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IN THIS ISSUE:

Section Chair's Corner

By C. Joyce Hall, Esq.

Welcome to the Fall 2011 issue of The Mississippi Business Law Reporter, a publication of the Business Law Section of the Mississippi Bar Association. It is my pleasure and a great honor to serve as chair of the Business Law Section for the 2011 - 2012 fiscal year. I am pleased to serve alongside Section officers, Ken Farmer of Young Williams, P.A., Vice Chair, Stan Smith of Jones, Walker, Waechter, Poitevent, Carrére & Denégre, Secretary - Treasurer, and immediate past-chair, Bill McLeod of McLeod & Associates. The Executive Committee Members include Cheryn Baker of Hancock Bank, Jimmy Milam of Milam Law, and Jason Bailey of Jones, Walker, Waechter, Poitevent, Carrére & Denégre, Olive Branch. Ryan Pratt of the Mississippi Secretary of State's Office will serve as our incoming newsletter editor.

Special thanks are due to our immediate past-chair, Bill McLeod and the other Section Officers and Committee Members for the great job undertaken this past year to represent our Section. Also, a special word of thanks is in order for Stan Smith who worked tirelessly to publish the Section's newsletters this past year.

The Business Law Section met recently with the Mississippi Corporate Counsel Association for our annual meet and greet social. The group gathered at Nick's Restaurant in Fondren and began the year with a "big bang." The highlight of the night included the food table crashing to the floor, food and all, due to what appeared to be a faulty table leg. A good time was had by all and we encourage our members to attend the next social event.

The Business Law Section Officers and the Executive Committee Members met to discuss activities and goals for the Section's upcoming fiscal year including the following events:

1. Publication of three newsletters: Fall 2011, Spring 2012 and Summer 2012. Ryan Pratt welcomes any and all articles and topics of interest which may be informative and helpful to our members.

2. Co-sponsor a CLE program with the Real Estate Property Section and continue the joint annual ethics hour CLE program with the Mississippi Corporate Counsel Association in July, 2012.

3. Award scholarships this fiscal year to deserving students at the Mississippi College School of Law and the University of Mississippi School of Law.

4. Offer a CLE program in May following the close of the Mississippi Legislative Session to provide an update to members on business law topics.

Several inquiries have been made concerning publication of the Mississippi Business Law Statute Book that was previously published by the Mississippi Secretary of State's Office. The officers discovered Lexis Nexis sells the Mississippi Code by volume. Therefore, Business Law Section Members may purchase Title 79, which is found in Volume 18 of the Mississippi Code Ann., for an approximate cost of $27.00, plus shipping and handling. Updates to the single volume cost between $9.00 and $10.00 each year. You can order your copy by calling the Lexis Nexis customer service line at 800-833-9844.

Our Section will hold its annual meeting at the Mississippi Bar Convention in July, 2012 and will offer a CLE presentation as well as legislative updates in areas of Business Law.

Once again, thank you for the opportunity to serve you this year in the Business Law Section. If you have any suggestions for activities or CLE offerings from our Section, please contact me or any of your Section officers with ideas or comments.

The Proposed Amendments to Article 9 of the UCC and Mississippi Law: Changes to Individual Names, Registered Organizations and Trusts

By Rod Clement, Esq.

The American Law Institute and the National Conference of Commissioners of Uniform State Laws have approved amendments to Article 9 of the Uniform Commercial Code ("UCC"). Article 9 governs secured transactions or security interests in personal property to secure loans.[1] A copy of the final (April 27, 2011) draft of the amendments (hereinafter the "2010 Amendments") can be downloaded from the website of the American Law Institute.[2]

This article will review some of the most significant changes regarding individual names registered organizations, and trusts, and the effect these will have on existing Mississippi law. Other proposed changes in the 2010 Amendment will be addressed in a subsequent article.

Prior changes to Article 9

The last major overhaul of Article 9 was Revised Article 9, which the American Law Institute and the National Commissioners of Uniform State Laws promulgated in 1998 and which became effective in Mississippi on January 1, 2002.[3] Revised Article 9 was a complete revision and restatement of Article 9.

The 2010 Amendments to Article 9 are much more limited than Revised Article 9. The 2010 Amendments only amend specific provisions of Article 9 and do not restate the entire article. To limit the changes to the text of Article 9, the 2010 Amendments show a preference for making changes to the Official Comments to Article 9 to clarify an issue rather than changes to the text of Article 9. As of November 6, 2011, nine states had adopted the 2011 amendments.[4]

The 2010 Amendments clarify and refine some of the original concepts in Revised Article 9, such as the name of the debtor; problems that arise when a debtor moves to another state or merges with another entity; changes in technology since the adoption of Revised Article 9; as well as particular cases that the drafters of the 2010 Amendments believe were erroneously decided.

Changes made by 2010 Amendments

1. Registered Organizations

A. Background

Prior to Revised Article 9, the UCC required that a secured creditor file a financing statement in every state in which the collateral was located. For some corporate debtors, this required secured parties to file financing statements in multiple states. In an effort to simplify filing, Revised Article 9 requires the secured party to file a financing statement, in most cases and for most types of collateral,[5] only in the jurisdiction in which the debtor is located.[6] Revised Article 9 provides that when the debtor is a "registered organization," the debtor is located in the state in which it is organized.[7] A registered organization is defined as "an organization organized solely under the laws of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized."[8] One effect of the 2010 Amendments in Mississippi is going to be to clarify that the name of a registered organization listed on the organization's

formation documents filed in the Secretary of State's office is the only name that is sufficient on a financing statement.

B. Names of Registered Organizations and Public Organic Records

Revised Article 9 states that the name of a registered organization is "the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized."[9] Since the enactment of Revised Article 9, questions have arisen about how to deal with the situation in which a corporation filed more than one public record in the state of its organization, and the name of the corporation is spelled differently in the public records. For example, suppose a corporation's articles of incorporation in the Secretary of State's office states that the name of the corporation is "Capitol Industrial Insurance Corporation," the corporation is required to obtain a license from the Mississippi Department of Insurance, and the license issued by the Department of Insurance states that the name of the licensee is "Capitol Indus. Ins. Corp." If the license is a public record, then arguably two public records exist with different names for the debtor, and either name would be correct in a financing statement. One complication is that neither Article 9 nor Article 1, which is the source of the general definitions for the UCC, defines a "public record."

The 2010 Amendments address this situation by distinguishing between "public records" and "public organic records." The 2010 Amendments change the definition of a "registered organization" and add a new definition, "public organic record."[10] The definition of a "registered organization" is amended to be "an organization formed or organized solely under the law of a single State or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States."[11] A "public organic record" is defined in part as "a record that is available to the public for inspection and is…a record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization."[12] The 2010 Amendments state that the name of a registered organization on a financing statement must be the organization's name as it appears on the public organic record.[13]

So in the example above, the name of the corporation as it appears in the articles of incorporation filed in the Mississippi Secretary of State's office would be the only name that should appear as debtor on a financing statement. The license issued by the Department of Insurance may be a "public record," but the license would not be a "public organic record." The name on the license therefore would not be sufficient as the name of the debtor on a financing statement under the 2010 Amendments. The same result would apply if the Secretary of State issued a certificate of good standing with a name that was different than the name on the corporation's articles of incorporation. The certificate of good standing would not be a "public organic record" and therefore the name on the certificate of good standing would not be sufficient for a financing statement.

