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ohio securities bulletin

State of Ohio
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Department of Commerce
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Division of Securities
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TABLE OF CONTENTS

Comments of the Commissioner 1
Policy Developments 7
Interpretive Opinion 9
Illustrative Rulings 11
Regulatory Standards 14
The Sections 17
Administrative Actions 25
Statistics 26

COMMENTS OF THE COMMISSIONER

1. *Securities Bill Faces Uncertain Future:* In the September issue of the **Bulletin** (page 1) it was announced that the Corporation Law Committee of the Ohio State Bar Association had recommended endorsement of the proposed new Ohio Securities Act (S.B. 338) by the Association and a formal endorsement of the Bill by the Bar Association followed shortly thereafter. In the October issue of the **Bulletin** (page 2) it was announced that after a series of discussions with interested parties the Division had submitted to the Senate Commerce and Labor Committee its final proposal for amendments to this Bill. Senator Howard Cook set Tuesday, December 11, as a hearing date for the disposition of remaining questions concerning S.B. 338 and requested that I arrange meetings prior to that date with representatives of the Governor's Business and Employment Council and the Department of Insurance to attempt a resolution of remaining differences with these two organizations so that the Committee might be able to take affirmative action on the Bill on the eleventh. Meetings were subsequently held with William J. McCrae of the Council on Thursday, November 29, and with Dennis W. Toivonen of the Department of Insurance on Friday, November 30. Both meetings were productive, but since the Governor's Council question, relating to the treatment of small business offerings (the Council has wanted some form of additional exemption) remained unresolved, a second meeting was set for Friday, December 7, to hopefully reach some agreement prior to the hearing on the following Tuesday.

The events which transpired during the meeting on the seventh marked the beginning (within four days of possible affirmative Committee action on the Bill) of a completely new phase in the deliberations concerning S.B. 338. Until that day the Division and the Bar Association (which was the largest source of support for the Bill) had been working together very productively throughout the year toward what had appeared to be similar and consistent objectives. This illusion of consensus was shattered when in the course of a discussion of the small business offering question it became apparent that the Bar Association (or at least several of its members closely involved in the analysis of the Bill) and the Division had been proceeding upon the basis of two different assumptions with respect to the statutory treatment of registrations by notification, the Division assuming that such registrations would be subject to requirements (to be set forth by rule) relating to substantive fairness and the Association assuming that they would be free of such regulation. The newly discovered registration by notification issue was not merely a technical question nor a minor matter for negotiation similar to the nearly one hundred items which had been discussed and resolved by the Division and the Association during the preceding year. This was a matter apparently fundamental to the basic objectives of both the Division and the Bar Association and one which for the first time exposed a possible incompatibility between certain objectives of those two organizations (which represent to some extent the interests of different constituencies within the body politic of Ohio.) Essentially at stake in this issue is the Division's continued authority to regulate approximately 2000 or 50% of all securities offerings now subject to its regulatory jurisdiction and not exempted by S.B. 338 as offerings limited to 10 or fewer purchasers, private placements, or offerings limited to sophisticated investors. Substantively what is involved is a fundamental question regarding what the scope of the Division's regulatory jurisdiction should be. Also involved is whether the delicate balance which has been incorporated into S.B. 338 between the interests of business enterprise and the interests of the investing public will be jeopardized by further modification of the Bill.

The apparent feeling of many (but not all) of the individuals considering this legislation on behalf of the Bar Association is that the Division has no legitimate interest in regulating, by means of the exercise of fairness (or disclosure) powers, essentially localized offerings of limited scope (25 or fewer purchasers) which are the subject of approximately 90% of anticipated notification filings, because such regulation creates unwarranted burdens upon small issuers (and general legal practitioners) without corresponding benefits in curbing promotional abuses and even discourages to some extent the formation of new business enterprise. They want to preserve the mechanism of a filing in connection with these offerings, however, in order to maintain an element of certainty for the issuer (and his attorney) that, insofar as the Division is able to determine, the offering will be made in compliance with the law and to take advantage of what they see as a self-purgative or prophylactic effect produced by filing a piece of paper with the Division announcing that the offering exists (but saying little more). They point out that because of the structure and history of Sections 1707.06, .08, and .13 of the existing Ohio Securities Act, there exists some question with respect to the regulatory jurisdiction of the Division in connection with similar offerings now registered by description and assert that I and previous Ohio securities administrators have not as a practical matter exercised, to a significant extent, our claimed regulatory jurisdiction over these offerings.

The position of the Division is set forth in the text of three letters on this subject written by me to Senator Howard Cook (December 11), toMr. James M. Tobin Jr. (January 8), and to Senator Cook again (January 14). Basically it is our position that any offering which is not limited (either specifically or as a practical result of the scope of the offering) to investors capable of fending for themselves (or within the substantive jurisdiction of some other regulatory body concerned at least partially with the protection of investors) should be subject to the regulatory (including fairness) authority of the Division of Securities. Unlike the requirements of qualifications for the exemptions contained in Sections .04(F), (G), and (H) of S.B. 338, no equivalent statutory distinction between offerings limited to investors capable of fending for themselves and those directed to unsophisticated public investors requiring government protection is made by the conditions of qualification for registration by notification contained in Section .08(A)(3). Although we agree that the needs for and benefits of regulation in the area of family oriented and closely held business enterprises, such as those exempted by the ten or fewer purchasers provision of the Bill, is minimal and that therefore the fairness jurisdiction of the Division in this area would be inappropriate, we very strongly believe that immediately above this area on the scale of offerings (as measured by size and breadth of distribution), in the quasi-public issuer-distributed offering, lies the grass roots of the area of financing activity which most greatly needs and can most greatly benefit from the impact of Division regulation and where fairness concepts can establish lasting patterns as companies grow. This most fertile area for regulation by the Division extends up through the multi-million dollar intrastate offering underwritten by intra-state broker-dealers to the point where nationally oriented offerings and secondary markets regulated by the S.E.C. and the N.A.S.D. begin to strain the efficacy of the Division in providing meaningful regulation. We know that we will never have a measurable productive impact on Wall Street and do not believe that as a matter of priority we should under normal circumstances attempt to do so. The most relevant scope of jurisdiction of the Division of Securities lies in the area of public securities activity where no one else is effectively regulating. The offering distributed to between 10 and 25 purchasers is an essential part of this scope and the Division intends, as a matter of priority, to make its regulatory impact felt there in order that all public investors will be protected.

The Division has no difficulty under the existing Ohio Securities Act finding statutory justification for asserting its authority to apply fairness requirements to these offerings, which are for the most part now registered by description. Regrettably, this area of regulation has not in the past received the degree of attention which it deserves. During 1973, in what has been basically a period of administrative reconstruction, higher priority has been given to the development and publication of the fairness standards themselves (prior to any increases in the scope of their application), the recruitment and training of new registration personnel, and the elimination of an intolerable backlog in qualification filings. In essence, we have sought to put our own house in order and to reduce the negative impact of our regulation before attempting to increase our positive impact so that we can put the industry's house in order. We will, however, within the very near future, be prepared to begin making our regulatory impact felt upon offerings registered by description felt more firmly through the application of fairness standards and the exercise of our suspension powers to a much greater extent than in previous years. The Division is not, therefore, in S.B. 338, asking to increase the scope of its regulation. It intends to create an administrative structure which will allow it to regulate more actively and more effectively within its existing scope. Many provisions have been incorporated into this Bill (such as the requirement of prior promulgated rules, the establishment of time periods within which the Division must act on registration and licensing applications, and the appeals process of the securities board of review) to assure that it will also regulate more responsibly.

A fundamental principle which has governed my decision-making with respect to the proposed new Act is that this legislation should not materially change the basic character or scope of regulation by the Division of Securities in any manner potentially detrimental to the interests of public investors in Ohio. It has been on the basis of this principle that suggestions to eliminate the authority of the Division to prescribe rules governing fairness of terms of securities being offered for sale in this State (perhaps, in light of pending Federal pre-emption, an even more important regulatory tool for state securities administrators than anti-fraud and disclosure powers) have been adamantly opposed by me, and it is on the basis of this principle that I will likewise oppose any provision which eliminates from the regulatory jurisdiction of the Division so large a segment of the securities offerings to which its fairness powers have been applied in the past as to significantly reduce the impact of the Division as a pervasive regulatory force upon public financing activities, large and small, in all sections of this State.

The Division and representatives of the Bar Association held several meetings during the months of December and January in an effort to gauge the distance between the objectives respectively sought by each in this area and to determine whether there might be some way to resolve the differences dividing us. In my letter of January 8 to Mr. Tobin, I offered a proposal to the Association designed to adequately handle the small local offering situation in a manner responsive to the needs of both small business and the investing public. I indicated that because of the existing tenuous balance in the Bill between the interests of each, this proposal represented the limits of my willingness to restrict the authority of the Division to regulate smaller offerings. It was and is my opinion that any further concessions to the Bar Association on this point would not be in the public interest.

Throughout our meetings, Mr. Tobin and certain of the other representatives of the Securities Subcommittee who have been active in the consideration of this Bill made evident their determination to find some mechanism acceptable to the Division which would result in the removal of the fairness jurisdiction of the Division from the entire broad range of potential offerings eligible for registration by notification. Their principal approach to this subject was the proposed incorporation of a few basic fairness considerations into the eligibility requirements of Section 8(A)(3) (which would be amendable by rule under Section 8(B) only upon a demonstration by the Division of the existence of specific abuses which required correction.) In fact it was implied that even now the Division should sustain the burden of demonstrating that sufficient abuse of various kinds had existed in past registrations by description to warrant the respective fairness conditions being considered for incorporation into Section 8(A)(3), although the records of the Division had never been kept on an abuse by abuse basis and until April of 1973 no basic statistics regarding numbers of offerings had even been compiled. I continuously expressed my opposition to this approach to the problem because of the extent of contraction in the Division's regulatory jurisdiction involved, the resulting appearance of Division regulation and approval where none would in fact exist, and the elimination of the elements of flexibility and precision necessary in the application of fairness concepts which could be achievable only by rulemaking and not by statutory prescription.

