Corporate Articles

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An Interview With Graeme Tunbridge, Head of Medical Devices EU Policy—Medicines and Healthcare Products Regulatory Agency.

by Rachel V. Rose, JD, MBA

The Corporate and Association Counsel Division was fortunate to interview, Mr. Graeme Tunbridge, Head of Medical Devices European Union (EU) Policy at the Medicines and Healthcare products Regulatory Agency (MHRA) in the United Kingdom (UK). His main responsibility is leading the UK Government's input into negotiations on the revision of legislation on medical devices.

Prior to joining the MHRA in 2011, Graeme had extensive experience in the UK Department of Health, working in policy roles in areas including tobacco regulation, clinical commissioning and healthcare associated infections. He also spent 18 months as Private Secretary to the Secretary of State for Health and headed up the Department's Freedom of Information team.

Graeme has a Master's Degree in Biochemistry from the University of Oxford.

RR: Please share with us your career path evolution into your current role.

GT: I have been a civil servant in the UK Govenment for just short of ten years.. I joined the UK civil service graduate scheme after finishing my degree and spent seven years working at the UK Department of Health in a variety of policy and corporate roles. Three years ago I made the move to join the MHRA to lead the work I am doing now.

RR: Because the United State is not as complex as Europe in the its political structure, would you please explain how the European Union, European Parliament, European Commission, and an individual country's governing body interact?

In This Issue

Message from the Chair

by John Okray

I hope everyone is enjoying their summer. The division leadership is pleased to release another issue of *Corporate Articles* featuring insights from legal, regulatory, and governance professional across a diverse spectrum, including Mark Rogers, Founder and CEO of BoardProspects.com, Graeme Tunbridge, Head of Medical Devices EU Policy at the UK's Medicines and Healthcare Products Regulatory Agency, and Peter Hans, Co-Founder & CEO of Harvest Exchange Corp. Rachel Rose has also contributed an article discussing the basics of fraudulent transfers in bankruptcy cases and reverse stock splits. As always, members of the division are encouraged to submit an article for a future issue.

Division members are also encouraged to attend this year's FBA Annual Meeting and Convention, which will be in Providence, Rhode Island from September 4-6, 2014. There will be numerous CLE and networking opportunities available. Visit the FBA's website for registration information.

We would like to encourage division members to reach out to any member of the division's leadership about getting more involved, whether it is contributing an article, participating in a CLE program, or other activity. A directory of the division's incoming leadership can be found later in this issue. Finally, as my term as chair comes to an end, I would like to thank everyone who has contributed to the division and wish all of my colleagues the best of luck. ■

GT: It is very complicated and differs depending on the policy area – I can explain the situation for medical device regulation but when you step into different sectors, justice and financial regulation for example, the rules are slightly different. Essentially, the treaties that set up the EU govern which laws and policies are directed by the EU and which ones are dictated by the individual Member States. The area of medical devices is one whereby the EU has powers to introduce laws to govern the regulation of the products, based on the dual principles of safeguarding patients and supporting the free movement of goods across the EU. To complicate things further it is also an area that falls into what is known as "shared competence." That means that the EU and individual member states are both able to propose laws and policies in the area, but as soon as the EU decides to step into a particular area or sector, then the EU law takes precedence and Member States cannot introduce conflicting national rules. An example in medical devices is in relation to unique device identification, which in basic terms is a requirement to put barcodes on medical devices to make them traceable. As it currently stands, this is an area where the EU has not stepped into that regulatory space and so individual Member States are introducing their own approaches. In the revision of the legislation that is currently ongoing, the EU plan to introduce rules in this area and so all Member States will need to come into line with these in the future.

In terms of the various different bodies of the EU, perhaps the most useful way to explain their roles and responsibilities is in relation to making EU legislation. My day job at the moment is mainly related to negotiating changes to the medical devices legislation. The European Commission, which is the central civil service of the EU, propose legislation; in September 2012, they published their proposed new legislation for medical devices to replace the current EU legislation that is in place. Separately, the European Parliament and the Council of Member States consider proposals on the table, propose changes to them and between all three entities, they agree on what the amended law should look like. As you can imagine, this process can take some time. It is difficult enough to try and get 28 Member States to agree a common position amongst themselves, so trying then to seek agreement with the Commission and Parliament as well can be challenging.

One interesting thing about the work of the Council is that every six months a new Member State takes over the Presidency of the Council of the EU. That means essentially that they are leading the group of 28 Member States. They have a key role in chairing legislative meetings and negotiations with the Commission and Parliament. My role is to represent the UK Government in terms of throughout the process of agreeing new legislation. Broadly, this involved developing a negotiating position as to what we want to achieve from this and then seeking to achieve this as far as possible during the negotiations themselves.