2. Trusts

A. Background

An important purpose of the 2010 Amendments is to make it easier for secured creditors to determine in which jurisdiction and under what name to file a financing statement when the debtor is a trust. One possible effect of the 2010 Amendments in Mississippi is that some common-law trusts which are currently not "registered organizations" under Revised Article 9 may be deemed to be "registered organizations" under the 2010 Amendments for purposes of determining the debtor's location for filing.

Revised Article 9 treats common-law trusts and statutory trusts the same as far as location of the debtor. A trust is an "organization."[14] A debtor that

is an organization and that has only one place of business is located at that place of business.[15] If the debtor has more than one place of business, then the debtor's chief executive office is its location for filing purposes.[16] In most cases, the chief executive office of a common-law trust is going to be where the trustee is located.

B. Common-law Trusts and Statutory Trusts

The 2010 Amendments distinguish between common-law trusts and statutory trusts. The Official Comments to Section 9-102 state that "[a] statutory trust is formed by the filing of a record, commonly referred to a certificate of trust, in a public office pursuant to a statute."[17] For example, an investment trust formed pursuant to the Mississippi Investment Trust Law[18] would be a statutory trust.

A common-law trust, on the other hand, according to the Official Comments to Section 9-102 of the 2010 Amendments, "arises from private action without the filing of a record in a public office."[19] The Official Comments to Section 9-307 of the 2010 Amendments also state:

> Questions sometimes arise about the location of a debtor with respect to collateral held in a common-law trust. A typical common-law trust is not itself a juridical entity capable of owning property and so would not be a "debtor" as defined in Section 9-102. Rather, the debtor with respect to property held in a common-law trust is the trustee of the trust acting in the capacity of trustee.[20]

C. Business Trusts

Amendments to the general definitions in Article 1 of the UCC that became effective in Mississippi on July 1, 2010, introduced the concept of a "business trust."[21] The 2010 Amendments take this concept and run with it. The definition of a "registered organization" states that the definition "includes a business trust that is formed or organized under the law of a single State if a statute of the State governing business trusts requires that the business trust's organic record be filed with the State."[22] The definition of "public organic record" likewise includes "an organic record of a business trust consisting of the record initially filed with a State and any record filed with the State which amends or restates the initial record, if a statute of the State governing business trust requires that the record be filed with the State."[23]

Both statutory trusts and common-law trusts are "organizations" as defined in Article 1.[24] The Official Comments to the 2010 Amendments state that both statutory trusts and common-law trusts can be "business trusts," and thus "registered organizations."[25] A common-law trust is a "business trust" if the common-law trust has a business or commercial purpose.[26]

Under Mississippi statutes governing trust law, the trust agreement or a certificate of trust agreement for a common-law trust must be filed in the office of the chancery clerk in order for the trust to be created.[27] Could the filing of a trust agreement of a common-law trust that had a business purpose in the chancery clerk's office be deemed to make the common-law trust a "business trust" and thus bring the common-law trust within the definition of a registered organization? An Official Comment to Section 9-102 of the 2010 Amendments states in relevant part:

> In some states, however, the trustee of a common-law trust that has a commercial or business purpose is required by statute to file a record in a public office following the trust's formation. [citations omitted] A business trust that is required to file its organic record in a public office is a "registered organization" under the second sentence of the definition if the filed record is available to the

public for inspection.[28]

The significance of a common-law trust being deemed to be a registered organization is that a common-law trust that is a registered organization is located for filing purposes in the state of registration, while a common-law trust which is not a registered organization would be deemed to be located in the state in which the trustee is located. In other words, it is possible that the 2010 Amendments could change the office in which a secured party must file a financing statement to perfect a security interest in collateral owned by a common-law trust from the state in which the trustee is located to the state in which the trust agreement is filed. This issue needs to be studied in connection with the consideration of the 2010 Amendments in Mississippi so that ambiguity does not exist about where a creditor must file a financing statement to perfect a security interest in collateral owned by the trustee of a common-law trust.

If a common-law trust is not a "business trust" or a "registered organization," then the rules about the location of the trust remain the same under the 2010 Amendments as under Revised Article 9.[29]

D. Names of Trusts

Revised Article 9 treats the names of all trusts the same. If the trust has a name specified in its organic documents, then that name is the name that should be identified as the debtor in a financing statement.[30] If no name is specified, the name of the settlor of the trust is used.[31] In addition, the name of the debtor in the financing statement must indicate that the debtor is a trust or is a trustee acting with respect to trust property.[32]

The 2010 Amendments extend the distinction between registered organizations and other trusts to names. If the trust is a registered organization, then the debtor's name on the financing statement must be the settlor's name as it appears on the public organic record.[33] If the trust is not a registered organization, the name of the debtor is the name of the settlor in the trust's organic record.[34] Another change is that the statement that the debtor is a trust or a trustee acting with regard to trust assets must be in a separate part of the financing statement and not part of the debtor's name.[35]

3. Names of individuals

Financing statements are indexed by the name of the debtor, so it is of utmost importance that a uniform protocol exists for names. Official Comment 2 to Revised Article 9 states that "the actual individual or organizational name of the debtor on a financing statement is both necessary and sufficient."[36] The national standard form of financing statement requires the "debtor's exact full legal name" and states that the name should not be abbreviated.[37] However, since Revised Article 9 was enacted, courts have struggled with the requirements for the debtor's name. Most of the changes in the 2010 Amendments are intended to clarify the requirements for the debtor's name.

A. Existing Law

Names of individuals are more problematic than names for registered organizations because, while a registered organization is created by statute and given one name in a charter that is filed and easily searchable in the Secretary of State's office, individuals can have nicknames or be known by more than one name in different contexts. For example, assume that a person's birth certificate states his name as "William Thomas Jones, Jr." Variations of the name could include William T. Jones, Jr.; William Thomas Jones; William T. Jones; W. Thomas Jones; Bill Jones, Jr.; Bill T. Jones; Bill Jones, Thomas Jones, Tom Jones, and W. T. Jones, all of which are not inaccurate names. When one starts considering nicknames and changes in marital status, the possibilities multiply many times.

A case arising in Mississippi and interpreting Mississippi law illustrates this issue. In *Peoples Bank v. Bryan Brothers Cattle Company,*[38] one creditor, Cornerstone, filed a financing statement with the Mississippi Secretary of State's office identifying the debtor as "Louie Dickerson." Subsequently, Dickerson borrowed money from Peoples Bank and granted a security interest to Peoples in the same collateral. The financing statement to Peoples Bank identified Dickerson as "Brooks L. Dickerson." When Dickerson defaulted on both loans, Peoples argued that Cornerstone did not have a perfected security interest in the collateral because Cornerstone's financing statement identified the debtor only as "Louie Dickerson" and not by his legal name of "Brooks L. Dickerson."[39] The United States Court of Appeals for the Fifth Circuit held that the use of "Louie Dickerson" by Cornerstone was sufficient under Mississippi law, that Peoples Bank was on "inquiry notice" that a financing statement could be filed under the name "Louie Dickerson," and that Peoples Bank had actual notice that Dickerson was known by both "Louie Dickerson" and "Brooks L. Dickerson" because he was identified by both names in the bank's files. The decision in this case has been heavily criticized by commentators.[40]

Compare the result of this case with *Clark v. Deere and Company (In re Kindernecht),*[41] in which the financing statement identified the debtor as "Terry J. Kindernecht." The full legal name of the debtor was "Terrance Joseph Kindernecht." The United States Court of Appeals for the Tenth Circuit held that "Terry" was a mere nickname, and that since the financing statement did not use the debtor's actual legal name, the financing statement was ineffective.[42] Presumably the Tenth Circuit would have decided the *Peoples Bank v. Bryan Brothers Cattle* case differently than the Fifth Circuit.