On Saturday, January 19, a meeting of the Securities Subcommittee (to which I and other representatives of the Division were invited) was held to confront this issue and, hopefully, to resolve the matter once and for all, since time was becoming a critical factor. Everyone at the meeting seemed to be in agreement that there was a need for new legislation and that a prompt decision on the issue at hand was essential, but it was obvious from the outset that in general the attitudes of several members of the Subcommittee who were present were such that no settlement was likely to result from the discussion that day. The Columbus subgroup repeated its suggestion, now in the form of a written proposal, for the elimination of fairness rules from registration by notification through the imposition of additional conditions upon the eligibility requirements of Section 8(A)(3). Only a few of those present, aside from representatives of the Division or of the Securities Advisory Board, expressed, prior to the departure of the Division group, preference for a solution which would fall within the framework of the Division's jurisdictional requirements. At that meeting it struck me for the first time that apparently certain objectives of many members of the Subcommittee with respect to this legislation went considerably beyond what I, as a state securities administrator, could allow to be enacted into law. It appeared that unless these attitudes changed or others prevailed there was little likelihood that a new securities law would be enacted this year, if at all in the forseeable future.

At the time of the printing of this issue of the **Bulletin**, we have not yet received official word of the decision of the Subcommittee but we are hopeful that it might yet agree to the Division's position on this matter of regulatory jurisdiction. A failure on the part of a majority of its members to come to grips with this final issue will, in my opinion, represent an insufficient recognition on their part of the importance of the Division's role in public protection. I hope that they will be able to evaluate this Bill in the context of public needs and administrative realities.

Several questions still remain to be answered: Will the Bar Association accept the Division's position and proceed with the enactment of this legislation? Will it, on the contrary, reaffirm the determination of the Subcommittee to reduce the Division's regulatory role and urge Senator Cook to proceed with the enactment of an amended Bill more to its own liking? Or will it (or the Governor's Council) introduce a new Bill designed to amend the existing Ohio Securities Act so as to achieve similar restrictions upon the Division's authority? Will Senator Cook and his Committee be willing to proceed with the enactment of S.B. 338, if so requested by the Division, without the support of the Bar Association? If so, is it likely that approval of the Bill by both the Senate and the House can be obtained before an early adjournment of the legislature in this election year? What will the Division do if the Bar Association decides to withdraw its support from S.B. 338? What will it do if the Association decides to proceed with legislation of its own?

Probably the fact that two months have been consumed debating this last issue to be resolved between the two major supporters of new securities legislation has already foreclosed the possibility of a new law being enacted this year. Even if the Subcommittee decides to remove its objections without referring the question to the full Corporation Law Committee or the Executive Committee of the associations, it will be the middle of February before the Commerce and Labor Committee can convene its final hearing. Then it will require a minimum of thirty days to draft and print an Amended Bill for Senator Cook to report out of committee and onto the floor of the Senate. If Senate action can be obtained by the end of March, two to three months at most remain before adjournment to achieve in the House what required twelve months in the Senate, and although a considerable degree of refinement in the Bill has been achieved and opposition removed during its tenure in the Senate Committee, the House is not going to pass this major legislative proposal without careful consideration.

It is likely that unless the Bar Association decides to proceed with vigorous support of this Bill in a form acceptable to the Division, that the Division will request that Senator Cook table the Bill and that its sponsor, Senator Novak, withdraw it from consideration. It would be extremely shortsighted for the Division to capitulate with respect to such a fundamental question regarding its jurisdiction merely in order to achieve the enactment of a new law this year. We would prefer to continue with the administration of the existing securities act, despite its many shortcomings, until an opportunity arises to obtain the right new securities law for Ohio. In the meantime, we can compile the necessary information to demonstrate justification for retaining the scope of our authority. We can continue to improve the operations of the Division so as to facilitate the implementation of the new law when it arrives by developing and publishing regulatory standards, reconstructing administrative procedures, and regulating more actively by means of denials, suspensions, injunctions, prosecutions, and other appropriate enforcement remedies. And we can study more carefully the larger policy questions relating to the scope and operations of the Division, such as the proper focus and extent of regulatory jurisdiction, the appropriate position of the agency in the governmental structure, the role of advisory boards and special counsel in light of the new ethics legislation, the revision of salary levels and other measures to maintain continuity of a professional staff, and the most appropriate funding mechanism to assure an adequate budget for effective regulation. We had intended to tackle these questions after the enactment of a new statute, but they might best be resolved beforehand and submitted as a single package. Perhaps if more attention had been given to establishing a better concensus upon these matters prior to the preparation of S.B. 338, the appearance at the eleventh hour of so fundamental an issue as the one now dividing the Division and the Bar Association would not have occurred.

2. *Preview of Division Program for 1974:* The January issue of the **Bulletin** will contain my observations concerning the Division's regulatory program for 1973, its successes and its shortcomings, and a detailed presentation of our program for 1974. I will set forth here, as a preview, a brief summary of the principal features of both.

The year 1973 was, for the Division, by and large a salvage operation involving a sifting through of the debris of a previous period of relative regulatory inactivity. It was a year for a taking of stock, an establishment of objectives and priorities, a reallocation of resources, a restructuring and restaffing, and a sewing of the seeds of more vigorous regulation in all areas of our jurisdiction in the future. The most significant activities of this past year were the preparation of a new securities law, the development of regulatory standards for securities registration, the establishment of the policy of "cursory review", the inauguration of the **Ohio Securities Bulletin**, the creation of an administrative staff, the reconstruction of the Registration and Enforcement Sections, the injection of many talented and highly motivated new people into positions of responsibility, the removal of the image of the Division as an inactive, obstructive, and disreputable agency, the initiation of several major enforcement actions, the return to compliance with the letter and spirit of the Administrative Procedure Act, the presentation of the first Division sponsored Securities Conference, and the commencement of efforts to revitalize the field examination process and to begin for the first time actually regulating the development and sale of foreign real estate.

A large part of our resources was, during 1973, diverted to the preparation of S.B. 338. In addition, we were besieged by the Realty National investigation, the Welfare Finance and Provident Securities law suits, and severe budget restraints which placed our program considerably behind schedule, but we were also the beneficiaries of a large reservoir of goodwill and valuable assistance extended by the Bar and by other constituencies which appreciated our good intentions and our serious efforts. We increased our regulatory activity and effectiveness in certain areas, but for the most part 1973 was a year of rebuilding, of putting our own house in order before we attempted to put in order the houses of the industries we regulate.

1974 will be a different kind of year. This year the Division will regulate more aggressively than it ever has before. The degree of intensity of our regulatory program will depend to a great extent upon whether or not we are able to resolve our differences with the Bar Association and proceed with the enactment of S.B. 338, since if we do proceed a large part of our resources will be devoted to a massive rule-writing project which will be necessary in order to implement the new law. On the other hand, even if we do not proceed with S.B. 338 we will probably devote a considerable amount of attention to cataloging the areas of abuse in public financing and to confronting major policy questions (not heretofore studied in sufficient depth) attendant to the reconstruction of a securities law and of the agency which administers it. Apart from these broader considerations, the Division will continue with and hopefully increase the pace of its development of regulatory standards. The emphasis of this project will be shifted from securities registration to broker-dealer and foreign real estate activities. This effort will be paralleled by a dramatic increase in enforcement activity in these two areas.

New broker-dealer standards will, under the Ohio Securities Act, require the promulgation of rules pursuant to the Administrative Procedure Act. We had been delaying the development and promulgation of rules in this area pending the commencement of the rulewriting project following the enactment of S.B. 338. Now, however, we will proceed. These rules and the accelerated enforcement activity in the broker-dealer areas will be directed principally toward the approximately two hundred fifty general intra-state broker-dealers who are not regulated by the S.E.C. or N.A.S.D. and who have in the past been virtually ' on a frolic of their own". We intend to make sure that from this point forward they will as a group take much more seriously their considerable public responsibilities. We will tighten up regulation with respect to financial responsibility (bonding and minimum net capital requirements) personnel qualifications (knowledge, experience, and business repute), and sales practices (full disclosure and suitability.) Our broker-dealer financial examinations and investigations will be concentrated almost entirely upon these licenses. Many intra-state broker-dealers probably won't survive . . . and many shouldn't.

As far as foreign real estate is concerned, it is going to be a "whole new ball game". The emphasis of regulatory standards and enforcement activities will be redirected this year principally toward the developer. It is the developer who has shirked his basic responsibility to the public by refusing to define clearly what he is promising and what he is not, by structuring his advertising pitch in an inherently deceptive manner toward an elusive life style generally unrelated to the piece of land the purchaser obtains, by failing to provide in his development operations adequate assurance that the improvements which he has promised will actually be provided, by channeling the bulk of his sales revenues back into the selling effort instead of into the land and improvements, and by condoning and even participating in the high pressure and commonly fraudulent sales methods of his field representatives. Where developers have not performed on express or implied promises of improvements or where they do not submit, as required, sufficient information to enable the Division to make such a determination, currently active foreign real estate registrations will be suspended. Where developers have not clearly defined what they are promising and continue to utilize flashy four-color brochures extolling the virtues of "the Great Southwest" to distract the reader's attention from the characteristics of the property itself, where they fail to discipline themselves financially by escrowing sales proceeds, by letting construction contracts and subcontracts on an "upset price" basis, and by letting commercial banks assume the risks of non-performance, conditioning the use of purchaser's funds (in the form of a "takeout") upon completion of the improvements, or where they propose to continue marketing their land by means of telephone campaigns utilizing "sucker lists" to entice prospects to high pressure sales meetings by means of free dinners and other giveaways, their applications for registration will be denied. We intend to put a stop to what is undoubtedly the most massive continuous fraud ever perpetrated upon the citizens of Ohio. Until this industry undergoes a drastic and fundamental internal reform, we do not expect to be approving very many more, if any, applications for foreign real estate registration in this state.