RR: The revisions of existing legislation (Medical Device Directives, Active Implantable Medical Devices Directive, and In Vitro Diagnostic Medical Devices Directive) have been in the works for quite some time. Can you please explain which laws will be consolidated and when the regulations will come into effect in the EU and the UK?

GT: The current framework is based on legislation that was first passed in 1990 and came into effect a few years after that – that was the Active Implantable Medical Devices Directive. The Medical Devices Directive and the *in vitro* Diagnostic Medical Devices Directive followed in 1993 and 1998 respectively. That is the legislation that is currently in place and over the years there have been small amendments and tweaks here and there to update it and adapt to progress. What is currently happening is a process of revision that will involve the re-writing of legislation from top to bottom – a complete overhaul – and this started in 2008. The end result will be two EU Regulations.

An increase in EU Member States is a key driver as to why the legislation needs to be reviewed – many of the new countries do not have the same degree or experience to be able to implement legislation as some of the more experienced Member States and there is a need to set out the rules more explicitly – the size of the legislation os going to increase substantially. Equally, however, the addition of new Member States also slows the revision and review process.

RR: In light of the legal and regulatory structure of Europe, as described in the previous question, how does this impact the regulation of medical devices?

GT: As I mentioned previously, there are three EU directives that govern the regulation of medical devices. When EU law is in the form of a directive each Member State has to take the legislation and put it into their own national law. I suppose one of the key things here is that a Member State can augment what a directive does, but it cannot do less than the directive. Also, countries may interpret EU legislation differently when they transpose it into their own legislation. This is one of the main reasons why the new legislation will be in the form of regulations – these are directly applicable in Member States and so tends to reduce the divergence in application by individual countries.

RR: IS this different depending on the status of a country within the EU? For example, in England, Wales, Scotland and Northern Ireland, the MHRA has a duty to enforce this legislation on behalf of the Secretary of State of Health?

GT: As I have alluded to before, there is variation as to how member states implement various pieces of EU legislation. The UK tends not to add additional provisions to EU law – this is known as 'gold plating'. The idea behind that is that we don't want to put the UK at a disadvantage with the rest of Europe by subjecting businesses and medical professionals to more rules than other Member States.

There are certain obligations that member states need to

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meet. For example with medical devices, they have to put in place a competent authority to implement and enforce the legislation and enforcement authority. The MHRA does this on behalf of all of the countries of the UK for medical devices but this is not the case in all areas of the law.

RR: Along the lines of the reporting of adverse events, the United States saw an increase between 2003-2007, which continues. Has the MHRA seen a similar trend?

GT: From 2003 to 2013, reporting by manufacturers has almost quadrupled, which is a substantial increase. We also saw a big jump in 2012 and 2013 by manufacturers, probably due to the PIP breast implant scandal. This probably heightened the importance of reporting in manufacturers minds.

In 2003 it was around 2,000 and in 2013 it was a shade under 8,000. We don't know the drivers behind this increase, but this trend is positively viewed as it is a sign that manufacturers are meeting their obligations to report. Equally, however, we have seen a decrease in reporting by the National Health Service (NHS) by health professionals over the same time period – this is a concern and we are putting in place steps to address this.

RR: In meeting its compliance and enforcement obligations under the Medical Device Regulations 2002 (SI 2002 No. 618 as amended) and the General Product Safety Regulations 2005 (SI 2005 No. 1803), does the MHRA report adverse findings to other countries where the device is listed as being approved or undergoing approval?

GT: The UK is part of the NCAR Program under the auspices of the International Medical Device Regulators' Forum (IMDRF). Whenever we get notifications from manufactures that they are making changes to their medical devices in the field or whether there have been additional reports of defects, we will put a report through this scheme. There are also other countries that have signed up including the US, Canada, Australia and Japan and the EU Regulators as well. There are confidentiality agreements in place and this is how the reporting is shared between nations.

RR: In terms of UK tort law, is there any issue regarding medical devices and common law tort suits for injuries sustained by a medical device?

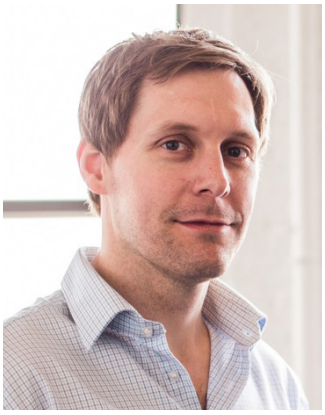
GT: In the UK, we don't really have no-fault compensation schemes in place – injured parties will receive the appropriate redress through the courts. EU law does not tend to extend into this area as it is an area left to the exclusive competence of Member States.

RR: What professional and personal accomplishments are you most proud of?