Because of the lack of guidance on names of individuals under Revised Article 9, four states—Texas, Tennessee, Nebraska and Virginia—have adopted non-uniform amendments to their versions of Article 9 to address this issue.

B. Names on Driver's Licenses

One of the main goals of the 2010 Amendments was to provide more specificity about individual names. Sections 9-503(a)(4)-(5) of the 2010 Amendments provide two alternatives for states to adopt regarding names. Alternative A, known as the "only if" approach, provides that the debtor's name on a financing statement is sufficient only if it is the same as the name on the debtor's driver's license. Alternative B, known as the "safe harbor" approach, provides that the debtor's name on a financing statement is sufficient if the name on the financing statement is the same as the name on the debtor's driver's license, if the financing statement provides the individual name of the debtor, or if the financing statement provides the surname and first personal name of the debtor. In other words, under Alternative B, the name on the debtor's driver's license is always sufficient, but there may be other names that also will work.

Some of the issues in relying on drivers licenses are obvious; for example, names change because of a change in marital status, and drivers' licenses expire. Other possible problems are not so obvious; for example, suppose that the state agency issuing drivers' licenses can accommodate the use of accented characters (for example, René, Zoë, Tomäs) but the filing office is more limited and does not use recognize accented characters.[43] But lenders, including the American Bankers Association, have taken the position that the certainty of being able to look at a driver's license, and the facts that most people carry a driver's license, and are accustomed to showing the driver's license as proof of identification, more than compensate for the potential problems of relying on the debtor's driver's license. Most states that have enacted the 2010 Amendments have adopted Alternative A. So it is likely that Mississippi will adopt Alternative A.

What does Mississippi law provide regarding names on drivers' licenses? Under the Highway Safety Patrol and Driver's License Law of 1938,[44] the Mississippi Department of Public Safety has the responsibility for issuing drivers' licenses. The Mississippi statutes regarding drivers' licenses do not specify how the licensee's name must be stated. The statutes only state that the application must state the applicant's "name"[45]. The Driver's License Manual issued by the Mississippi Department of Public Safety states that an application for a driver's license must contain the applicant's "full name," and requires that an applicant submit both a Social Security card and a birth certificate.[46] However, the Department of Public Safety does not have a written policy about whether the name on the Social Security card or the name on the birth certificate should be used. An informal survey by the author shows that on many drivers' licenses, the middle initial is abbreviated, which would be different from the birth certificate. Abbreviating the middle name arguably is not the debtor's "exact full legal name," which would have the middle name spelled out. In other words, a name that was not sufficient under the current version of Article 9 because the middle initial is abbreviated may be deemed to be sufficient under the 2010 Amendments because the debtor's driver's license shows the middle initial abbreviated.

Suppose that the debtor's driver's license has the middle initial abbreviated, and the secured party instead uses the debtor's full legal name with the middle name spelled out. Would the full legal name be deemed sufficient? Arguably the full name would not be deemed sufficient if it varies from the debtor's driver's license.

Hopefully the procedures of the Mississippi Department of Public Safety and the Mississippi Secretary of State's office will be reviewed for possible inconsistencies in procedures regarding names before the 2010 Amendments become effective in Mississippi.

C. Identification Cards

In addition to drivers' licenses, the Mississippi Department of Public Safety issues identification cards.[47] The 2010 Amendments state in a Legislative Note that if a state issues both drivers' licenses and identification cards, and a person can hold either but not both, that any reference to "driver's license" in the 2010 Amendments should include "driver's license or identification card."[48] Based on informal conversations with officials of the Mississippi Department of Public Safety, the policy of the Department is that one cannot hold both an identification card and a driver's license at the same time. So the change suggested by the Legislative Note needs to be made in Mississippi.

A third alternative to Alternative A or Alternative B in the 2010 Amendments, of course, is not to change the current requirements for individual names, and hope that courts get it right. Given that the courts have struggled with individual names since the adoption of Revised Article 9, and arguably got it wrong in the *Peoples Bank v. Bryan Brothers Cattle* case which purports to apply Mississippi law, hopefully the Mississippi Legislature will act to clarify Mississippi law.

Conclusion

In connection with considering the 2010 Amendments, the procedures of the Mississippi Department of Public Safety and the Mississippi Secretary of State's office should be coordinated to ensure a uniform method of names in drivers licenses and identification cards, and to ensure that names on drivers' licenses and identification cards issued by the Department of Public Safety are searchable in the Secretary of State's database of financing statements. The issue of whether common-law trusts that have a business purpose and that file a trust agreement are registered organizations also should be considered.

[1] *See* MISS. CODE ANN. § 75-9-109 (2002 & Supp. 2011) (scope of UCC).

[2] http://www.ali.org/00021333/UCC9%20amendments%202010%20-%20final%20text.pdf. In this article, the 2010 Amendments will be cited as "Proposed U.C.C. § __ (2010)." An excellent summary of the 2010 Amendments is by Edwin E. Smith, *A Summary of the 2010 Amendments to the Official Text of Article 9 of the Uniform Commercial Code*, Commercial Law Newsletter of the Business Law Section of the American Bar Association, Fall 2010 edition, pages 4-9, available at https://apps.americanbar.org/buslaw/blt/content/2011/01/0004a.pdf.

[3] MISS. CODE ANN. § 75-9-702(a). The Uniform Law Commission urged all states to adopt Revised Article 9 by the uniform date of July 1, 2001, and predicted "horrendous complications" if all states did not achieve this date. *See* http://www.nccusl.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UCC%20Article%209. Alabama, Connecticut, Florida and Mississippi did not adopt Revised Article 9 by the July 1, 2001 target date. Revised Article 9 became effective in Connecticut on October 1, 2001 and effective in Mississippi, Alabama and Florida on January 1, 2002. To the best of the author's knowledge, no "horrendous complications" occurred as a result of the delay. While there are some variations between the uniform version of Revised Article 9 and the version enacted by Mississippi, all references to Revised Article 9 in this article will refer to the version of Revised Article 9 as in effect in Mississippi.

[4] According to the website of the Uniform Law Commission, as of November 6, 2011, the following states have adopted the 2010 Amendments: Connecticut, Indiana, Minnesota, Nebraska, Nevada, North Dakota, Rhode Island, Texas, and Washington. The 2010 Amendments have been introduced in the District of Columbia, Kentucky, Massachusetts, Oklahoma, and Puerto Rico.

[5] Special rules exist for, among other types of collateral: fixture filings and timber to be cut (MISS. CODE ANN. § 75-9-301(3) (2002 & Supp. 2011)); as-extracted collateral (*id*. § 75-9-301(4)); certificates of title (*id.* § 75-9-303); and letter of credit rights (*id.* § 75-9-306.)

[6] *Id.* § 75-9-301(1).

[7] *Id.* § 75-9-307(e).

[8] *Id.* § 75-9-102(a)(70).

[9] *Id.* § 75-9-503(a)(1).

[10] Proposed U.C.C. § 9-102(a)(68) (2010).

[11] *Id.* § 9-102(a)(71).

[12] *Id.* § 9-102(a)(68).

[13] *Id.* § 9-503(a)(1).

[14] MISS. CODE ANN. § 75-1-201(a)(25) (2002 & Supp. 2011) (definition of an "organization" is "a person other than an individual").