The third area in which Division enforcement activities will be considerably increased during 1974 relates to the regulation of registrations by description and in particular to the application of fairness standards to those offerings registered pursuant to Section 1707.06(A)(1) for which the principles of cursory review do not apply. The processing of these registrations will be restructured administratively so that more attention can be devoted to the analysis of these offerings in terms of the broader perspective of basic regulatory objectives rather than continuing to treat them in an essentially clerical manner. Resources available to devote to this area of regulation will be meager in relation to the large volume of filings involved, but gross violations of fairness standards will be able to be detected and if registrants are determined to proceed with sales rather than to comply with Division requirements, these registrations will be suspended pursuant to the authority of Section 1707.13. The Division has obligations to the public in connection with small offerings as well as large ones and it does not intend to surrender by adverse possession its authority to provide needed protection in this area.

In conclusion, although the Division will continue during 1974 the implementation of policies and projects initiated during 1973, it will devote a much smaller proportion of its efforts to internal reconstruction and a much larger proportion to making its regulatory impact felt through more aggressive enforcement activity. If those who have applauded the Division's recent efforts to clean its own house are not willing to accept the results of its transition this year to more hard-nosed regulation, then the honeymoon will be over and properly so. This is, first and foremost, a regulatory agency.

3. *Cleanup Project Underway for Foreign Real Estate Registrations:* Subsequent to the administrative changes in the Foreign Real Estate Section announced in the October issue of the **Bulletin**, the Division has, largely through the special efforts of the Deputy Commissioner, carefully analyzed the records of that Section to determine the condition of its inventory of some 250 active foreign real estate registrations. What we have discovered is that in most of the filings which have been approved by the Division in the past there has never been an adequate clarification of exactly what commitments to specific improvements were being made by the respective registrants, yet the advertising brochures and other promotional materials to be used in connection with the various offerings have been replete with implications that certain recreational as well as utilitarian features either were in existence or would be made available for the benefit of purchasers. In addition, less than 10% of the registrants have been submitting to the Division the periodic reports describing the status of such improvements which are required by Division Orders as a condition of the continued effectiveness of those registrations. Without a clarification of the developer's commitment to specific improvements it is impossible to adequately determine whether or not the foreign real estate in question will be sold on grossly unfair terms and whether or not the advertising is deceptive or misleading so that a decision can be made to either approve or deny the application for registration, and without the receipt of periodic reports describing the status of such improvements it is impossible to adequately determine whether or not the developer is meeting his obligations so that a decision can be made to continue the registration in effect or suspend it. The Division will be taking action immediately to remedy these fundamental informational deficiencies.

No further applications for registration of foreign real estate will be considered unless and until there is filed with the Division in connection with such applications a detailed schedule describing all improvements to be provided by the developer and the dates by which each is to be completed. Supporting documentation sufficient to establish the size and character of such improvements must be attached to this schedule and it must be accompanied by an explanation of any references in advertising or promotional materials to features which are not included in such schedule and which might be mistaken by prospective purchasers for improvements to be provided by the developer.

The schedule of improvements must also contain a description of arrangements which have been made (including escrows of proceeds, performance bonds, firm construction contracts, licenses and permits, construction and permanent financing arrangements, etc.) to assure that such improvements will be completed on schedule as promised. An applicant who submits a filing which is not accompanied by the schedule of improvements described above will be immediately notified of this deficiency in his application by a form letter and the Division will wait further compliance before proceeding with an examination of the application. A schedule which does not clearly indicate specific commitments and adequate means of assuring completion will be considered insufficient and the application for registration will not be approved. Since the entire foreign real estate industry has to date been so lax in disciplining its operations as to fail to make such fundamental commitments and assurances as these so that regulatory agencies can make meaningful determinations and the public can be protected, it is doubtful that the Division will be approving many more applications for registration of foreign real estate this year.

On or about February 1, the Division will issue notices to all currently active foreign real estate registrants that unless adequate periodic reports of the status of improvements required by Division Order as a condition of continued registration are received by the Division within 30 days, their registrations will be suspended. Extensions of time for completion of these reports will be granted only in special circumstances and upon a showing of just cause for delay. Again, these reports must relate the improvements provided to those promised, expressly or impliedly, in previous advertising and promotional material and must be accompanied by an explanation of references therein to features which have not been provided. On or about March 1, the Division will begin suspending the registrations of those developments for which adequate reports have not been received or for which the reports submitted disclose material discrepancies between promises and performance. During the next two to three months we will be conducting our own independent analysis of the files of all active registrants and as a result of this undertaking additional registrations will be suspended in connection with developments for which misleading representations of planned improvements have been made.

We expect that as a result of this extensive cleanup project, a very large number of foreign real estate registrations will be denied or suspended this year. We intend to eliminate from the marketplace developments whose sponsors have not lived up to their basic responsibilities to the public. We hope that upon the completion of the Division's proposed new regulatory standards for the development and sale of foreign real estate (a summary of which is set forth in the November and December issues of the **Bulletin**) an entirely new and honest environment will be established for the marketing of this particular commodity in Ohio.

4. *New Concerns About the Sale of Real Estate Securities:* A new state chapter of the Real Estate Securities and Syndication Institute has recently been established under the auspices of the Ohio Association of Realtors. As I understand it, the basic purposes of R.E.S.S.I. are to educate real estate brokers who are members of the National Association and its state counterparts on the subject of real estate securities, to encourage and facilitate the entry of these persons into this segment of the securities business, and to establish a self-regulatory mechanism to assure responsible conduct by these new entrants. I participated in the initial program of the Ohio Chapter on January 9 to present the regulatory point of view and will be making an additional presentation as a part of the Institute's Syndication Conference on January 24 and 25 in Columbus.

It is my observation as a state securities administrator that a dangerous situation already exists in connection with the sale of real estate securities and unless it is handled properly this new campaign by R.E.S.S.I. and its Ohio Chapter could aggravate this situation to the point where a special enforcement effort by the Division would be necessary. Many real estate people — brokers, developers, mortgage bankers — are violating the Ohio securities laws every day and most of these are not even aware that they are doing so. They are dealing in condominiums with rental pool arrangements, developmental investment contracts, foreign real estate, mortgage financing, and limited partnership interests without registration and without being licensed as broker-dealers. I have reached the conclusion that this illegal activity is more widespread than I would have previously imagined. These people should be considerably more concerned about this state of affairs than they apparently are. Apart from possible enforcement action by the Division of Securities, they are creating for themselves a vast amount of potential civil liability which might destroy the investment vehicles with which they are dealing as well as jeopardize their own individual financial security.

The promotion by the Ohio Chapter of R.E.S.S.I. of a rapid expansion of securities activity by real estate people creates the potential for even more widespread violations in this area. Real estate people are generally not accustomed to the legal and financial complexity involved in the securities business and to the heavier degree of regulation which prevails. Many might well consider the additional benefits not worth the burdens which must be assumed. Perhaps the greatest danger to the investing public lies in the secretive approach to selling which has historically been associated with the real estate business. For many real estate people an adjustment to the concepts of full disclosure within the spirit of Rule 10-B-5 will be an extremely difficult one and a widespread failure to make this adjustment will lead to widespread fraud. The attractions of real estate securities to those who enter the business as promoters (in the form of acquisition fees, development fees, management fees and other forms of compensation in addition to sales commissions) may likewise lead to widespread abuse, to a dilution of the quality of available real estate investments, and even to the creation of inferior real estate itself if this activity is not carefully policed by government and industry alike. In short, securities activities of any kind should not be promoted wholesale by any organization with an evangelical fervor but should be approached cautiously and at a pace suitable for a complete assimilation of the public obligations involved.

It is fortunate that the leaders of R.E.S.S.I. at both the national and state levels appear to appreciate the aforementioned concerns and have placed a significant degree of emphasis in their programs upon the requirements of the securities laws and regulations. They have expressed their desire as an organization to cooperate fully with the Division and we hope to participate with these organizations in their conferences and other programs to maintain an adequate regulatory emphasis. It is hoped that the initial good intentions of both parties will result in an increase rather than a decrease of discipline in this important area of securities activity.

William L. Case, III.

POLICY DEVELOPMENTS
Foreign Real Estate (Cont.)

I. *Disclosure.* (Add as second paragraph to this section.)

As a condition to registration, the applicant must prominently set forth in both the offering circular and registration application a list of promised improvements and a time table for the completion of such improvements. Such list of improvements shall represent those commitments undertaken by the developer of the property and a schedule for the completion of the improvements.