GT: One of my previous roles in the Department of Health involved working on tobacco regulation – I was lucky enough to be there at the time that legislation in England was being enacted banning smoking in public places. It was hugely enjoyable and got me interested in EU policy. I also found heading up the Department of Health's Freedom of Information Team to be a great challenge but extremely rewarding. But I am most proud of being a father to my 15 month-old son. That is my greatest accomplishment. ■

The JOBS Act—An Interview with Peter Hans, Co-founder & CEO of Harvest Exchange Corp.

by Rachel V. Rose, JD, MBA



Peter Hans is the CEO and Co-Founder of Harvest Exchange Corp., the fastest growing community for the sharing and consumption of investment ideas and information. Prior to Harvest, Peter spent 14 years on Wall Street in asset management, research, trading, and institutional sales. Peter holds a Bachelor of Arts in Psychology from Colby College and an MBA in Finance from Vanderbilt University.

RR: The evolution of Harvest Exchange in the marketplace is in many ways novel. Would you describe the concept?

PH: Harvest Exchange was an idea I scribbled on the back of a piece of scrap paper over three years ago. I was just naïve enough to think that professional investors should actually want to increase their transparency and communication, not only with their clients, but also with the public. We launched in December 2013 with a tiny group of friends, and now Harvest Exchange is a global community with over 15,000 registered members, over 70% of whom are investment professionals. The culture of financial services is overly archaic, and slow to adopt change, however, Harvest Exchange is at the forefront of that change. This is both incredibly humbling and exciting.

RR: Starting with the basics, what is the difference between a hedge fund and a mutual fund?

PH: At a high level, mutual funds are highly regulated investment vehicles that are largely available to all types of investors. As a result, they typically require low initial investments and also have limitations on fees and leverage. Hedge Funds are increasingly becoming more regulated; however, they will typically take on greater leverage, employ more diverse strategies, and have more fee variance than mutual funds. Hedge Funds are also typically unregistered securities, and thus only available to qualified purchasers and accredited investors. However, in practice the lines between mutual funds and hedge funds are becoming increasingly blurred. We are seeing more and more liquid alternative products, which aim to offer "Hedge Fund-like" strategies, and returns, to retail investors. We are also seeing more large alternative investment managers launch retail oriented products with the aim of growing AUM and offering a broader base of investment products. Both of these strategy changes will require the respective asset management firms to think about their brands and the impact of brand on future growth.

RR: In your experience, what do in-house counsel need to know about these types of investments?

PH: In my experience in-house counsel needs to be aware of the ever-evolving regulations affecting their firm, the products they offer, and their employees. Also being aware of the broad trends in regulation is extremely important, as changes to regulation are rarely a surprise and often purposefully telegraphed. In addition, understanding how one's clients, counterparties, and service providers are regulated, and that they have an appropriate compliance infrastructure in place is also extremely important.

RR: Can you please explain the fundamentals of The Jump Start Our Business Startups Act ("JOBS Act") and the Title II regulations that came into effect?

PH: The SEC has been examining access to capital for U.S. businesses for some time. As a result of their studies, the SEC found that trends were shifting from a reliance on public markets to a seeking of private investors. I believe the aim of the SEC is to improve access to capital for business, as well as to improve discovery of investment opportunity for those qualified. Title II is especially important as it lifts the ban on general solicitation and advertising for certain securities under Reg D, Rule 506. That said, investment in these securities is still only available to qualified purchasers.

RR: In what ways will the JOBS Act assist small companies in raising capital?

PH: The JOBS Act allows for companies issuing private securities to broadly market the offerings. Previously, selling these securities required soliciting only those qualified to purchase; however, now these securities can be broadly shown to anyone. Given that Hedge Funds are privately offered securities, issued often by an SEC regulated Registered Investment Advisor, many hedge funds may also be able to broadly solicit new investors. That said, in practice, adoption of this rule will take time. Though, an interesting focus for investment advisers managing hedge funds is now, what constitutes a solicitation of a private security versus a public communication on behalf of an SEC regulated IA, which has been, and remains allowed.

RR: Does this offset the requirements of Dodd-Frank for small funds?

PH: Dodd-Frank required hedge funds, depending on their size, to register with the SEC, or if they are smaller, with their state. The JOBS Act and Title II, to my best knowledge, do not change anything that was codified into law as a result of Dodd-Frank. That said, Hedge Fund managers that are now registered with the SEC as investment advisers must comply with SEC guidelines when communicating with the public, though the regulations here are straightforward. Thankfully, we are seeing increased adoption of transparency and public communication amongst Hedge Fund managers. This is something that is largely positive for the managers, the public, and the regulators, and a trend that I believe we will continue to see increase.

RR: Currently, there is approximately $2.5 trillion in assets under management in the hedge fund space? What are the advantages of investing in a small fund versus a large fund like Paulson and Soros?