[15] *Id.* § 75-9-307(b)(2).

[16] *Id*. § 75-9-307(b)(3).

[17] Proposed U.C.C. § 9-102 cmt. 11 (2010).

[18] MISS. CODE ANN. §§ 79-15-1 to -29 (2009 & Supp. 2011).

[19] Proposed U.C.C. § 9-102 cmt. 11 (2010).

[20] *Id.* § 9-307 cmt. 2. The beneficiary of the trust is a "debtor" with regard to its beneficial interest in the trust, but the trustee is deemed the owner of the trust property. *Id. See also* MISS. CODE ANN. § 91-9-2(3)(2004 & Supp. 2011) ("Title to any property acquired by the trust shall be deemed to be vested in the trustee. Title so acquired can be conveyed only by the trustee.").

[21] MISS. CODE ANN. § 75-1-201(a)(27) (2002 & Supp. 2011).

[22] Proposed U.C.C. § 9-102(a)(71) (2010).

[23] *Id.* § 9-102(a)(68)(B).

[24] MISS. CODE ANN § 75-1-201(a)(25)(2002 & Supp. 2011).

[25] Proposed U.C.C. § 9-102 cmt. 11 (2010).

[26] *Id.*

[27] MISS. CODE ANN. §§ 91-9-1, 91-9-7 (2004 & Supp. 2011).

[28] Proposed U.C.C. § 9-102 cmt. 11 (2010).

[29] *See id.* § 75-9-307(b) (no change from Revised Article 9).
[30] MISS. CODE ANN. § 75-9-503(a)(3)(A)(2002 & Supp. 2011).
[31] *Id.*
[32] *Id.* § 75-9-503(a)(3)(B).
[33] Proposed U.C.C. § 9-503(h)(1) (2010).
[34] *Id.* § 9-503(h)(2).
[35] *Id.* § 9-503(a)(3)(B). The national standard form of financing statement is being revised contemporaneously with the 2010 Amendments to provide a place to indicate that the debtor is a trust or a trustee.
[36] MISS. CODE ANN. § 9-503 cmt. 2.
[37] The uniform version of Section 9-521 includes this national form, but Mississippi has a non-uniform version of Section 9-521 that provides that a filing office may not refuse to accept the national form, but does not include the form itself. The national standard form of UCC financing statement can be viewed on the website of the International Association of Commercial Administrators at http://www.iaca.org/downloads/forms/ucc1.pdf.
[38] 504 F.3d 549 (5th Cir. 2007) (applying Mississippi law).
[39] Arguably "Brooks L. Dickerson" is the not the debtor's full legal name either since the middle name is abbreviated, but it is closer than "Louie Dickerson."
[40] *See, e.g.*, Stephen L. Sepunick & Kristen Adamas, ABA Section of Business Law, *Spotlight*, http://www.law.gonzaga.edu/Centers-Programs/Files/clc/spotlight/Spotlight_March2008.pdf, at 4-7 (March 2008) (case is "patently wrong"); Michael Weissman, What's in a Name? Don't Count on the Courts to Follow the Rules, RMA Journal (March 2008), http://findarticles.com/p/articles/mi_m0ITW/is_6_90/ai_n31396424/ ("decision of the Fifth Circuit is a flawed reading of the UCC"); Barkley Clark & Barbara Clark, *UCC Revisions Committee Wrestles with Individual Debtor Name Problem*, http://www.eagle9.com/newsletter.cfm?page=v6_i1_A_UCC_Article (decision is "horrid," "reflects a lack of understanding about individual debtor names under Article 9," and "is way off base").
[41] 308 B.R. 71 (BAP 10th Cir. 2004) (applying Kansas law).
[42] *Id.* at 74.
[43] Legislative Note 2 to the 2010 Amendments recognizes this issue and recommends that states that adopt Alternative A should investigate the possibility of inconsistency in the use of special characters and other potential technological limitations.
[44] MISS. CODE ANN. §§ 63-1-1 to -71 (2004 & Supp. 2011).
[45] *Id.* § 63-1-19(1)(a).
[46] http://www.dps.state.ms.us/dps/dps.nsf/webpageedit/LicenseManuals_DriversLicenseManuals_DL-manualPDF/$FILE/Driver%20License%20Manual%20March%202011.pdf?OpenElement (March 2011 edition), at page 9.
[47] http://www.dps.state.ms.us/dps/dps.nsf/webpageedit/LicenseManuals_DriversLicenseManuals_DL-manualPDF/$FILE/Driver%20License%20Manual%20March%202011.pdf?OpenElement (March 2011 edition), at page 15.
[48] Proposed U.C.C. § 9-503 leg. note 3 (2010).

Filing Changes Under the Mississippi Revised Limited Liability Company Act

By Thomas H. Riley, III, Esq.

The Mississippi Revised Limited Liability Company Act[49] (the "Revised Act") was adopted by the Mississippi Legislature in the Spring of 2010. It was applicable to all Mississippi limited liability companies ("LLCs") formed on or after January 1, 2011. LLCs formed prior to 2011 could "opt in" to be governed by the Revised Act at that time.[50] Starting on January 1, 2012, the Revised Act will apply in its entirety to all LLCs regardless of their date of formation.[51]

The Revised Act is a comprehensive revision of the 1996 LLC Act. It updates and alters nearly every section of the law. An excellent summary of those changes can be found under the Policy and Research tab of the website of the Mississippi Secretary of State. (www.sos.ms.gov). The purpose of this article, however, is to inform the practitioner of some of the practical changes in filing procedures and forms arising under the Revised Act.

The new forms for LLC filings will be on the Secretary of State website beginning January 1, 2012. Many of the forms will be unchanged. Others, however, will have changes ranging from slight to significant. The existing form numbers will, to the extent possible, remain the same. There will also be new forms designed to capture the requirements of the Revised Act. Some of these are already in use.

LLC Annual Reports

Several of the provisions of the Revised Act were applicable to all LLCs beginning January 1, 2011. Perhaps the most important of these was the requirement that all LLCs formed prior to the January 1, 2010 must file an annual report with the Office of the Mississippi Secretary of State.[52] This annual report is similar to the one that has been filed by corporations since 1989. Like the corporate annual report, the report for LLCs is due each year on or before April 15. The annual report is free for Mississippi LLCs. Foreign LLCs must pay a fee of $250.[53]

The annual report for all LLCs must be completed online at the Secretary of State's website. The link for filing the LLC annual reports is on the Business Services page. The company must know its business ID number in order to begin the filing process. Once the business ID number has been entered, the filing system will pull up a copy of the annual report for that company. Those who have utilized this process are aware that there is very little information preprinted on the report this year. The company representative must fill in the rest of the information. It is important to note that the report may be filed by any authorized representative of the LLC.[54] This includes attorneys or accountants for the company.

After the information has been entered, the filer must press the update button. At this point, the annual report has been electronically filed for a Mississippi LLC. A copy may be printed but nothing need be sent to the Secretary of State. A foreign LLC will be instructed to print off a paper copy of the report and mail it in, along the fee of $250, to the Secretary of State's office.

Failure to file an annual report will result in the LLC being administratively dissolved.[55] And foreign LLCs will have their registrations revoked. Administrative dissolution this year will take place on December 17, 2011. A notice of intent to dissolve was mailed on October 3, 2011 to approximately 55,000 LLCs which failed to file the annual report. Pursuant to Mississippi Code Section 79-29-823, these companies must file the report within 60 days of the notice or face administrative dissolution.[56]

Annual reports may be filed in any calendar year beginning on January 1st. As noted above, they must be filed by utilizing the online filing system. Reminders will be sent to LLCs via email. There will also be reminders in the professional publications for manufacturers, attorneys, and accountants.