II. *Unfair and Deceptive Practices.* (Add as second paragraph to this section.)

The following represents certain unfair and deceptive practices that will be considered to be misrepresentative claims in the selling process:

(i) that there are plans for the future construction of improvements or the expected rate of completion of such improvements which are exaggerated;

(ii) that a future price increase is imminent and that the buyer should purchase property now in order to avoid such increase, (unless such price increase has been requested and approved by the Division);

(iii) that the investor will realize a gain through natural appreciation in the value of the property (unless such claim is justified by documented past increases in value which are of equivalent magnitude);

(iv) that the land is now selling at a substantial discount as compared with the established price, (unless such price was in effect for a reasonable period of time prior to such discount);

(v) that credit for the purchase of such property is readily available or that the terms of such credit plans are favorable when in fact neither of those claims are true in all instances; and

(vi) that the land can be resold through an existing procedure (when in fact there is no active secondary market in such property).

III. *Land Installment Contracts.* (Note that this section will apply to all contracts for the sale of foreign real estate to Ohio investors. The title of this section will be more appropriately titled *Contract Restrictions.*

Add the following as a second paragraph).

A contract for the sale of land should contain a description of the property, including any encumbrances, deed restrictions, or zoning regulations that could affect the purchaser's use of the property.

The contract shall contain a provision requiring that whenever the developer for any reason abandons a commitment to make an improvement which represents a principal feature of project or affects specific property he must make an offer of rescission to all purchasers who relied on the developer's promise to make such improvements. Such a promised improvement must have been a material feature of the project or must have been a substantial part of the inducement to purchase the property.

IV. *Minimum Investment and Suitability.* (Add as second paragraph to this section.)

To qualify for the lowest suitability standards (i.e., $10,000 net worth or $8,000 annual gross income) properties must be Immediately Available for improvement by the purchaser. This means that the basic characteristics of habitability outlined in section VI must have been provided by the developer prior to registration.

Properties that are in the Developmental stages shall include those properties that will have these basic characteristics of habitability within 3 years of the date of registration. All further improvements, advertised in the offer of such properties, shall be completed within 5 years from the date of registration.

Properties for which the amenities outlined in section VI shall not be provided within 3 years from the date of registration shall be classified as Speculative properties. Properties in this Speculative category shall be sold only to persons who are suitable based on their having an annual gross income of $30,000 and a minimum net worth of $30,000 or, in the alternative have a minimum net worth of $75,000.

Any purchase of more than one non-adjacent property shall be presumed to be for investment purposes rather than improvement by the purchaser. Accordingly, all purchases over and above the original purchase will be considered to be Speculative purchases of foreign real estate. All purchasers who fall into this Speculative category must meet the corresponding suitability standards.

V. *Advertising.* (Add as second paragraph to this section.)

The content of all advertising must be current so as not to suggest any improvements that will not be in existence within 5 years from the date of registration. Such advertising shall place primary emphasis on the homesite lots and improvements in the immediate vicinity of the proposed purchase area rather than the general geographic location of the project or any other feature not within the immediate vicinity of the development.

All advertised improvements must be specifically noted in the list and schedule for completion of improvements required to be disclosed in both the registration application and the offering circular, See Section I, *Disclosure*.

VI. *Physical Land Characteristics*. Properties that are offered for sale as being suitable for construction of homesites shall be registered and offered in units of a minimum of 100 homesite lots. Such lots shall be considered to be Immediately Available for improvement when the following minimum characteristics of habitability have been supplied:

(i) an adequate supply of potable water;

(ii) approval by the local municipal authority for the use of septic tanks on the property, or, if required, the installation of an adequate sewage disposal system;

(iii) the availability of municipal services such as police and fire protection and sanitary and health services;

(iv) the availability of necessary public utilities such as gas, electricity, and telephone services;

(v) the availability of commercial facilities in reasonable proximity to the development which offer such basic goods as food, drugs, and household requirements;

(vi) the existence of all-weather roads allowing access to the properties by means of conventional forms of transportation; and

(vii) the readiness of the property for the construction improvements without the necessity of performing any major draining, filling, or subsurface improvement to the land.

Properties that are promoted principally for future improvements will be classified as Developmental. Developmental properties must provide these basic characteristics of habitability within 3 years of the date of registration. Properties for which the planned improvements will not be completed within 3 years shall be classified as Speculative properties and shall be sold only to persons who are considered to be suitable, see *Minimum Investment and Suitability,* Section IV.

Properties that are being sold or leased for temporary use, such as campsites or recreational vehicle parks rather than permanent homesites or condominiums, shall be classified as properties that are Immediately Available. These properties must have certain of the above improvements, as they are applicable, such as an adequate potable water supply, municipal protection services, and roads that allow access to the property.

VII. *Selling and Marketing Methods.* Dealers and salesmen shall conduct business during normal working hours and shall refrain from the use of high-pressure and over-reaching sales techniques. Dealers and salesmen may attract clients through the use of approved advertising, respond to unsolicited customer inquiries, and make limited use of telephone solicitation of prospective clients. Such telephone solicitation must be approved for use by the Division and shall be limited to the function of eliciting an indication of interest, arranging a meeting with the person, and establishing the time, date, place, and general purpose of such meeting. Copies of any list of names and telephone numbers of persons solicited by telephone must be submitted to the Division prior to the use of such list.

The dealer or salesman shall be prohibited from engaging in home solicitation except by request of the prospective purchaser for such person's own convenience.

Where a promotion includes the offer of an expense-paid visit or free trip for the purpose of inspecting the property, such plan must apply to all offerees and may not be conditioned on a subsequent purchase of property by the offeree.

The dealer or salesman shall be responsible for accompanying all sales solicitations with an offering circular that has been approved by the Division. Such offering circular must represent the true status of the development including a schedule of the type of improvements and a time-table for the completion of these improvements as promised by the developer, dealer, or salesman.

VIII. *Escrow; Performance Bond.* In order to assure the completion of the various community improvements promised by the developer in the registration and offering circular, the Division shall require the developer to obtain a completion bond or maintain an escrow of proceeds from the sale of all properties. Such escrow shall be in an amount considered adequate to complete all promised improvements.

IX. *Prices; Price Increases.* Accompanying the schedule of sales prices of such real estate, which is part of the registration application, the Division will require evidence justifying the initial offering price per lot. It must be demonstrated that this lot price bears a reasonable relationship to the cost of the property, based on the individual lot's pro-rata share of the cost of improvements and the development of the property.

A reasonable price structure shall be one where the cost of the land and of development of the property will account for at least 60% of gross sales. Two-thirds of this amount must have been spent prior to registration with the remaining one-third of the cost of land and improvements being spent after registration. The balance, or 40% of the total sales price, may be used to cover total selling expenses, including commissions, advertising, underwriting expenses, and compensation to the developer.

Prior to their implementation, all price increases must be submitted to the Division for approval. Such requests for increases must be justified on the basis of increased costs or other persuasive factors.

X. *Miscellaneous.* All Division Orders issued for the qualification of foreign real estate registrations shall have a twelve month expiration period. At the end of this term the registrant must re-qualify the development in order to sell in Ohio. Such a re-qualification will require the Division to make another fairness determination based on the developer's progress in making the promised improvements to the property. The re-qualification procedure may incorporate by reference any material included in the original Form 33 application, however, the registrant must submit current audited financial statements, an updated offering circular, copies of all advertising currently being used, and a new filing fee of $150.

All registrants must fulfill their periodic reporting responsibilities by filing successive 90-day reports which indicate the progress being made toward the completion of various improvements to the property. Such periodic progress reports must be certified by an independent architect or other third party who represents the report to be an accurate account of progress with respect to the planned improvements.

The Division will implement, with respect to foreign real estate registration, the procedure for qualifying securities sold in violation of the registration provisions, as authorized by Section 1707.39, Ohio Revised Code. The Form 39 procedure will permit the Division to exercise its discretion in the late registration of foreign real estate. In such situations the Division must be satisfied that no person has been "defrauded, prejudiced, or damaged" as a result of an applicant's failure to register.

All applicants for either a dealer's or salesman's license in foreign real estate pursuant to Section 1707.331, Ohio Revised Code, will be tested on their knowledge of the securities laws of this state through a written examination.

The Division will require all applicants to deposit the amount of $700 at the time of application to cover the costs inspection of the property. In addition, all registrants will be required to maintain a total balance of $700 on deposit with the Division to cover the costs of any future verifications considered necessary by the Division. Any unused portion of this amount shall be refunded by the Division upon notice that the developer has completed all improvements promised at the time of registration, see Section I, *Disclosure.*

Midwest Statement of Policy Regarding Real Estate Programs

This issue of the **Bulletin** continues **Written Policy Guidelines 1973-5** dealing with the Division's modifications of the Midwest Securities Commissioners Association **Statement of Policy Regarding Real Estate Programs.**

These guidelines make significant modifications in the area of fees, compensation and expenses, Section IV of the *Midwest Statement of Policy.* There are also some definitional changes to correspond to the modifications to Section IV.

There is a modification in the conflict of Interest Area, Section V(E)(3), to permit a sponsor to perform development and/or construction services for the program where he can demonstrate substantial advantages to the program in allowing him to perform such services.

This is also modification to the area of voting rights of limited partners, Section VII(B), that eliminates the power of the limited partners to remove the sponsor. This power of removal is believed to jeopardize the tax status of the partnership entity as the power of removal may lead to the continuation of the partnership under new management. In that situation, the entity may be considered to possess the "continuity of life" characteristic of a corporation, Federal Income Tax Code of 1954, Regulation 301.7701-2(b).

The added portions of the voting rights section compel a general partner to seek a prior majority approval in cases where such action would alter the ordinary course of the business of the limited partnership, such as amending the agreement in some way causing a substantial change, or by selling all or substantially all of the assets of the entity. This addition merely articulates an affirmative duty on the part of the general partner in these instances. Such duty is mandated by the Uniform Limited Partnership Act, Section 1781.09(A)(2), Ohio Revised Code, which states that the general partner has no authority to "Do any act which would make it impossible to carry on the ordinary business of the partnership."