PH: That's a great question, and gets to the heart of an interesting dynamic in the hedge fund industry. In the interest of keeping things simple, think of potential hedge fund investors as falling into two categories: those representing large pools of institutional capital, such as pension funds, and those who are individual accredited investors. Of course, the first group is investing on behalf of a third party, thus, every decision is carefully scrutinized by numerous stakeholders. The second group should theoretically only care about alpha generation, thus they shouldn't be swayed by a big name if they truly believe that a particular manager can deliver superior returns. This, I believe, is a major reason why we see numbers like '90% of every dollar raised goes to the same 5% of funds'. Given that managing money is a fee-based business, and one with tremendous operating leverage, all funds are seeking large investments from institutions. However, given the potential "career risk" of investing in smaller funds with less of a track record, we will likely continue to see the above dynamic play out. This is why it is important for asset managers to continue to build their brands of maintaining expertise in their respective strategies. The potential advantage of investing in a smaller fund is purely a numbers game. If you run $20bn and you have a very high conviction investment thesis, purchasing, and then monetizing, a 5% position is far more difficult than if you manage $20mm and are seeking a 5% position.

RR: What are the implications for certain fund managers of the exemptions from Investment Company Act of 1940 Sections 3c1 and 3c7, which were set forth in the JOBS Act? (NOTE: these sections previously exempted hedge funds from registration requirements).

PH: I am not an attorney, but my understanding of this particular portion of the rule is that upon adoption of the JOBS Act by the SEC in July 2010, private funds are able to either continue marketing under rule 506(b) or to market using the new 506(c), which allows for general solicitation. If the manager chooses to adopt the new rules, assuming that it is in compliance, it would maintain its ability to avoid being defined as an investment company. I believe it's important to note that this applies to the private security offering, which is the hedge fund. This would not apply to the management company, which actively manages the fund, as many hedge funds are already registered with the SEC. Again, it's very important to note the distinction between a general solicitation of a private security, and a public communication from an SEC-regulated investment adviser. The former is a direct solicitation for an investment in a specific security; the latter is a written communication available to the public for the purposes of increased transparency and/or brand awareness. ■

Discussion with Mark Rogers, President & CEO of BoardProspects.com

by John Okray

Mark Rogers is the Founder and CEO of BoardProspects.com – the online board recruitment destination. Prior to founding the company, Mark practiced corporate law in the Boston area for more than 10 years. In 2010, he was selected by Massachusetts Lawyers Weekly as one of Massachusetts' "Up and Coming Lawyers". Mark also served as an adjunct professor for 4 years at New England School of Law. He serves on the boards of several for-profit and not-for-profit companies. Mark is a nationally recognized expert on corporate governance and has lectured and written extensively on the topic. His articles have appeared in numerous publications, including The Wall Street Journal, Los Angeles Times, Forbes.com, USA Today and The Boston Globe. Mark received his BA from the College of the Holy Cross and JD from Suffolk University School of Law.

Okray: What is BoardProspects.com and what was your vision when you started it?

Rogers: BoardProspects.com ("BoardProspects") is the online boardroom recruitment destination for board members, prospective board members and corporations (public, private and non-profit). The company provides a platform where members can learn the latest in boardroom news, education, best practices and boardroom recruitment opportunities. My vision in starting BoardProspects was to provide a modern day solution to all of the problems attendant with traditional boardroom recruitment.

Okray: How have companies historically sourced board candidates? What gaps does your service fill and how will it improve the process for companies and/or candidates?

Rogers: The overwhelming majority of board seats are filled through either the annual "who do you know?" conversation around the boardroom table or executive recruitment firms. These processes are outdated, ineffective and in the case of executive recruitment firms, costly. There isn't a lack of qualified board candidates – rather, there is a lack of a forum in which such candidates can identify their value proposition to a board.

BoardProspects transforms the board recruitment process by leveraging technology to bring together board candidates and corporations like never before. Our proprietary platform allows individuals to identify their value proposition to corporate boards and provides corporations with the power to be pro-active in the board recruitment process by allowing them to search for and connect with board candidates based on their own unique search criteria. In addition, the features within BoardProspects' platform are designed to elevate board service by providing members with effective resources within a community environment.

Okray: Your company's strategic partners include a number of organizations focused on promoting women in business or the law, such as Women in the Boardroom. As women are underrepresented in the boardroom, how do you feel your service might help address the current imbalance?

Rogers: It is truly stunning to see how slow corporate boards have been to recruit women to the boardroom – despite the growing

body of evidence demonstrating the direct correlation between the number of female directors on a board and the increase in revenues and overall corporate performance. Privately, a common excuse often used by board chairs in response to criticism regarding the lack of women directors, is that there is a relatively small field of qualified candidates. That is nonsense. There are a substantial number of qualified women candidates for director positions. Our hope is that BoardProspects can play a part in increasing the number of women directors by providing a forum through which these corporations can search for, and connect with, qualified women candidates for open board positions.

