

***** DRAFT - NOT YET FILED *****

1301:6-3-06

Transactions registered by description.

(A) Every registration by description filed with the division pursuant to section 1707.06 of the Revised Code shall be filed on an appropriate division form. A registration by description intended to comply with division (A)(1) of section 1707.06 of the Revised Code shall be filed on a division form 6(A)(1), a registration by description intended to comply with division (A)(2) of section 1707.06 of the Revised Code shall be filed on a division form 6(A)(2), a registration by description intended to comply with division (A)(3) of section 1707.06 of the Revised Code shall be filed on a division form 6(A)(3), and a registration by description intended to comply with division (A)(4) of section 1707.06 of the Revised Code shall be filed on a division form 6(A)(4). The registration by description shall be accompanied by any additional exhibits requested by the division for the protection of investors, and the following exhibits, as necessary:

- (1) Where the issuer has engaged in operations for ninety days or more prior to the date of the filing of the registration by description with the division, a balance sheet of the issuer as of a date not more than ninety days prior to the date of filing of the registration by description with the division and statements of income and shareholder's equity for the two years prior to the date of the balance sheet or the period of the issuer's existence if less than two years, either audited by an independent public accountant or verified as true in all material respects within the actual knowledge and belief of the chief financial officer or the general partner of the issuer. If any financial statements used in connection with a registration by description are accompanied by a report of an independent public accountant, a letter from the accountant consenting to the use of the report shall be attached to the application; and
- (2) Where the aggregate amount of the securities to be registered by description exceeds two hundred fifty thousand dollars, or where the securities to be registered by description represent interests in oil and gas, an offering circular prepared in accordance with paragraph (D) of this rule;
- (3) When the issuer has sold securities in violation of the Ohio securities act not more than five years prior to the registration by description, an exhibit stating:
 - (a) The total number of persons to whom the securities were originally sold,
 - (b) The consideration received by the issuer for the securities, showing in detail whether the consideration was in cash or in property or services, and if in property or services, the nature, value and description thereof,

and

- (c) The total number of each type of securities outstanding;
- (4) One copy of any offering circular, prospectus, advertising, sales literature, or other writing to be used in connection with the offering or sale of the securities registered by description.
- (B) The division shall promptly examine every registration by description filed with it and shall issue a certificate of acknowledgment when it determines that the description conforms to the requirements of and is accompanied by the appropriate fee required by section 1707.08 of the Revised Code.
- (C) No dealer or issuer selling its own securities shall use any prospectus or offering circular in connection with the offering or sale of any securities registered by description unless the prospectus, offering circular, advertising, sales literature, or other writing has first been filed with the division. No dealer or issuer selling its own securities shall use any advertising, sales literature, or other writing other than a prospectus or offering circular in connection with the offering or sale of any securities registered by description unless the advertising, sales literature, or other writing has first been approved by the division. All dealers and any issuer selling its own securities shall retain one copy of any prospectus, offering circular, advertising, sales literature, or other writing which it has used in connection with the offering or sale of the securities registered by description for a period of five years from the date of last use of the prospectus, offering circular, advertising, sales literature, or other writing.
- (D) Where the aggregate amount of the securities to be registered by description exceeds two hundred and fifty thousand dollars or where the securities to be registered by description represent interests in oil and gas, the issuer and dealer shall, prior to the earlier of the date that a subscription agreement or its equivalent is signed by a purchaser or the purchaser transfers or loses control of the purchase funds, deliver an offering circular which shall contain the following information to each purchaser of the securities registered by description:
- (1) The issuer's name and address, its type of business entity, the state or jurisdiction of its incorporation or formation, and the date of its incorporation or formation on the outside front cover page;
 - (2) The offering price to the public, discounts or commissions to dealers, and proceeds to the issuer shall be presented in tabular form on the outside front cover page;

- (3) The amount of securities to be offered for sale, the aggregate offering price to the public, the aggregate underwriting discounts or commissions, the amount of expenses of the issuer, the amount of expenses of the underwriters to be paid by the issuer, and the aggregate proceeds. If the securities are not to be offered for cash, a description of the consideration to be paid for the securities on the outside front cover page;
- (4) A description of the method by which the offering will be made and, the name and address of every dealer participating in the offering, specifying the extent and amount of participation of each dealer, and indicating the nature of any material relationship between the issuer and any dealer;
- (5) A statement specifying the purposes for which the proceeds of the sale of the securities registered by description will be used and the amount to be used for each purpose, indicating the present intention of the issuer; with respect to the order of priority in which the proceeds will be used;
- (6) A description of the experience and expertise of the issuer in the particular business which is the subject of the offering;
- (7) A description of the significant risks inherent in the particular offering;
- (8) A description of the securities;
- (9) A description of the particular business which is the subject of the offering, which shall include, to the extent material to an understanding of the business of the issuer, the nature and principal market of the issuer's present or proposed products or services, the length of time the issuer has been in commercial production of the present or proposed products or services, the location and ownership interest of the issuer in real property, patents, and other physical property now held or to be acquired by the issuer, the manner in which any new invention or process will be used, and the application or registration numbers of any applicable patents;
- (10) A summary of the background, history, and compensation of the principals, officers, directors, and general partners of the issuer and holders of ten percent or more of the securities of the issuer, which shall include:
 - (a) The names and addresses of all principals, officers, directors, general partners, and ten per cent shareholders of the issuer, and similar information regarding all promoters if the issuer was incorporated or organized less than one year prior to the date of the registration by

description;