The foregoing modifications of the *Midwest Statement of Policy* are designed to supercede the corresponding sections of the February 28, 1973 draft of the *Statement.*

Credit Union Rules

Pursuant to a public hearing on the proposed rules, held on November 14, 1973, the Division is announcing the formal adoption of rules regarding the administration of state-chartered credit unions.

The text of such rules appears in the Rules section of this **Bulletin.** These rules are to become effective as of February 1, 1974.

Nelson E. Genshaft

INTERPRETIVE OPINION

Participation of Intrastate Broker/Dealer in Offering of Out-of-State Issuer

The purpose of this interpretive opinion is to state the Division's viewpoint on the ability of an intrastate broker/dealer, namely a broker/dealer whose license is limited to intrastate transactions, to participate in an offering of the securities of an issuer that is not an Ohio resident.

Section 15 (a)(1) of the Securities Exchange Act of 1934 states:

> "No broker or dealer (other than one whose business is exclusively intrastate) shall make use of the mails or any means or instrumentality of intrastate commerce to effect any transaction in, or to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills), otherwise than on a national securities exchange, unless such broker or dealer is registered in accordance with subsection (b) of this section."

This section states the application of the registration requirements for broker/dealers under the Securities Exchange Act of 1934. It is apparent that the only "exemption" available for a broker/dealer from the 1934 Act would be that his business was "exclusively intrastate".

Professor Loss, in his treatise on securities regulation, states that the sale on behalf of an out-of-state issuer precludes the broker/dealer from claiming that he is conducting an "exclusively intrastate business". *LOSS, 2 Securities Regulation at 1300.* Professor Loss cites the case of *Professional Investors, Inc.*, 37 SEC 173, 175-76 (1956). The broker/dealer in this case sold stock of a Colorado corporation to residents of Indiana. The broker/dealer was licensed in Indiana and the offering was registered under the Indiana Securities Act. The offering was exempt from SEC registration pursuant to Section 3(b) of the '33 Act and a Regulation A filing was made in the SEC regional office. The Commission found that the broker/dealer's business was no longer exclusively "intrastate" and therefore its intrastate exemption from registration as a broker/dealer was destroyed. See also, *The Whitehall Corporation,* 38 SEC 259-271 (1958) where a Texas broker/dealer sold the securities of an Arkansas issuer exclusively to Texas residents and was found to not be entitled to the intrastate exemption pursuant to Section 15 of the Exchange Act.

The *Professional Investors* case is mentioned in the case of *Mutual Real Estate Investors, Inc,* 41 SEC 557 (1963) where the Securities and Exchange Commission found an unregistered Connecticut broker/dealer to be in violation of the '34 Act for not only offering limited partnership interests in an out-of-state issuer to Connecticut residents, but also for making offers in newspapers which had an out-of-state circulation. This identical theory is espoused in *WEISS, Registration and Regulation of Brokers and Dealers* 14-15 (1955), where it is stated that:

> "The business of a broker or dealer is not exclusively intrastate if he is a participant in the distribution of securities of an out-of-state issuer, or even if he acts only as a broker in the sale of an out-of-state block of securities from an out-of-state issuer to a local customer." (citing *Professional Investors* and *Whitehall*).

The SEC has also stated before the Senate Sub-Committee on Banking and Currency that:

> "In order to qualify for the exclusively intrastate exemption, a broker/dealer must not only deal with customers who are exclusively within the State, but he must deal exclusively with securities originating in the State." SEC Legislation, 1963, Hearings before Sub-Committee of Senate Committee on Banking and Currency on S. 1642, 88th Cong. 1st Sess. 388 (1963).

Professor Loss points out that:

> "A resident who has bought out-of-state securities with a view to distribution and resells them to a dealer in the state would destroy the dealer's intrastate exemption, presumably on the theory that the dealer has been made a step in the distribution of an out-of-state issue. (*Loss, supra,* at 3358 Note 41-B)

Recent rulings by the Securities and Exchange Commission have underlined the theory espoused in the *Professional Investors* case. In *Fifty Florida Corporation,* BNA Securities Regulation & Law Reporter 9/12/73 at C-3, the S.E.C. found that a Broker/Dealer who participates in a Regulation A offering would not be involved in an "exclusively intrastate business" within the meaning of Section 15(a)(1) of the Exchange Act.

The S.E.C. has placed other parameters on the intrastate exemption such as in *Boetell & Co.,* CCH Federal Securities Law Reporter Paragraph 78,343, where it ruled that participation by a broker/dealer as a general partner in a partnership whose business was interstate in nature constituted a loss of an "exclusively intrastate" exemption for the broker/dealer even though it was not selling the limited partnership interests of the partnerships of which it was a general partner. Also, in *Wertheim* CCH Federal Securities Law Reporter Paragraph 79,286 the Commission stated that a broker/dealer in a "private placement" must be registered under Section 15(b) of the Exchange Act because his business would not be exclusively "intrastate". One should refer also to *Capital Fund, Inc. v. S.E.C.,* (8th Cir. 1965) CCH Federal Securities Law Reporter Paragraph 91,552 affirming *In the Matter of Capital Funds, Inc.,* Release No. 34-7398 CCH Federal Securities Law Reporter Paragraph 77,131. The Commission ruled that an Oklahoma corporation selling securities in two states was not entitled to intrastate exemption pursuant to Section 15(a)(1).

The ramifications of participation by an intrastate dealer in an interstate transaction such as the offering of the securities of an out-of-state issuer, raises the possibility of liability under federal law. Most significantly there is the possibility of rescission or rescissional equivalent in damages for individuals who are sold securities by a dealer that should have been registered under the '34 Act. See *Harris v Palms Springs Alpine Estates, Inc.* CCH Federal Securities Law Reporter Paragraph 91,353, where the court allowed damages in a class action seeking rescission or rescissional equivalent in damages. *See* also *McGregor Boulevard Church of Christ v Walling,* CCH Federal Securities Law Reporter Paragraph 92,692.

The S.E.C. has emphasized its position by publicly displaying its opinion in its "Information on Registration and Regulation of Broker/Dealer" brochure. There the Commission states that the fact that an intrastate broker/dealer "cannot, as agent, represent an out-of-state principal even if the transaction is consummated with the customer in the broker/dealer's own state." This position is the position which the Division of Securities will adopt vis-a-vis the offering of an out-of-state issuer's securities within the state of Ohio by an intrastate broker/dealer.

The Registration Section will consider an offering of securities by an out-of-state issuer to be consummated in Ohio through an intrastate broker/dealer, who is not registered under the '34 Act, to be on grossly unfair terms. This determination would be based on the theory that such an offering would be entitled to rescission or rescissional equivalent in damages immediately upon the consummation of any offer or sale pursuant to such registration. Therefore, any intrastate dealer wishing to offer for sale within Ohio the securities of an out-of-state issuer must register with the Securities and Exchange Commission pursuant to Section 15 of the Exchange Act of 1934 prior to participating in such an offering.

Alan P. Baden

ILLUSTRATIVE RULING

Registration of Fractional Interests in Oil or Gas Wells, Form 9-OG, Form 6(A)(3)OG

Facts: Mr. Promoter is the owner of an oil and gas lease located in Muskingum County, Ohio. He has obtained the oil and gas leasehold working interest and the drilling permit for that specific tract of land. He proposes to sell undivided fractional interests in Z No. 1 Well and arrange for the drilling and completion of the well.

Illustration 1: Mr. Promoter estimates that it will cost $48,000 to drill and complete the well. Based on these costs, which are fully documented, Mr. Promoter requests a determination of his allowable compensation under the Division's **Written Policy Guidelines 1973-3.**

Ruling: Mr. Promoter would be entitled to a maximum of $32,000 of compensation. Out of this total amount $22,000 would be cash and the other $10,000 of compensation would be in the form of a 1/8th working interest, valued at $10,000.

Explanation: Under the Division's regulatory standards, Mr. Promoter would first determine the value of the aggregate interests in Z No. 1 Well. The term, "aggregate interests" refers to the total amount of participation interests being offered to the public and retained by the promoter (exclusive of any landowner's royalty interest and any overriding royalty interest not owned by an affiliate of the promoter). The Division will permit Mr. Promoter to charge as much as 5/3 (or 166.67%) of the reasonable fair market value of drilling and completion costs less the amount of interests required to be retained. The maximum amount of interests sold to the public would be the aggregate interests less the minimum 1/8th working interest retained by the promoter.

These drilling and completion costs, which provide the basis for the aggregate interest computation, must be within the range of the fair market value of similar costs incurred by persons not affiliated with the promoter for comparable wells in the same geographic area.

Maximum compensation to the promoter would be 2/5 (or 40%) of aggregate interests or, alternatively stated, 2/3 (or 66.67%) of the estimated drilling and completion costs. This compensation includes the value of the promoter's retained interest and the amount to be paid for underwriting services, with the remainder accruing to the promoter as cash compensation.

The above process can be computed in the following manner:

Estimated Drilling and Completion Costs	$48,000
Aggregate Interests (5/3 of $48,000)	80,000
Less 1/8 Retained Working Interest	10,000
Working Interests Offered to the Public	70,000
Less Underwriting Services (15% of $70,000)	10,500
Total Cash from Public Offering	59,500
Less Drilling and Completion Costs	48,000
Cash Compensation	$11,500

To summarize the foregoing, total compensation that would be allowed to Mr. Promoter is $32,000 (40% of $80,000) in the form of cash, a retained working interest, and underwriting services. This amount would be itemized in the following way:

1/8 Retained Working Interest (1/8 of $80,000)	$10,000
Underwriting Services (15% of $70,000)	10,500
Cash Compensation	$11,500
Total	$32,000

Illustration 2: In what denominations may Mr. Promoter offer fractional interests in this well?