Okray: What do you feel are lingering bad practices for some boards? Over-boarded directors? Overly long-tenured directors? Lack of diversity? Or?

Rogers: The lack of boardroom diversity, over-boarded directors and the failure to adopt (and adhere to) term limits for directors, all contribute to the continued proliferation of corporate governance problems across the globe. The inability of corporations to populate their boards with qualified, forward-thinking individuals representing diverse perspectives, has for far too long hindered corporate growth and progress.

Okray: Will you be focused exclusively on the U.S. market or do anticipate the service being used in foreign markets as well?

Rogers: At this point, we are focused on the U.S. market. However, we certainly plan on bringing BoardProspects to the international market. In fact, we have already have a substantial number of members from outside the U.S. I believe BoardProspects can serve as the link between the U.S. and international boardroom communities. There are three (3) primary reasons for this: (1) boardroom diversity quotas in certain parts of the world (particularly in Europe); (2) globalization of the boardroom; and (3) corporate governance dilemmas.

Okray: Your website says it can be used by public and private companies and non-profit organizations. Where have you had the most traction and resistance in these different markets?

Rogers: Actually, I have been excited to see our traction in all markets. Initially, there was a bit of reluctance in the public company market. However, as we have been able to demonstrate our ability to serve as an effective resource for public company boards to stay engaged year-round in the board recruitment process, we have seen growth in that market as well.

Okray: What advice do you have for individuals interesting in serving on a board to increase their likelihood of being offered a board seat?

Rogers: Besides signing-up for BoardProspects.com, I would suggest that an individual who is seeking to serve on a board of directors emphasize their own unique skill-sets and industry expertise. There is a tremendous shift happening in for-profit board recruitment. Specifically, they are moving away from recruiting from the pool of existing board members to recruiting individuals with deep industry expertise (who may have no prior board experience). Therefore, individuals should do what they can to underscore their talents. In particular, I would suggest they seek out speaking and writing engagements related to their industry.

Okray: How will your company measure success?

Rogers: It is interesting, because contrary to what many people may think, we do not track board appointments through our platform. This is intentional on our part as we realize that at some point a board and a prospective candidate (whom are both members of BoardProspects.com), will eventually take their recruitment conversation off-line. We do not want to stay in the middle of that conversation as it could become inefficient for each party. At BoardProspects.com we are content with our position as the forum where the 2 sides can find each other and access resources (news, information, education, etc.) to help improve corporate governance.

Thus, we will measure success at BoardProspects by how we are able to expand the director candidate pool.

Okray: If you had your choice of serving on any one public company board and on any one non-profit board, which would you select and why?

Rogers: As to a for-profit board, I would select Hewlett-Packard. I am a huge fan of their Chairman, Ralph Whitworth. He is a champion of good governance and has a tremendous track record of success in the boardroom. The turn-around he is overseeing for Hewlett-Packard is nothing short of remarkable.

In regard to a not-for-profit board, I would really like to get involved with the Make-A-Wish Foundation. Their work is truly inspiring. ■

Interview conducted by John Okray, Chair of the Federal Bar Association's Corporate and Association Counsel Division.

The Basics of Fraudulent Transfers in Bankruptcy Cases and Reverse Stock Splits

by Rachel V. Rose, JD, MBA

Under the Securities and Exchange Commission ("SEC") Rule 10b-17, Over-the-Counter ("OTC") issuers are required to notify the Financial Industry Regulatory Authority ("FINRA") of certain corporate actions, including reverse stock splits.[1] Hence, giving FINRA authority under Rule 10b-17. All companies whose securities are quoted on the OTC Markets platform are subject to the Rule. This SEC Rule relates to FINRA Rule 6490, which may cause unanticipated legal and compliance cost for issuers and their securities attorneys. Additionally, the Depository Trust Company ("DTC") has review discretion that may be prompted by the issuer's corporate action notification. Since there are more companies listed as OTC than on centralized exchanges (such as the New York Stock Exchange), the impact of a reverse stock split and the securities and bankruptcy provisions that can apply are important to in-house counsel.

Corporations may engage in reverse stock splits if there is a legitimate corporate purpose. As the CFR sets forth, "examples of legitimate corporate purposes include a reverse stock split to: (1) Reduce the number of share holders in order to qualify as a Subchapter S corporation; and (2) Reduce costs associated with shareholder communications and meetings."[2] Courts have clearly articulated that fraud and breach of fiduciary duty are not legitimate reasons for a reverse stock split. *Teschner v. Chicago Title & Trust Co.*, 322 N.E.2d 54 (1954), *appeal* dismissed, 422 U.S. 1002 (1975) a seminal Illinois case involving a 600 to 1 reverse stock split, held that a stock reclassification may be valid; however, a claim for fraud cannot be present. In a more recent case, the Minnesota Supreme Court held that certain actions by a corporation can be effectuated without the benefit of dissenters' rights, including utilizing a reverse stock split to reduce the minority shareholder interest.[3] Again, the court expressly indicated, "in the absence of fraud." And, in a reverse stock split addressing the scenario where a company's chief executive officer attempted to become its only shareholder and abused his fiduciary duty, the U.S. District Court (E.D. New York) indicated that the claims for breach of fiduciary duty under Nevada law could move forward.[4] Hence, there is heightened scrutiny being given to reverse stock splits by both the SEC, FINRA and courts.

