companies seeking equity capital from self-directed IRAs and benefit plan investors subject to ERISA? How does one structure equity-based incentive compensation in LLCs and partnerships to ensure tax advantages are available to <i>both</i> the company and key employee? What common employer-employee compensation arrangements are subject to IRC Section 409A and how does one structure such arrangements to avoid potential large penalties to the key employee (and possibly to the employer)? Learn what to look for and what to be wary of in each of these three areas important to corporate lawyers.</p> <p>T. Mark Edwards, Gardere Wynne Sewell LLP - Dallas, TX</p>
<p>3:20 pm</p>	<p><b>Break</b></p>
<p>3:30 pm 0.50 hr ethics</p>	<p><b>Recent Developments in Attorney-Client Communication Privilege for In-House Counsel</b></p> <p>Analysis and implications of two 2014 U.S. Court of Appeals cases that held privilege for in-house counsel may be broadly applied: the D.C. Circuit in <i>In re Kellogg Brown &amp; Root, Inc.</i> held that if an attorney-client communication had multiple purposes, but "obtaining or providing legal advice was one of the significant purposes," then the communication was privileged; the Fifth Circuit in <i>Exxon Mobil Corp. v. Hill</i> held that a memo by in-house counsel about disclosure of company information and a contractual term during a contract negotiation was subject to the attorney-client communication privilege.</p> <p>John R. Fahy, Whitaker Chalk Swindle &amp; Schwartz PLLC - Fort Worth, TX</p>
<p>4:00 pm</p>	<p><b>Adjourn</b></p>