Ruling: The regulatory standards, Section III(B), require a minimum purchase of $2,500 per investor. Mr. Promoter would be permitted to divide the well into 32/32nds. fractional interests and offer 28/32nds. to the public at a price of $2,500 per unit. He would be obligated to retain a 1/8th working interest (4/32nds) as part of his overall compensation. If he proposes to sell in smaller units he would not comply with this minimum investment standard unless such smaller units were sold on the basis of a minimum purchase of a number of units so as to aggregate a $2,500 investment per person.

Illustration 3: In the past, Mr. Promoter has sold fractional interests in other wells and has taken no more than "25% in cash or retained interests in the aggregate thereof." He has ordinarily not retained a working interest in the well and has taken his total compensation in the form of cash. Mr. Promoter requests an explanation of the policy behind the new standards on compensation, including the rationale for compelling the promoter to retain a 1/8th working interest as part of his compensation.

Explanation: The Division is attempting to determine whether an offering is grossly unfair. This includes a prohibition on excessive promoter compensation. The compensation standards are designed to prevent excessive compensation by examining the costs of drilling and completing the well. Many of these costs presently contain and are undoubtedly the source of promoter compensation through affiliate arrangements.

By permitting the promoter to take a larger percentage of the aggregate interests in compensation and by compelling him to take a retained interest in the well, the guidelines can accomplish two principal things:

1. make the promoter more of a participant in the final outcome of the venture, and

2. encourage the completion of a well only when there is a feasible chance of producing oil or gas rather than completing a dry hole so that the promoter can realize more compensation.

The Division will take a very close look at the estimated drilling and completion costs, comparing those costs with the fair market price for similar services on comparable wells in the same geographic area. Through this computation, the Division can determine the maximum amount of promoter compensation that will still allow the drilling and completion of the well at a fair price to investors. Estimated costs that exceed this fair market range for such services will be borne by the promoter as part of his compensation.

The promoter will be permitted to take a larger percentage of aggregate interests as compensation; however, a portion of such compensation will be in the form of a retained working interest. This will assure the promoter's continued interest in the outcome of the well. By forcing the promoter to assume an investment status in the enterprise in addition to his promotional interest, the promoter's interests become more compatible with those of the public. For example, this will have the effect of discouraging the drilling or completion of certain wells that appear to be only marginally productive as a result of preliminary geological reports.

The guidelines also contain a refund provision in the case of a dry hole. This will have the effect of encouraging a promoter to cap a non-producing well. The promoter is permitted to retain the same percentage of the cash compensation that he would have received had the well been completed. In other words, he is allowed to abandon the project and still retain a certain amount of cash while not expending the time and money on what he believes to be a dry hole. Furthermore, the promoter's own retained working interest is worth no more than the working interests of the public. This factor encourages the promoter to base the decision to complete the well strictly on a consideration of the merits of the well.

In summary, the Division is emphasizing in its fairness determination the two following factors:

1. controlling promoter compensation by examining the estimated costs of drilling and completing the well, and

2. tying the promoter to the project by compelling him to take a working interest in the well as a form of compensation.

Illustration 4: Comparison of the compensation rules under the old "25 percent" rule and the new regulatory standards based on a well with an estimated drilling and completion cost of $60,000.

A. *Twenty-Five Percent Rule.* Compensation under this standard was generally based on 25% of the aggregate interests in the well, whether taken in the form of cash or fractional interests. This compensation figure was generally derived from the exemption in Section 1707.03(P) and included the total of commissions, compensation, costs and expenses. The formula for this well would be the following:

Costs of drilling and completion	$60,000
Aggregate Interests (4/3 x $60,000)	80,000
Compensation (25% in cash and/or interests)	20,000

The total amount of compensation could be taken in one of the following ways:

1. 1/16 Retained Interest	$ 5,000
Cash Compensation and Underwriting Serv.	15,000
Total	$20,000
2. 1/8 Retained Interest	$10,000
Cash and Underwriting	$10,000
Total	$20,000
3. No Retained Interests	–0–
Cash and Underwriting	$20,000
Total	$20,000

B. *Forty Percent Rule.* Under the Division's new regulatory standards, the same well would have the following formula:

Drilling and Completion Costs	$60,000
Aggregate Interests (5/3 Costs)	100,000
Total Compensation (40% of Aggregate Interests)	40,000

This compensation figure is comprised of the following items:

1/8th Retained Working Interest	$12,500
Underwriting Services	13,125
Cash Compensation	14,375
Total	$40,000

The above comparison illustrates that under the foregoing new rule the promoter would realize more cash compensation from the higher price of interests offered to the public. Out of this sum, the promoter would pay the total cost of underwriting services. In addition, he would be further compensated through the retained working interest.

In the case where a promoter does not want to sell at the maximum price and compensation ratios permitted by the guidelines, thereby reducing the total amount of proceeds raised from investors, the Division will entertain a request by the promoter to retain a lesser amount of working interest. The following example illustrates this situation: Mr. Promoter estimates drilling and completion costs to be $60,000 (maximum aggregate interests of $100,000). However, he wants to sell a 1/16th fractional interest in the well at $5,000 per unit for a total of $80,000 aggreagte interests under the Division's formula. Normally, Mr. Promoter would be required to retain a 1/8th working interest which would be valued at $10,000 (1/8 of $80,000). Because he has decided not to sell the well at its maximum price to the public, Mr. Promoter can request a variance from the standard allowing him to retain a 1/16th working interest. Compensation would be computed in the following manner:

Drilling and Completion Costs	$60,000
Aggregate Interests	80,000
Total Promoter Compensation	$20,000

This compensation figure is itemized in the following manner:

1/16th Retained Working Interest	$ 5,000
Cash and Underwriting Services	15,000
Total	$20,000

Illustration 5: Mr. Promoter files a Form 9 registration for X No. 1 Well and includes a budget estimate for drilling and completion costs (Exhibit D) of $80,000. The Division has determined that the fair market value for similar services in this area would not exceed $54,000 and that the excess of that figure represents promoter compensation. How would the Division treat this offering where costs were estimated at $80,000; or, how would the Division rule where such costs were estimated at $64,000?

Ruling: The Division believes that the $80,000 figure submitted as estimated drilling and completion costs includes promoter compensation. This is based on the Division's experience in this area indicating that the fair market value for such services would be $54,000. Based on this cost the Division would not permit the sale to the public of more than $78,750 worth of fractional interests. As shown by the following computation, this would not allow enough proceeds for the promoter to meet his estimated costs for drilling and completion of the well, plus pay the underwriting expenses.

Aggregate Interests (5/3 of $54,000)	$90,000.00
Less Retained Working Interest	11,250.00
Total Public Offering	78,750.00
Less Underwriting Expenses	11,812.50
Total Cash from Public Offering	66,937.50
Less Estimated Drilling & Completion Costs	80,000.00
Net Loss	($13,062.50)

In this situation, the Division would find the proposed offering to be grossly unfair as a result of two factors. First, based on these estimated costs, there is a substantial chance that the well will never be drilled and completed. Secondly, the Division is presuming that the estimated costs already include a certain amount of promoter compensation. By allowing compensation to the promoter based on these estimated costs the Division may, in effect, be authorizing compensation in excess of the regulatory standards.

In the same situation, where the Division has found the fair market value of drilling and completion costs to be $54,000, Mr. Promoter may decide that it is feasible to proceed where his costs are $64,000. As in the above well, the maximum amount of fractional interests to be sold to the public is $78,750 ($90,000 aggregate interests less the retained working interest). This estimate of costs would allow the promoter to drill and complete the well plus meet the underwriting expenses for selling interests to the public.

The estimated cost figure of $64,000 is $10,000 more than the Division knows to be the fair market value for such services. However, it would allow the promoter to complete the well, pay the underwriting expenses, and have some compensation as shown in the following manner:

Fair Market Drilling and Completion Costs	$54,000.00
Aggregate Interests	90,000.00
Less Retained Working Interest	11,250.00
Total Public Offering	78,750.00
Less Underwriting Expenses	11,812,50
Total Cash from Public Offering	66,937.50
Less Estimated Drilling & Completion Costs	64,000.00
Compensation	$ 2,937.50

Illustration 6: Mr. Promoter files a Form 9 registration for W No. 1 Well and includes a budget estimate for drilling and completion costs of $60,000, which is composed of an estimated $36,000 for drilling the well and another $24,000 for the completion. Based on geological reports following the drilling phase, Mr. Promoter decides it is not feasible to complete the well. Mr. Promoter requests a ruling on the refund provisions of the Division's guidelines in the case of a dry hole.

Ruling: Section 11(E)(1) of the guidelines indicates that Mr. Promoter must make an undertaking, both in the offering circular and participation agreement, to make a refund in the case of a dry hole. This refund consists of that portion of the proceeds which represents the unexpended costs which would have been incurred if the well had been completed plus the percentage of the proceeds which represents the cash compensation which Mr. Promoter would have received if the well had been completed. Compensation for the completed well would have been computed in the following manner:

Cost of Well	
Drilling	$36,000
Completion	24,000
Total	$60,000
Aggregate Interests	$100,000
Less Retained Working Interest	12,500
Total Public Offering	87,500
Less Underwriting Services	13,125
Total Proceeds from Public Offering	74,375
Less Drilling & Completion Costs	60,000
Total Cash Compensation	$14,375

In this case, Mr. Promoter would have to refund to purchasers the unexpended costs of completing the well ($24,000) plus a percentage of the cash compensation that would have accrued to him. This percentage figure is computed by finding what portion the unexpended costs represents of the total estimated costs. In this case, the unexpended costs ($24,000) is 40% (2/5) of the total costs ($60,000). Therefore, in addition to the unexpended completion costs, Mr. Promoter must refund $5,750 (2/5 of $14,375) of the cash compensation he would have received if the well had been completed. Total refund amounts to $29,750 and is distributed on a pro-rata basis to purchasers of fractional interests in W No. 1 Well.