The notion of fraud in relation to a reverse stock split can come up in relation to bankruptcy in the context of a fraudulent transfer. The U.S. Bankruptcy Code has certain provisions relating to fraudulent transfers and obligations.[5] The general standard under Section (a)(1) provides that:

> The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition.

Like many areas of law, exceptions do apply. And Section (c) expresses:

> Except to the extent that a transfer or obligation voidable under this section is voidable under sections 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

Fundamentally, a trustee may transfer or avoid transfer in the absence of fraud. FINRA Rule 6490 requires filing of the action and other documentation within 10 days. In keeping with bankruptcy proceedings, if "FINRA has knowledge that parties related to the action are the subject of pending, adjudicated or settled regulatory action or investigation, or civil or criminal action related to fraud or securities law violations"[6], then the action can be denied. For in-house counsel and their external securities and bankruptcy lawyers, detailing why the transactions are legitimate and do not constitute fraud can make a pivotal difference in the outcome of the transaction or a case. Therefore, documenting the transaction in every capacity (i.e., the consideration given), being aware of statute of limitations defenses under Federal, State and Bankruptcy Code provisions, and filing the requisite documents with the State and Federal agencies can alleviate cost, time and frustration in the long run. ■

Rachel V. Rose, JD, MBA is a Principal with Rachel V. Rose – _Attorney at Law, PLLC, located in Houston, TX. Ms. Rose holds an MBA with minors in health care and entrepreneurship from Vanderbilt University, and a law degree from Stetson University College of Law, where she graduated with various honors, including the National Scribes Award and The William F. Blews Pro Bono Service Award. Ms. Rose is licensed in Texas. Currently, she is Vice Chair of Publications for the Federal Bar Association's Counsel Division, the Co-Editor of the American Health Lawyers Associations' "Enterprise Risk Management Handbook for Healthcare Entities" (2nd Edition), Vice Chair of the Book Publication Committee for the Health Law Section of the American Bar Association and Co-Author of the ABA's, "The ABCs of ACOs." Ms. Rose is an Affiliated Member of the Baylor College of Medicine's Centre for Medical Ethics and Health Policy. She can be reached at rvrose@rvrose.com.

Endnotes

[1]Reverse stock split – "the conventional stock split in reverse – instead of a company amending its charter so as to have more shares authorized and outstanding, the charter is amended so as to reduce dramatically the authorized and outstanding shares." M. Rickman, *Reverse Stock Splits and Squeeze-Outs: A Need for Heightened Scrutiny*, 64 Wash. U.L. Q. 1219, fn 1 (1986) (citing Dykstra, *The Reverse Stock Split – That Other Means of Going Private*, 53 CHI. KENT L. REV. 1, 3 (1976)).

[2] 12 CFR §7.2023(b)(1) and (2), 64 Fed. Reg. 60099 (Nov. 4, 1999).

[3]*US Bank N.A. v. Cold Spring* Granite, 802 N.W.2d 363 (2011). It is important that the reduction of shares only be effectuated on those shares that are "issued and outstanding."
[4]*Gardner v. Major Automotive Companies*, No. 11–CV–1664 (2012).
[5]11 U.S. Code § 548 - Fraudulent Transfers and Obligations.
[6]Hamilton & Associates Law Group, *Securities Lawyer 101*, available at, www.securitieslawyer101.com/rule-6490/ (noting that reverse stock-splits may require an amendment to a corporation's state Articles of Incorporation in addition to federal security agency filings).

We would like to thank John Okray for his leadership and service to the CACD. His efforts have enabled our Division to attract a variety of talented members and flourish. We look forward to collaborating with him as he transitions to the Health Law Section.

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FEDERAL BAR ASSOCIATION APPLICATION FOR MEMBERSHIP (CONTINUES ON REVERSE)

Applicant Information

First Name | M.I. | Last Name | Suffix (e.g. Jr.) | Title (e.g. Attorney At Law, Partner, Assistant U.S. Attorney)

❍ Male ❍ Female | Have you been an FBA member in the past? ❍ yes ❍ no | Which do you prefer as your primary address? ❍ business ❍ home

Business

Firm/Company/Agency | Number of Attorneys

Address | Suite/Floor

City | State | Zip | Country

( )
Phone | E-mail

Home

Address | Apt. #

City | State | Zip | Country

( ) | / /
Phone | Date of Birth

E-mail

Bar Admission and Law School Information (required)

U.S.