Reinstatement Following Administrative Dissolution

LLCs which are administratively dissolved may be reinstated.[57] An LLC that is administratively dissolved, or a foreign LLC whose registration is revoked, must submit the Application for Reinstatement, a clearance letter from the Mississippi Department of Revenue, and a copy of any annual report which is delinquent. The fee for reinstatement is $50 plus the fee for any annual reports. The form for reinstatement will be available on the Secretary of State's website in December 2011.

Starting in 2012, LLCs may also be administratively dissolved/revoked for failure to have a valid registered agent or for being tax delinquent.[58] The reinstatement procedure will be the same except that the LLC will be required to name an agent or provide proof of good standing with the Department of Revenue.

Voluntary Dissolution

The Revised Act also changes the manner in which LLCs dissolve voluntarily. Under the prior version of the LLC Act, dissolving an LLC was a two-step process. First, a Certificate of Dissolution was filed. After the LLC winding up occurred, a Certificate of Cancellation was filed which formally ended the LLC. This caused a great deal of confusion as many LLCs never filed the second document.

This process has now been eliminated. Dissolution is now accomplished by filing a single form.[59] After filing, the LLC continues winding up including settling claims and distributing assets. While several things can stop or reverse this process, the LLC is considered dissolved as of the date of filing the Certificate of Dissolution.

Revocation of Dissolution

An LLC that files for dissolution may revoke that form and reinstate under the Revised Act. The prior version of the LLC Act did not allow an LLC which filed the initial Certificate of Dissolution to put the company back in good standing, even if the final Certificate of Cancellation was never filed. There was simply no mechanism to do so under the prior version of the LLC Act. Consequently, companies that had a change of circumstances could not resurrect their LLC.

The Revised Act allows LLCs to revoke a voluntary dissolution within 120 days after the filing of a Certificate of Dissolution.[60] The statute contains the voting requirements to reinstate. The revocation relates back *nunc pro tunc* to the date of the dissolution. The form for revocation of an LLC dissolution will be available on the Secretary of State's website on January 1, 2012.

The Revised Act was written to address the needs of the growing number of LLCs doing business in Mississippi. It revises outdated practices and simplifies filing. In the process it treats LLCs

more like corporations, eliminating the need for the practitioner to follow a different set of rules for each type of entity. Attorneys with LLC clients will need a firm grasp of the Revised Act as January 1, 2012 approaches.

[49] MISS. CODE ANN. §§ 79-29-101 – 1317 (2010).
[50] *Id.* § 79-29-1309.
[51] *Id.* § 79-29-1301.
[52] *Id.* § 79-29-1303.
[53] *Id.* § 79-29-1203.
[54] *Id.* § 79-29-207.
[55] *Id.* § 79-29-821.
[56] *Id.* § 79-29-823.
[57] *Id.* § 79-29-825.
[58] *Id.* § 79-29-821.
[59] *Id.* § 79-29-801.
[60] *Id.* § 79-29-829.

Look Who's Not Coming to Dinner: Felons and Bad Actors

By Wes Scott, Esq.

In its initial action to implement Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the United States Securities and Exchange Commission (the "SEC") recently issued proposed amendments to Rule 506 of Regulation D ("Rule 506") of the Securities Act of 1933, as amended (the "Securities Act"), to disqualify private placements that involve certain felons and other "bad actors" from the safe harbor of Rule 506.

The proposed amendments are available here, and the corresponding SEC press release and fact sheet are available here.

What Is the Safe Harbor of Rule 506?

Rule 506 permits the sale of an unlimited dollar amount of securities to an unlimited number of "accredited investors" and up to 35 "non-accredited investors," provided that the conditions of Rule 506, including the prohibition against a general solicitation of interest and the provision of a sufficient amount of information to non-accredited investors, are satisfied. Rule 506 does not currently have any "bad actor" disqualification provisions which prohibit issuers and their directors, officers, and shareholders, underwriters, placement agents and other finders from participating in private placements if they have been convicted of, or are subject to court or administrative sanctions for, securities fraud or other violations of certain laws.

What Would Be the Effect of the Proposed Amendments?

The proposed amendments would disqualify private placements that involve certain felons and other "bad actors" from reliance on the safe harbor provided by Rule 506.

Are the Proposed Amendments Similar to any Other Federal Securities Laws?

Yes. According to the SEC, the proposed amendments must be substantially similar to the disqualification provisions of Rule 262 of Regulation A of the Securities Act. Regulation A provides for a limited offering exemption that allows companies which are not required to file periodic reports with the SEC to make public offerings of securities that do not exceed $5 million in any twelve-month period.

To Whom Would the Proposed Amendments Apply?

The proposed amendments to Rule 506 would apply to the following "covered persons:"

- The issuer, any predecessor of the issuer or any affiliated issuer;
- Any director, officer, general partner or managing member of the issuer;
- Any beneficial owner of 10% or more of any class of the issuer's equity securities;
- Any promoter connected with the issuer in any capacity at the time of the private placement;
- Any person that has been or will be compensated, whether directly or indirectly, for solicitation of purchasers in a private placement; and

- Any director, officer, general partner or managing member of any compensated solicitor.

For purposes of the proposed amendments, the term "officer" would be defined as it is in Rule 405 of the Securities Act which definition provides that an "officer" includes "a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer and any person routinely performing corresponding functions with respect to any organization."

The SEC made clear in the proposed amendments that a disqualification event relating to an affiliated issuer that occurred before the affiliation would not be a disqualifying event for the issuer if the affiliated issuer is not (i) in control of the issuer or (ii) under common control with the issuer by a third party that controlled the affiliated entity at the time of such disqualifying event. The proposed amendments also provide that investment advisers of issuers, or the directors, officers, general partners, or managing members of such investment advisers are not covered by the proposed amendments.

What Are the Disqualifying Events for Covered Persons?

The proposed amendments set forth seven categories of disqualifying events. A disqualifying event generally occurs when a covered person:

- has been convicted of any felony or misdemeanor arising out of the purchase or sale of any security, the making of any false filing with the SEC or the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities. The proposed amendments provide for a five-year look-back period from any sale made pursuant to a private placement (a "Sale") for issuers and their predecessors and affiliated issuers and a ten-year look-back period from a Sale for other covered persons.
- is subject to any order, judgment or decree of any court which enjoins or restrains such covered person from engaging or continuing to engage in any conduct or practice arising out of the purchase or sale of any security, the making of any false filing with the SEC or the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities. The proposed amendments provide for a five-year look-back period from a Sale.
- is subject to a final order of certain state and federal regulators (including state securities commissions but excluding the SEC) that, at the time of a Sale, (i) bars such covered person from (A) association with an entity overseen by such regulators, (B) engaging in the business of securities, insurance or banking, or (C) engaging in savings association or credit union activities or (ii) constitutes a final order based upon a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct. The proposed amendments provide for a ten-year look-back period from a Sale.
- is subject to an SEC disciplinary order that, at the time of a Sale, (i) suspends or revokes such covered person's registration as a broker, dealer, municipal securities dealer or investment adviser, (ii) places limitations on the activities, functions or operations of such covered person or (iii) bars such covered person from being associated with any entity or from participating in the private placement of any penny stock.
- is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national securities

association for any conduct inconsistent with just and equitable principles of trade.