Illustration 7: Mr. Promoter files a Form 9 registration for X No. 1 Well and includes a budget estimate for drilling and completion costs of $54,000. A Division Order is issued authorizing Mr. Promoter to offer for sale to the public a total of $78,750 worth of fractional interests ($90,000 aggregate interests less a retained working interest worth $11,250 equals $78,750 worth of interest to be offered to the public).

The post-drilling report, filed with the Division within 120 days of completion of the well indicates that the actual drilling and completion costs were only $46,000. Mr. Promoter requests an explanation of the Division's refund provisions, Section 11(E)(2).

Explanation: As in the case of a dry hole, Mr. Promoter must make an undertaking in the offering circular and participation agreement to the effect that he will refund amounts derived through excess estimates. To the extent that the budget estimate of drilling and completion costs exceed actual costs by more than 2% of actual costs, Mr. Promoter must make a pro-rata refund to purchasers. In this case, an estimate that exceeds $46,920 (2% of $46,000) is subject to the refund provisions. Therefore, Mr. Promoter must refund the total difference between estimated and actual drilling and completion costs ($8,000) to purchasers of fractional interests in X No. 1 Well.

Nelson E. Genshaft

REGULATORY STANDARDS

Written Policy Guidelines 1973-5 (continued)

Modifications to the Midwest Securities Commissioners Association's Statement of Policy Regarding Real Estate Programs.

Midwest Statement of Policy, Section I(B)(1):

1. **Acquisition Fee** – the total of all fees and commissions paid by any party in connection with the purchase of property by a program, including any real estate commission, acquisition fee, selection fee, non-recurring management fee, or any fee of a similar nature, however designated, but excluding organization and offering expenses, development fees, and construction fees.

Midwest Statement of Policy, Section I(B)(10):

10. **Construction Fee** – a fee for acting as general contractor to construct improvements or the construction profit for such services performed on a program's property either initially or at a later date.

Midwest Statement of Policy, Section IV:

IV. **Fees-Compensation-Expenses**

A. Fees, Compensation and Expenses to be Reasonable.

1. The total amount of consideration of all kinds which may be paid directly or indirectly to the sponsor or its affiliates shall be reasonable, considering all aspects of the program and the investors. Such consideration may include, but is not limited to:

a. Organization and offering expenses

b. Compensation for acquisition services

c. Compensation for development and/or construction services

d. Compensation for program management

e. Additional compensation to the sponsor in the form of subordinated interests and promotional interests

f. Real estate brokerage commissions on resale of property

g. Property management fees

2. Except for the extent that a subordinated interest is permitted for promotional activities pursuant to Subdivision F, hereof, consideration may only be paid for reasonable and necessary goods, property or services.

3. The application for qualification or registration and the Prospectus, if required, must fully disclose and itemize all consideration which may be received from the program directly or indirectly by the sponsor, its affiliates and underwriters, what the consideration is for and how and when it will be paid. This shall be set forth in one location in tabular form.

B. Organization and Offering Expenses. All organization and offering expenses to be incurred in connection with the registration and sale of program interests shall be reasonable and shall comply with all statutes, rules and regulations imposed in connection with the offering of other securities in the state.

C. Compensation for Acquisition Services. Payment of an acquisition fee shall be reasonable and shall be payable only for services actually rendered and to be rendered directly or indirectly and subject to the following conditions.

1. Sponsors shall not receive a real estate commission, finder's fee or similar fee from any person other than the program.

2. The total of all such compensation paid to everyone involved in the transaction by the program and/or any other person shall be deemed to be presumptively reasonable if it does not exceed the lesser of such compensation customarily charged in arm's length transactions by others rendering similar services as an ongoing public activity in the same geographical location and for comparable property or an amount equal to 6% of the purchase price of the property. The acquisition fee to be paid to the sponsor shall be reduced to the extent that other real estate commissions, acquisition fees, finder's fees, or other similar fees or commissions are paid by any person in connection with the transaction.

3. The sponsor shall set forth in a separate section in the forepart of the Prospectus the amount of all acquisition fees which may be received or paid. This amount shall be expressed in absolute dollars, as a percentage of the gross proceeds of the offering, and as a percentage of the purchase price of the property.

4. The sum of the purchase price of the program's properties plus the acquisition fees paid shall not exceed the appraised value of the properties.

D. Compensation for Development and/or Construction Services. Payment of a development and/or construction fee to the sponsor or its affiliates shall be permitted so long as the amount is reasonable and shall be payable only for services actually rendered or to be rendered and subject to the following conditions:

1. The development fee and construction fee shall be comparable and competitive with the fee and terms of other persons who are rendering comparable services which could reasonably be made available to the program.

2. The sum of the purchase price of a specific property and the development fee and acquisition fee respecting such property shall be at a firm contract price and shall not exceed the appraised value of such property as improved.

3. The Administrator may require, as a condition of registration, that all or a portion of the development and/or construction fee be escrowed until gross rental revenues have been achieved for six (6) consecutive months, equal to ninety percent (90%) on an annualized basis of the annual predicted revenue based upon one hundred percent (100%) occupancy or until the requirements of some other performance standard required by the Administrator have been satisfied. The terms of such escrow may include requirements that such funds be applicable to any operating deficits of the program on terms satisfactory to the Administrator.

4. The sponsor shall set forth on the cover page of, or in a separate section of the forepart of the Prospectus, the amount of all development fees and construction fees to be paid by the program to the sponsor or its affiliates. This amount shall be expressed in both absolute dollars and as a percentage of the gross proceeds of the offering and may, in addition, be expressed as a percentage of the purchase price of the property.

E. Program Management Fee.

1. A sponsor of a program owning unimproved land shall be entitled to annual compensation not exceeding 1/4 of 1% of the cost of such unimproved land for operating the program until such time as the land is sold or improvement of the land commences by the program. In no event shall this fee exceed a cumulative total of 2% of the original cost of the land regardless of the number of years held.

2. A sponsor of a program holding property in government subsidized projects shall be entitled to annual compensation not exceeding 1/2 of 1% of the cost of such property for operating the program until such time as the property is sold.

3. Program management fees other than as set forth above shall be prohibited.

F. Subordinated Interests.

1. An adequately subordinated interest in the program shall be permitted as a promotional interest and management fee, provided the amount or percentage of such interest is reasonable. Such an interest will be considered adequately subordinated and presumptively reasonable if it is within the limitations expressed in either subparagraph below:

a. An interest equal to 25% in the undistributed amounts remaining after payment to investors of an amount equal to 100% of capital contribution; or

b. An interest equal to:

(i) 10% of distributions from cash available for distribution; and

(ii) 15% of distributions to investors from the proceeds from the sale or refinancing of properties after payment to investors of an amount equal to 100% of capital contribution, plus an amount equal to 6% of capital contributions per annum cumulative, less the sum of prior distributions to investors.

2. Where the sponsor is performing development or construction services for the program and he demonstrates to the Administrator that he is not otherwise fully compensated for such services, the sponsor shall be permitted an adequately subordinated interest not to exceed 40% in the undistributed amounts remaining after payment to investors of an amount equal to 100% of capital contribution.

G. Real Estate Brokerage Commissions on Resale of Property. Payment of all real estate brokerage commissions or similar fees to the sponsor on the release of the property by a program shall not be in excess of 50% of the standard commission, and shall be subordinated as in paragraph F(1)(b) above. A program shall not pay, directly or indirectly, a commission or fee to a sponsor in connection with the reinvestment of proceeds of the resale, exchange, or refinancing of property acquired by the program.

H. Leveraging Provisions.

1. The organizational or other governing documents of the program shall contain a provision restricting total borrowing by the program, including long and short term debt, to an amount not exceeding the lesser of:

a. 80% of the appraised value of the property, as established by an appraisal which is used by a financial institution in granting permanent financing; or

b. 90% of the cost of acquisition, development and construction of the property.

2. The leveraging provision contained in the organizational or other governing documents shall also restrict long and short term debt service requirements to an amount which, when added to all other operating expenses of the program, are not in excess of 90% of the projected annual revenues generated by the program based on reasonable market expectations.

Midwest Statement of Policy, Section V(E)(3):

3. **Other Services.** Any other services, including development and/or construction services, performed by the sponsor for the program will be allowed only if this would result in substantial advantages to the program as demonstrated to the satisfaction of the Administrator. As a minimum, self-dealing arrangements must meet the following criteria:

a. the compensation, price or fee therefor must be comparable and competitive with the compensation, price or fee of any other person who is rendering comparable services or selling or leasing comparable goods which could reasonably be made available to the program and shall be on competitive terms, and

b. the fees and other terms of the contract shall be fully disclosed in the prospectus, and

c. the sponsor must be previously engaged in the business of rendering such services or selling or leasing such goods, independently of the program and as ordinary and on-going business, and

d. all services or goods for which the syndicator is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensation to be paid, which contract may only be modified by a vote of the majority of the limited partners. Said contract shall contain a clause allowing termination without penalty on 60 days notice.