Court of Record: _____

State/District: _____ Original Admission: / /

Tribal

Court of Record: _____

State: _____ Original Admission: / /

Foreign

Court/Tribunal of Record: _____

Country: _____ Original Admission: / /

Students

Law School: _____

State/District: _____ Expected Graduation: / /

Practice Information

PRACTICE TYPE

Private Sector: ❍ Private Practice ❍ Corporate/In-House

Public Sector: ❍ Government ❍ Association Counsel ❍ Nonprofit ❍ University/College ❍ Military ❍ Judiciary

PRIMARY PRACTICE AREAS

❍ Administrative
❍ Admiralty/Maritime
❍ ADR/Arbitration
❍ Banking
❍ Bankruptcy
❍ Civil Rights
❍ Communications
❍ Criminal
❍ Environment/Energy
❍ Federal Litigation
❍ Financial Institutions
❍ General Counsel
❍ Government Contracts
❍ Health
❍ Immigration
❍ Indian
❍ Intellectual Property
❍ International
❍ Labor/Employment
❍ Military
❍ Securities
❍ Social Security
❍ State/Local Government
❍ Taxation
❍ Transportation
❍ Veterans
❍ Other: _____

connect

Membership Categories and Optional Section, Division, and Chapter Affiliations

Membership Levels

Sustaining Membership

Members of the association distinguish themselves when becoming sustaining members of the FBA. Sixty dollars of the sustaining dues are used to support educational programs and publications of the FBA. Sustaining members receive a 5% discount on the registration fees for all national meetings and national CLE events.

	Private Sector	Public Sector
Member Admitted to Practice 0-5 Years	❍ $165	❍ $145
Member Admitted to Practice 6-10 Years	❍ $230	❍ $205
Member Admitted to Practice 11+ Years	❍ $275	❍ $235
Retired (Fully Retired from the Practice of Law)	❍ $165	❍ $165

Active Membership

Open to any person admitted to the practice of law before a federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the United States or in the District of Columbia.

	Private Sector	Public Sector
Member Admitted to Practice 0-5 Years	❍ $105	❍ $80
Member Admitted to Practice 6-10 Years	❍ $165	❍ $140
Member Admitted to Practice 11+ Years	❍ $210	❍ $170
Retired (Fully Retired from the Practice of Law)	❍ $105	❍ $105

Associate Membership

Foreign Associate *Admitted to practice law outside the U.S.* ..... ❍ $210
Law Student Associate *Currently enrolled in an accredited law school* ..... ❍ $35

Dues Total: _____

Practice Area Sections

- ❍ *Admiralty Law* $25
- ❍ *Alternative Dispute Resolution* .. $15
- ❍ *Antitrust and Trade Regulation* ..$15
- ❍ *Banking Law* $20
- ❍ *Bankruptcy Law* $15
- ❍ *Civil Rights Law* $10
- ❍ *Criminal Law* $10
- ❍ *Environment, Energy, and Natural Resources* $15
- ❍ *Federal Litigation* $10
- ❍ *Government Contracts* $20
- ❍ *Health Law* $15
- ❍ *Immigration Law* $10
- ❍ *Indian Law* $15
- ❍ *Intellectual Property Law* $10
- ❍ *International Law* $10
- ❍ *Labor and Employment Law* $15
- ❍ *Securities Law Section* $0
- ❍ *Social Security* $10
- ❍ *State and Local Government Relations* $15
- ❍ *Taxation* $15
- ❍ *Transportation and Transportation Security Law* $20
- ❍ *Veterans and Military Law* $20

Career Divisions

- ❍ *Corporate & Association Counsel* (in-house counsel and/or corporate law practice) $20
- ❍ *Federal Career Service* (past/present employee of federal government) .....N/C
- ❍ *Judiciary* (past/present member or staff of a judiciary) .....N/C
- ❍ *Senior Lawyers** (age 55 or over) $10
- ❍ *Younger Lawyers** (age 36 or younger or admitted less than 3 years) .....N/C

For eligibility, date of birth must be provided.

Sections and Divisions Total: _____

Chapter Affiliation

Your FBA membership entitles you to a chapter membership. Local chapter dues are indicated next to the chapter name (if applicable). If no chapter is selected, you will be assigned a chapter based on geographic location. *No chapter currently located in this state or location.