- has filed as a registrant or issuer, or was or was named as an underwriter in, any registration statement, including a Regulation A offering statement, filed with the SEC that, within five years before a Sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption or is at the time of a Sale the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued.

- is subject to a United States Postal Service false representation order entered within five years of a Sale, or is at the time of a Sale subject to a temporary restraining order or preliminary injunction due to conduct that is alleged to constitute a scheme or device for obtaining money or property through the United States mail by means of false representations.

Would There be any Exceptions from and Waivers of Disqualification?

Yes. The proposed amendments provide for a reasonable care exception that would apply if an issuer can demonstrate to the SEC that it did not know and, in the exercise of reasonable care, could not have known of a disqualification arising from the participation of a covered person who is a felon or bad actor in a private placement. The purpose of the reasonable care exception is to preserve the cost-effective method of raising capital, particularly for small businesses, afforded by Rule 506 while simultaneously effectuating the intent of the proposed amendments. To rely upon the reasonable care exception, however, an issuer must establish that it exercised reasonable care which, according to the SEC, would necessarily include a factual inquiry, the nature of which would depend upon the facts and circumstances of the issuer and the other participants.

In addition, an issuer may also seek a waiver from disqualification of its private placement by the SEC if the issuer is able to demonstrate good cause that the exemption from registration afforded by Rule 506 should not be denied.

How Are Completed, Future and Ongoing Private Placements Affected?

The proposed amendments would not affect any private placement that was completed before the effective date of the proposed amendments. Private placements that commence after the effective date of the proposed amendments, however, would be subject to disqualification for all disqualifying events that occurred within the relevant look-back periods, regardless of whether the events occurred before enactment of the Act. With respect to continuous private placements, application of the disqualification provisions would apply only to those sales of securities made in reliance on Rule 506 after the proposed amendments become effective. If disqualifying events occur during the conduct of a continuous private placement, only those sales that were consummated after the disqualifying event occurred will be impacted.

Is There a Transition or Phase-in Period?

The proposed amendments do not contemplate any phase-in period or delay before issuers would be required to comply with their provisions.

Would There be any Amendments to Form D?

Yes. The proposed amendments would require issuers who are claiming a Rule 506 exemption to certify on Form D that the private placement is not disqualified.

When Were Comments due to the SEC?

Comments were due on July 14, 2011 though, according to the SEC's website, comments have been submitted as late as October 4, 2011.

You Know How to Whistle, Don't You? SEC Incentivizing Whistleblowers Monetarily

By Wes Scott, Esq.

The United States Securities and Exchange Commission (the "SEC") recently promulgated final rules that implement the whistleblower program mandated by Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). The final rules are designed to reward individuals who voluntarily provide the SEC with original information that leads to successful enforcement actions under the federal securities laws which result in monetary sanctions in excess of $1 million. Despite the well-voiced concern that allowing whistleblowers to report directly to the SEC may undercut internal compliance programs, the final rules do not mandate that whistleblowers initially report misconduct to their companies though they do provide for additional, new incentives for whistleblowers to utilize these programs. According to SEC Chairman Mary Schapiro, the final rules strike "the correct balance — a balance between encouraging whistleblowers to pursue the route of internal compliance when appropriate — while providing them the option of heading directly to the SEC."

The final rules are available here, and the corresponding SEC press release and fact sheet are available here.

Who Is a Whistleblower?

A whistleblower is an individual who, acting alone or in conjunction with other individuals, voluntarily provides the SEC with original information that relates to a possible violation of the federal securities laws which has occurred, is ongoing or is about to occur. The SEC made clear that only natural persons can claim whistleblower status, thereby excluding entities such as non-governmental organizations and/or worker representatives, including labor unions.

When Is a Submission Voluntary?

A submission will be considered voluntary if the whistleblower submits information before a request, inquiry or demand that relates to the subject matter of the submission is directed to the whistleblower or his or her representative by the SEC, the Public Company Accounting Oversight Board (the "PCAOB"), a self-regulatory organization such as the Financial Industry Regulatory Authority, Inc. ("FINRA"), Congress, any other authority of the federal government, a state Attorney General or a state securities regulatory authority. Notably, a submission may be made after any of the aforementioned authorities launches an investigation, but, to be considered voluntary, the submission must be made before the whistleblower, or his or her representative, is directly contacted for information.

What Is Original Information?

Generally, original information is information which is derived from the independent knowledge or independent analysis of the whistleblower and of which the SEC is not already aware or knowledgeable. Information that is derived solely from a governmental investigation or from a company's internal investigation will not be deemed original information. A submission that "materially adds" to the information already in the possession of the SEC or that "significantly contributes" to the success of a claim brought by the SEC, however, may be deemed to be original information.

What Is a Possible Violation and what is the Reasonable Belief Standard?

According to the final rules, a "possible violation" need not be material, probable or even likely; rather, it must only have a "facially plausible relationship to some securities law violation . . . ." Additionally, the "reasonable belief" standard requires that an individual possess a subjectively genuine belief that the information submitted to the SEC demonstrates a possible violation and that such belief would reasonably be held by a similarly situated individual.

What Protections and Incentives Are Afforded to a Whistleblower?

The Act provides that employers may not discharge, demote, suspend, threaten, harass or otherwise discriminate against whistleblowers as a result of providing information to the SEC or initiating, testifying in or assisting with any investigation or judicial or administrative action launched by the SEC. In addition to the protections of the Act, the final rules provide that a whistleblower who voluntarily provides the SEC with original information that leads to the successful enforcement by the SEC of a legal action brought pursuant to the federal securities laws will receive an award that ranges between 10% and 30% of the total monetary sanctions collected by the SEC if the sanctions exceed $1 million. Regardless of whether the award requirements are satisfied or whether an enforcement action ultimately proves successful, to receive whistleblower status and, consequently, protection from retaliation, a whistleblower must possess a reasonable belief that his or her company is possibly violating federal securities laws; accordingly, individuals who submit frivolous reports would not be able to claim or avail themselves of protected status.

Must Information Be Submitted Directly to the Company?

No. Although they may do so, whistleblowers need not initially report original information through an internal compliance program to be eligible for an award. Thus, the final rules afford whistleblowers with the option to directly report misconduct to the SEC or, alternatively, to report misconduct to their respective company. In response to public concern regarding the efficacy of internal compliance programs due to the ability of whistleblowers to directly report misconduct to the SEC, the SEC sought to further encourage whistleblowers to utilize internal compliance programs before reporting their claims to the SEC by adding new incentives in the final rules which include the following:

- In determining the size of an award, the SEC may pay a larger award to a whistleblower who reports a possible violation through a company's internal compliance program rather than reporting directly to the SEC and smaller awards to a whistleblower who obstructs or interferes with the operations of a company's internal compliance programs.

- A whistleblower can receive an award for reporting information internally when the company subsequently self-reports the possible violation discovered as a result of the whistleblower's internally-reported information. The whistleblower would then be given credit by the SEC for all of the information self-reported by the company to the SEC.

- The date of a whistleblower report to the SEC relates back to the date that the whistleblower reported a possible violation internally, provided, however, that the whistleblower submits the same information to the SEC within 120 days of the initial disclosure to the company.

Acknowledging the concerns regarding the undermining of internal compliance programs while simultaneously advocating for the aforementioned incentives, SEC Chairman Schapiro stated that "incentivizing – rather than requiring – internal reporting is more likely to encourage a strong internal compliance culture."