(b) The annual remuneration of all principals, directors, general partners and ten per cent shareholders of the issuer and of the three highest paid officers of the issuer for the year preceding the date of the filing of the registration by description;

(c) All direct and indirect interests (by securities holdings or otherwise) of each principal, officer, director, general partner, or promoter:

(i) In the issuer or its affiliates and;

(ii) In any material transactions within the two years prior to the date of filing of the registration by description or in any proposed material transactions to which the issuer or any of its predecessors or affiliates was or is to be a party.

(d) If the issuer was incorporated or organized within the last three years, the price paid for and the percentage of outstanding securities of the issuer which will be held by directors, officers and promoters, as a group, and the price paid for and the percentage of securities which will be held by the public, if all of the securities to be offered are sold; and

(11) A description of the financial condition of the issuer audited by an independent certified public accountant or verified as true in all material aspects within the actual knowledge and belief of the chief financial officer of the issuer which shall include;

(a) A balance sheet as of a date no more than ninety days prior to the filing of the registration by description; and

(b) A statement of income and a statement of other shareholders' equity for the two years prior to the date of the balance sheet or for the period of the issuer's existence, if less than two years.

(E) Pursuant to section 1707.13 of the Revised Code, the division may suspend any registration by description where:

(1) The issuer has sold securities in violation of the Ohio securities act within five years of the date of filing of the registration by description and has not retroactively qualified those securities pursuant to section 1707.39 or 1707.391 of the Revised Code;

- (2) The issuer has issued securities in exchange for intangibles within six months of the date of filing of a registration by description pursuant to division (A)(1) of section 1707.06 of the Revised Code. If the division finds that the protection of investors will be assured, it may permit an escrow of the securities previously issued for intangibles;
 - (3) The issuer proposes to issue securities for consideration other than cash and has not submitted a sworn appraisal by a competent, disinterested appraiser, other proof as the division may require to establish the dollar value of the consideration, or, if the division finds that the protection of investors will be assured, an escrow of the securities proposed to be issued for consideration other than cash;
 - (4) The person who filed the registration by description has failed to provide the division with supplementary information as required by paragraph (H) of this rule;
 - (5) The issuer, incorporators, or dealer has filed a registration by description which does not comply with the provisions of section 1707.08 of the Revised Code and the issuer, incorporators, or dealer has not amended the registration by description in compliance with section 1707.08 of the Revised Code in response to a notice of deficiency transmitted to the issuer, incorporators, or dealer prior to the offer or sale of the securities; or
 - (6) The registration by description appears to the division to comply with the provisions of section 1707.08 of the Revised Code, but the division has requested additional information to clarify the registration by description for the protection of investors by a letter sent to the address shown on the registration by description by the issuer, incorporators, or dealer, and the issuer, incorporators, or dealer does not provide the additional information requested prior to the offer or sale of the securities.
- (F) Pursuant to division (B) of section 1707.131 of the Revised Code, the division shall refuse any registration by description if the issuer is in the development stage and either has no specific business plan or purpose or has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other entities or persons.
- (G) Pursuant to division (C) of section 1707.131 of the Revised Code, the division may refuse any registration by description if the issuer does not disclose in final offering materials that, with regard to officers, directors, five per cent shareholders, managers, trustees, or general partners:

- (1) Any future transactions will be on terms no less favorable to the issuer than could be obtained from an independent third party; or
 - (2) Any outstanding loans from the issuer are required to be repaid within six months of the offering, except for loans or extensions of credit made by a bank, and any future loans from the issuer will be for bona fide business purposes as approved by a majority of the disinterested directors, managers, trustees, or general partners, or will be a type of transaction involving a director or executive officer of the issuer as permitted by section 13(k) of the Securities Exchange Act of 1934 as amended.
- (H) During the effectiveness of a registration by description, the person who filed the registration by description shall promptly notify the division of:
- (1) Any adverse material change in the financial status of the issuer;
 - (2) Any material change in the proposed use of the proceeds reported in the registration by description;
 - (3) Any change in the identity of the principals, general partner or officers of the issuer; or
 - (4) The occurrence of any event or series of events which would cause any statement contained in the registration by description, prospectus or offering circular to be false or misleading in any material respect.
- (I) The division shall accept amendments to registrations by description which are limited, in compliance with section 1707.08 of the Revised Code, to the correction of errors or omissions.

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	1707.20
Rule Amplifies:	1707.06
Prior Effective Dates:	8-3-78; 4-1-83; 1-17-92; 11-27-00; 9-16-03