Alabama
- ❍ Birmingham
- ❍ Mobile
- ❍ Montgomery
- ❍ North Alabama

Alaska
- ❍ Alaska

Arizona
- ❍ Phoenix
- ❍ William D. Browning/ Tucson–$10

Arkansas*
- ❍ At Large

California
- ❍ Inland Empire
- ❍ Los Angeles
- ❍ Northern District of California
- ❍ Orange County
- ❍ Sacramento
- ❍ San Diego
- ❍ San Joaquin Valley

Colorado
- ❍ Colorado

Connecticut
- ❍ District of Connecticut

Delaware
- ❍ Delaware

District of Columbia
- ❍ Capitol Hill
- ❍ D.C.
- ❍ Pentagon

Florida
- ❍ Broward County
- ❍ Jacksonville
- ❍ North Central Florida–$25
- ❍ Orlando
- ❍ Palm Beach County
- ❍ South Florida
- ❍ Southwest Florida
- ❍ Tallahassee
- ❍ Tampa Bay

Georgia
- ❍ Atlanta–$10

Hawaii
- ❍ Hawaii

Idaho
- ❍ Idaho

Illinois
- ❍ Chicago
- ❍ Hon. P. Michael Mahoney Western Division of the Northern District of Illinois

Indiana
- ❍ Indianapolis

Iowa
- ❍ Iowa–$10

Kansas
- ❍ Kansas

Kentucky
- ❍ Kentucky

Louisiana
- ❍ Baton Rouge
- ❍ Lafayette/ Acadiana
- ❍ New Orleans
- ❍ North Louisiana

Maine
- ❍ Maine

Maryland
- ❍ Maryland

Massachusetts
- ❍ Massachusetts –$10

Michigan
- ❍ Eastern District of Michigan
- ❍ Western District of Michigan

Minnesota
- ❍ Minnesota

Mississippi
- ❍ Mississippi

Missouri
- ❍ Missouri

Montana
- ❍ Montana

Nebraska*
- ❍ At Large

Nevada
- ❍ Nevada

New Hampshire
- ❍ New Hampshire

New Jersey
- ❍ New Jersey

New Mexico
- ❍ New Mexico

New York
- ❍ Eastern District of New York
- ❍ Southern District of New York
- ❍ Western District of New York

North Carolina
- ❍ Eastern District of North Carolina
- ❍ Middle District of North Carolina
- ❍ Western District of North Carolina

North Dakota
- ❍ North Dakota

Ohio
- ❍ John W. Peck/ Cincinnati/ Northern Kentucky
- ❍ Columbus
- ❍ Dayton
- ❍ Northern District of Ohio–$10

Oklahoma
- ❍ Oklahoma City
- ❍ Northern/ Eastern Oklahoma

Oregon
- ❍ Oregon

Pennsylvania
- ❍ Eastern District of Pennsylvania
- ❍ Middle District of Pennsylvania
- ❍ Western District of Pennsylvania

Puerto Rico
- ❍ Hon. Raymond L. Acosta/ Puerto Rico–$10

Rhode Island
- ❍ Rhode Island

South Carolina
- ❍ South Carolina

South Dakota*
- ❍ At Large

Tennessee
- ❍ Chattanooga
- ❍ Memphis Mid-South
- ❍ Nashville
- ❍ Northeast Tennessee

Texas
- ❍ Austin
- ❍ Dallas–$10
- ❍ El Paso
- ❍ Fort Worth
- ❍ San Antonio
- ❍ Southern District of Texas–$25
- ❍ Waco

Utah
- ❍ Utah

Vermont*
- ❍ At Large

Virgin Islands
- ❍ Virgin Islands

Virginia
- ❍ Northern Virginia
- ❍ Richmond
- ❍ Roanoke
- ❍ Tidewater

Washington*
- ❍ At Large

West Virginia*
- ❍ At Large

Wisconsin*
- ❍ At Large

Wyoming
- ❍ Wyoming

Chapter Total: _____

Payment Information and Authorization Statement

TOTAL DUES TO BE CHARGED
(membership, section/division, and chapter dues): $ _____

❍ Check enclosed, payable to Federal Bar Association
Credit: ❍ American Express ❍ MasterCard ❍ Visa

Name on card (*please print*)

Card No. Exp. Date

Signature Date

By signing this application, I hereby apply for membership in the Federal Bar Association and agree to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its Board of Directors. I declare that the information contained herein is true and complete. I understand that any false statements made on this application will lead to rejection of my application or the immediate termination of my membership. I also understand that by providing my fax number and e-mail address, I hereby consent to receive faxes and e-mail messages sent by or on behalf of the Federal Bar Association, the Foundation of the Federal Bar Association, and the Federal Bar Building Corporation.

Signature of Applicant ***Date***
(Signature must be included for membership to be activated)

*Contributions and dues to the FBA may be deductible by members under provisions of the IRS Code, such as an ordinary and necessary business expense, except 4.5% which is used for congressional lobbying and is not deductible. Your FBA dues include $14 for a yearly subscription to the FBA's professional magazine.