Are Certain Individuals Precluded from Receiving Awards?

Potentially. The final rules provide that attorneys who provide the SEC with information obtained through a communication subject to the attorney-client privilege or as a result of legal representation would not be eligible for an award unless disclosure of such information is waived or would be permitted by the SEC's attorney conduct rules, applicable state statutes and local bar rules. Officers, directors, auditors and compliance personnel and other persons in similar roles would not be eligible to receive awards for information received in these positions unless they have a reasonable basis to believe that:

- disclosure of the information is necessary to prevent the company from engaging in conduct that is likely to cause substantial injury to the financial interests of the company or its investors; or
- the company is engaging in conduct that will impede an investigation of the misconduct; or
- at least 120 days has passed since they provided the information to senior responsible persons at the company or to their supervisor or 120 days has passed since they received the information at a time when such senior responsible persons were already aware of the information.

Moreover, employees of law enforcement, the SEC, the Department of Justice, the PCAOB and self-regulatory organizations, as well as members of foreign governments, may not claim whistleblower status.

Does the SEC Aggregate Sanctions that it Collects?

Yes. In determining whether the $1 million threshold has been satisfied, the SEC will aggregate sanctions from separate proceedings if the proceedings were based upon the same nucleus of operative facts. More specifically, the award may be based upon amounts collected in actions brought by the SEC as well as "related actions," including judicial or administrative actions brought by the U.S. Department of Justice, a state attorney general in a criminal case or a self-regulatory organization such as FINRA.

Do Limitations on Awards Paid to Wrongdoers Exist?

Yes. Unless a whistleblower is convicted of a criminal violation that is related to an action brought by the SEC or a "related action," the final rules do not necessarily disqualify a whistleblower who has engaged in fraud or other misconduct, even if it is the same fraud or misconduct that the whistleblower is reporting. The degree and nature of the fraud or misconduct is a factor that the SEC will consider in determining the amount of the award to be paid to a whistleblower. Notably, though, the SEC does not provide amnesty to whistleblowers and may bring an action against a whistleblower based upon the whistleblower's conduct in connection with violations of federal securities laws.

When did the Final Rules Become Effective?

Although the SEC's whistleblower program was created on July 21, 2010 when President Obama signed the Act into law, the final rules which implement the program became effective on August 12, 2011. The SEC's whistleblower website, which can be found here, is currently active, and, according to the SEC, as of May 2011, the initial

staffing of the Whistleblower Office in the Division of Enforcement was complete and the $450 million Investor Protection Fund from which awards to whistleblowers are to be paid was fully funded. Thus, companies should be cognizant that the SEC is and has been fully engaged in operating the whistleblower program.

What Is the Potential Impact of the Final Rules?

The final rules will most likely spur an uptick in the volume of information reported to the SEC. Ultimately, the true impact of the final rules upon (i) the quality of reports received by the SEC and the SEC's ability to efficiently process those reports and (ii) internal compliance programs and the ability of companies to identify and remediate promptly fraud or other misconduct will significantly depend upon the SEC's prospective implementation and administration of the final rules.

Are There any Practical Measures that Can Be Implemented or Reinforced to Encourage Internal Reporting?

Yes. The following practical measures, among others, may prove beneficial for a company seeking to encourage its employees to report internally through existing compliance programs rather than directly to the SEC:

- **Audit Existing Programs**: Companies should be deliberative and measured in their respective responses to the final rules. Before taking any remedial action, companies should conduct thorough audits of their internal compliance programs and assess their effectiveness and efficiency. In the event that an employee submits information to the SEC, the existence, effectiveness and efficiency of a program may likely affect the SEC's decision that an investigation or enforcement action is warranted or that a subject company has cured any fraud or other misconduct such that no investigation or enforcement action is warranted.

- **Culture of Compliance**: Companies should embrace and implement a top-down approach to compliance whereby executive officers and other recognized leaders within the company address and emphasize the importance of maintaining an effective and robust culture of compliance. This message should be regularly communicated and reemphasized during employee meetings and evaluation processes and through well-placed copies of policies and guidelines, internal correspondence and emails.

- **Incentives**: Because the motivations of whistleblowers are usually varied and complex, the quality of, and potentially more importantly the incentives offered by, an internal compliance program may significantly impact whether a whistleblower chooses to report (i) directly to the SEC or (ii) to their company. Although the final rules seek to encourage whistleblowers to utilize internal compliance programs, whistleblowers who may be driven solely by economic motivations may opt to report directly with the SEC to ensure their ability to claim and collect sizeable awards. Accordingly, in an effort to keep potentially sensitive information within their respective four walls, companies should consider providing competitive financial incentives and/or other perquisites.

- **Compliance as Component of Performance Evaluation**: Management should consider including a compliance evaluation component in annual performance reviews. This evaluation mechanism would reinforce to employees that they are on the front lines of the company's compliance efforts and would serve as notice that company policies and guidelines apply at all levels of the company and are not merely theoretical strictures that have no practical application.

- **Anonymous Hotlines**: Companies should strive to make what may likely be a trying undertaking (i.e., whistleblowing) more comfortable and less stressful for its employees. To this end, many companies have implemented and internally and externally advertised anonymous hotlines to facilitate compliance and reporting. This mechanism for reporting is particularly favored by employees due to its most distinctive feature: anonymity.

- **Prompt, Thorough and Decisive Responses to Submissions**: Few things more effectively display a company's desire to maintain a culture of compliance than prompt, thorough and decisive investigatory and remedial action regarding reported violations; conversely, few things more effectively undermine an internal compliance program and potentially foster non-compliance amongst employees than an apathetic, nonchalant response to whistleblowing. When compliance reports are submitted, a company should investigate promptly and thoroughly, communicate regularly and effectively with affected employees and, if necessary, promptly implement corrective action targeted to remediate the cause for the report.

About the Editor

Ryan Pratt joined the Mississippi Secretary of State's Office in January 2011, and currently serves as Assistant Secretary of State, Policy and Research Division. Ryan was previously an associate at Butler, Snow, O'Mara, Stevens, and Cannada, PLLC, where he practiced governmental and public finance law. A native of Jackson, Ryan received a Bachelor of Arts degree in Psychology from the University of Mississippi and a Juris Doctorate from the University of Mississippi School of Law, where he was Managing Editor of the *Mississippi Law Journal*. Ryan is an adjunct professor of legal writing at the Mississippi College School of Law, and is a 2010 graduate of Leadership Mississippi. Ryan and his wife Loren live in Madison County.

How to Contribute

Persons interested in submitting news, a proposal or an article for publication in The Mississippi Business Law Reporter should submit it by e-mail to the Editor, Ryan Pratt, at ryanlpratt@gmail.com. All news, proposals and articles are subject to review and approval by the Editor and Section Leadership.

When submitting an article, the article should be the original work of the author and must not have been previously published (unless proof of consent to reproduction can be provided). Articles shall not, to the best of the author's knowledge, contain anything which is libelous, illegal, or otherwise infringes upon anyone's copyright or other rights. Authors are responsible for the accuracy of all citations and quotations.

Articles should be arranged in the following order: (i) article title, (ii) author's name, (iii) acknowledgement of assistance, if applicable or desired, and (iv) text of the article. All contributions should be submitted in MS Word format.

A short biographical statement should also be provided at the time the article is submitted. The statement should include, at a minimum, the author's (i) current position, (ii) practice areas, (iii) professional affiliations. A head and shoulder photograph of the author(s) in color is requested but not required.

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C. Joyce Hall was admitted to the Mississippi Bar in 1987 and the Louisiana Bar in 1995. Her experience includes commercial transactions, public finance, corporate and health care law. Joyce has been recognized as one of Mississippi's 50 Leading Business Women and is a past recipient of Mississippi's Outstanding Young Lawyer. She is an active member of the American Bar Association, where she serves on the Health Law Section Council, and the Mississippi Bar Association where she is the chair of the Business Law Section.

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Thomas H. Riley, III, of Madison has served the Secretary of State's office for three years as the Assistant Secretary of State for the Business Services Division. His previous work experience includes twenty years as a trial attorney, in partnership in the Jackson-based Wilkins, Stephens & Tipton law firm and partnership in the Chicago-based Riley & Riley law firm. Riley is a graduate of the University of Notre Dame and earned his law degree from John Marshall Law School. He is a member of both the Illinois and Mississippi Bar Associations and is a member of the local bar associations in Hinds and Madison counties and in Chicago, Illinois.

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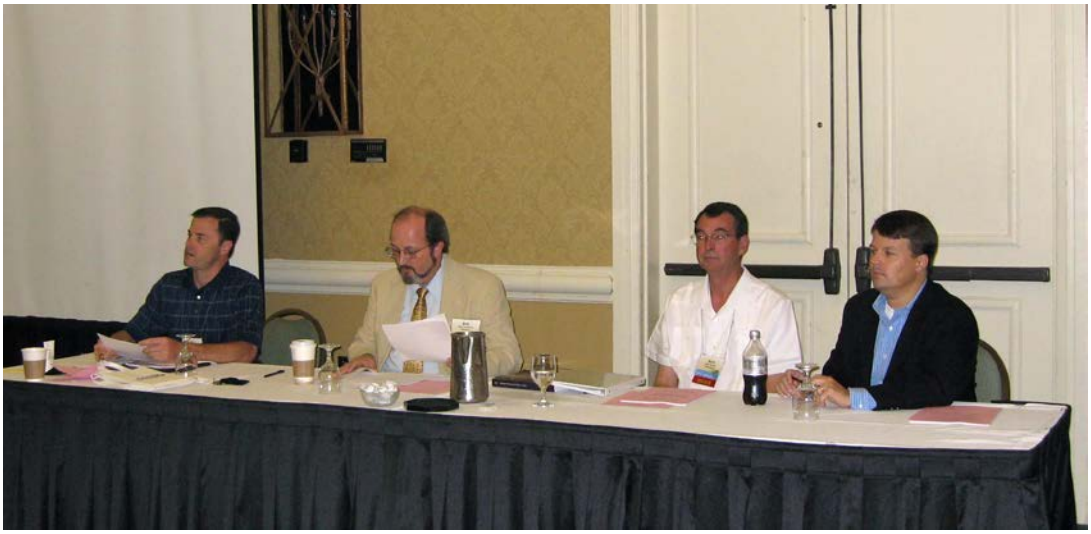
Wes Scott is an attorney in the Memphis office of Butler, Snow, O'Mara, Stevens & Cannada, PLLC. Wes focuses his practice on securities offerings and other corporate finance matters as well as public company compliance with the SEC and FINRA. Since 2009, he has represented both issuers, including real estate investment trusts and healthcare companies, and underwriters in the registration and/or sale of securities in excess of $1 billion. In addition, Wes advises public and private clients with respect to a variety of corporate matters including corporate governance, mergers and acquisitions and private placements of securities. Wes is an author of the Capital Markets and Securities Alerts which are published in the Press Room of Butler Snow's website and speaks at public events regarding securities regulation matters.

Member News



Presenters at the joint presentation of the Business Law and Health Law Sections of the Mississippi Bar at the 2011 Summer School for Lawyers.

Attendees of the joint presentation of the Business Law and Health Law Sections of the Mississippi Bar at the 2011 Summer School for Lawyers.

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The Business Law Section of the Mississippi Bar is on facebook!

If you are a facebook member go to our group page entitled "Business Law Section of the Mississippi Bar" which is at the following address:

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We will post news, announcements, and upcoming events on the page as well as pictures. We hope to see you there soon!

The Business Law Section of the Mississippi Bar has a listserv.

As a member of the Business Law Section you are automatically a member of the listserv.

To send a message to the following listserv email address:

BusinessLaw@listbox.com

LISTSERV RULES AND ETIQUETTE

TO MB LISTSERVE PARTICIPANTS:

Please review the listserve rules, etiquette and legal disclaimer below. This email is forwarded to participants on all MB listserves on a periodic basis to remind everyone of the rules and etiquette of MB listserves.

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- **When sending messages use a meaningful subject line.** State concisely and clearly the specific topic of the comments in the subject line. This is a time-saver for all participants. Listserve participants will know if something can wait. Also, if they are not interested in the subject matter they can delete the message.
- **Do not post commercial messages.** The cyberspace term for this is "spamming". Contact people directly with products, programs and services that you believe would be of interest to them.
- **Stick to the topics intended for discussion on the listserve.**
- **Be polite, professional and civil.** Do not challenge or attack others. The discussions on MB listserves are meant to stimulate conversation, not to create contention. If you have a conflict with an individual, please settle it by private email.
- **Include a signature tag on all messages.** Include your name, affiliation, location, and e-mail address. Include only the relevant portions of the original message in your reply, delete any header information, and put your response before the original posting.
- **Warn other list subscribers of lengthy messages.** Either in the subject line or at the beginning of the message body with a line that says "Long Message."
- **Do not post anything you do not want to be seen in public.** Remember that e-mail is very easily forwarded and reproduced and can show up anywhere. Do not post anything in a listserve message that you would not want the world to see or that you would not want anyone to know came from you.
- **All defamatory, abusive, profane, threatening, offensive, or illegal materials are strictly prohibited.**
- **Don't send meaningless messages with no content.** Messages such as "thanks for the information" or "me, too" to individuals--not to the entire list. Do this by using your e-mail application's forwarding option and typing in or cutting and pasting in the e-mail address of the individual to whom you want to respond.
- **Do not send administrative messages through the listserve.** Messages such as "remove me from the list", should be directed to Rene' Garner at rgarner@msbar.org
- **Use caution when discussing products.** Information posted on the listserve is available for all to see, and comments are subject to libel, slander, and antitrust laws.
- **Use virus detection/protection software.** Make sure you have and use virus detection/protection software on your PC. If you receive a email that has a virus please post a message to the listserve immediately with "WARNING VIRUS" in the subject line followed by an explanation.

- **Do not send attachments through MB Listserves.** Many virus are spread by way of attachments. If you wish to send an attachment to someone please email directly and DO NOT POST to listserve .

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Messages should not be posted if they encourage or facilitate members to arrive at any agreement that either expressly or impliedly leads to price fixing, a boycott of another's business, or other conduct intended to illegally restrict free trade. Messages that encourage or facilitate an agreement about the following subjects are inappropriate: prices, discounts, or terms or conditions of sale; salaries; profits, profit margins, or cost data; market shares, sales territories, or markets; allocation of customers or territories; or selection, rejection, or termination of customers or suppliers.

MB does not actively monitor the site for inappropriate postings and does not on its own undertake editorial control of postings. However, in the event that any inappropriate posting is brought to MB's attention, MB will take all appropriate action.

MB reserves the right to terminate access to any user who does not abide by these guidelines.