Midwest Statement of Policy, Section VII(B):

B. Voting Rights of Limited Partners. To the extent the law of the state in question is not inconsistent, the limited partnership agreement must provide that a majority of the then outstanding limited partnership interests may, without the necessity for concurrence by the general partner, vote to (1) amend the limited partnership agreement on matters that would not alter the basic substance of such agreement,

(2) dissolve the program, and (3) approve or disapprove the sale of all or substantially all of the assets of the program.

The limited partnership agreement must provide that the general partner(s) seek the approval of a majority of the then outstanding limited partnership interests whenever he desires to (1) amend the limited partnership agreement on matters which would alter the basic substance of such agreement, or (2) sell all or substantially all of the assets of the program.

THE SECTIONS

REGISTRATION SECTION
"Reflections and Projections"

I. *Reflections on 1973*

During the past year the registration procedure operated much more smoothly due to a revamping of the section, the publication of guidelines, a hard working staff, a slower market and a more cooperative attitude between the practicing Bar and the Division examiners. I should like to dwell for a moment on the last consideration. Although the Division and the practicing Bar should properly be cast in adversarial roles, this should not necessarily engender a hostile or uncooperative attitude. Unquestionably, the smooth operation of the registration process depends upon the continued good faith and mutual concern which existed this past year.

This spirit of cooperation was reflected in the aid we received from the Bar this year. Speaking for the examiners, we wish to thank the accountants and members of both the practicing and teaching Bar who graciously offered their time and energies assisting us in various projects such as rethinking Division policies on corporate reorganizations, projections, and oil and gas filings. Further, several others consulted with us informally on more specific topics. Law professors and industry representatives lectured Division examiners on current real estate and securities problems. This kind of discourse with the Bar is most valuable to us, for it provides us with information that would be most difficult to get on our own. We need to understand the practical aspects of corporate operations and real estate syndications. Thankfully, the Bar has shown great responsiveness to this need.

II. *Projections for 1974*

This year the section will try to consolidate and firm up those projects already undertaken; then we will embark upon new spheres of regulatory activity.

A. **Intrastate Offerings**

As 1973 indicated, the intrastate offerings were a constant source of irritation for us. The damage done by a few offerings has had a most sobering effect and dramatized the need for effective regulation of intrastate offerings.

1. DISCLOSURE

a. Operations of the business

One of the difficulties encountered in these filings is the lack of direction and preparation on the part of management. A surprising number of these "deals" come in to us without much thought given to what the business entity wants to do or how it intends to accomplish its goals. In some filings, I am quite sure that the promoters had not thought through the business venture, other than to give it a name. Under such circumstances, an investor cannot make an informed investment decision because of the scanty disclosure. This past year, we have looked unfavorably upon such filings and will continue to do so.

b. Financials

One of the most frequent causes of delay in the examination process is the inadequate presentation of the issuer's financial position. Often the financials are unaudited and contain truly amazing and innovative accounting entries. On the *asset* side of some balance sheets, we have found such entries as "Future Profits", "Treasury Stock," "Adjusting Entries," and "Excess of fair market value over cost". Many of these entries are totally repugnant to generally accepted accounting principles. In a great many more filings, the financials are not properly footnoted. We should like to point out that the registration forms require financials of much higher quality. With respect to qualification registrations, we will not accept anything less than *audited financials* unless *substantial* justification is provided. Registration by description will be accepted if accompanied by an audited financial or financials certified by a corporate officer *if* prepared according to generally accepted accounting principles *and* properly footnoted.

2. SUBSTANTIVE FAIRNESS

This year, the Division will continue the publication of policy guidelines with a view to the problems we have experienced in the past. The highest priority of this section will be real estate investment trusts. After a number of discussions and incidents, we feel the present guidelines are inadequate. Our first major project will be an analysis of the existing guidelines and the eventual promulgation of new ones. To accomplish this, we shall embark upon a massive research program and discussions with our sister states, as well as the Bar and industry representatives. The resulting regulations will apply to both interstate and intrastate offerings.

B. **New Spheres of Activity**

1. COMMODITIES OPTIONS

The Securities and Exchange Commission and many Blue Sky agencies have begun regulation of these securities. We also are convinced that many of these transactions constitute investment contracts and should be registered. Although we do not wish to act precipitously, the volume of trading in Ohio dictates a response as quickly as possible. Hopefully, we can borrow from the research of other states such as California to expedite our entry into the area of commodities options, with substantive guidelines.

2. RENTAL POOL AGREEMENTS

In a great many condominium offerings, the rental pool agreement constitutes an investment contract subject to our regulation. These condominium offerings generally give rise to two registration requirements. Section 1707.09 requires registration because of the investment contract feature and 1707.33 requires registration because the issuer is selling "foreign real estate". The Foreign Real Estate Section shall maintain primary jurisdiction over such files, but the Registration Section will review the investment contract features.

In closing, let me emphasize that I have not attempted to discuss all the matters in which this section will involve itself in the coming year. We are still formulating what will be an ambitious program, but we feel confident that much progress can be made this year. Certainly this will happen if the Bar maintains its support and its spirit of cooperation.

Robert J. DeLambo

ENFORCEMENT SECTION

Suspensions of Registrations Pursuant to Section 1707.13

The formal procedure required when a Suspension Order for a broker/dealer's or salesman's license is issued was described in the August issue of the **Ohio Securities Bulletin**. This same procedure would apply to the suspension of registrations. A Division Order suspending a registration is issued when the Division finds that the registrant has violated the Ohio Securities Act; that terms of the offering have varied materially from those which were registered; or that the registrant is engaged in any deceptive or fraudulent acts, practices or transactions.

Particular attention will be paid to any security which appears to be disposed of or sold on grossly unfair terms. Any such security which would tend to deceive or defraud purchasers and is in disregard of the lawful rules and regulations of the Division will be suspended forthwith.

A. *The Division Order*

The Division Order of Suspension will contain the following terms:

1. The name and address of the registration to be suspended.

2. Specific data identifying the registration such as issuance date and the issuer of the security as well as the principals involved.

3. The recitation of the authority of the Division to suspend the registration, including the enumeration of specific statutory provisions.

4. Findings of the Division with regard to the alleged violations committed by the registrant being suspended.

5. The statutory language ordering the suspension.

6. A notification of a hearing to confirm or suspend the Suspension Order which is set within ten (10) days of the issuance of a Suspension Order.

7. A notification of the constitutional rights of the suspended registrant at such hearing:

a. That it may appear by representative or by counsel; or

b. That it may present its position, arguments, or contentions orally or in writing;

c. That it may present evidence;

d. That it may examine witnesses appearing for or against it.

8. A notification that failure on the part of the suspended registrant to appear at said hearing within ten (10) days will result in a Division confirmation of the Suspension Order.

9. Signature of the Commissioner.

The Division order is mailed to the registrant, including all known principals, and to any broker/dealer who may in fact be offering said registration.

B. *The Hearing*

Hearings are conducted pursuant to the provisions of the Administrative Procedure Act, Sections 119.01 to 119.13, inclusive, of the Ohio Revised Code. However, the Division has the authority and power in the conduct of such hearings as set forth in Section 1707.23 of the Ohio Revised Code. With regard to said Section, the Division has the right to subpoena witnesses and the books and records of the registrant in order to elicit testimony and offer evidence in support of the Suspension Order. (Failure to heed such subpoena will result in an application to the local Court of Common Please for a contempt order).

W. Dennis Shaul et al. vs.
Cathedral of Tomorrow, Inc. et al.

The Offer of Repayment which was contained in the Agreed Journal Entry on May 25, 1973, was mailed November 1, 1973 to the noteholders. At that time the holders of the Time Certificates had 60 days in which to respond as to whether or not they wished to have repayment from a Fund which was established pursuant to the Court Order, or wished to continue to hold their certificates.

The Cathedral had accumulated $3,533,000.00 in a Trust Fund which was administered by the Huntington National Bank of Columbus. Also, a $500,000.00 loan was negotiated which would bring the amount in the Trust Fund to $4,150,251.19. $8,412,511.47 worth of certificates had been tendered to the Huntington National Bank requesting repayment. The Cathedral was able to pay a 49.33% pro rata share of the face amount of these certificates. The Trust Fund will continue and each certificate holder will be paid the remainder of his claim from the Fund. The Cathedral is required by the May 25, 1973 Journal Entry to put in not less than $50,000.00 a month until all the outstanding debt instruments have been paid. The checks for the first payment of the amount tendered were mailed January 16, 1974.

Welfare Finance, Inc. vs. State of Ohio
National Finance, Inc. vs. State of Ohio

The State made application to intervene in the Chapter XI Bankruptcy proceeding initiated by Welfare Finance, Inc. The State attended the first Creditor's Meeting on December 17, 1973 and examined the debtor.

Three complaints were filed in related cases. An identical complaint was filed in both Hamilton County Common Pleas Court and Federal District Court in Cincinnati by certificate holders of National against Welfare and several directors of Welfare. Another complaint was filed by a certificate holder of Welfare in Federal District Court in Cincinnati against directors and controlling shareholders of Welfare.

Provident Securities

On October 29, 1973 the Division of Securities issued a Suspension Order suspending the broker/dealer license of Provident Securities. This was a major undertaking in that Provident Securities was an intrastate broker which employed 386 licensed salesmen. Each and every one of these individuals' licenses was also suspended.

Provident Securities has requested a hearing which will be held in the near future pursuant to the Administrative Procedure Act Sections 119.01 to 119.13, Ohio Revised Code.

Veronica M. Dever

FOREIGN REAL ESTATE SECTION
Inspections, Re-registration and Pricing

1. *Physical Inspection Fees*

In this section of last month's **Bulletin**, it was indicated that the December issue would contain additional information regarding the period of time during which the $700 physical inspection fee will be retained by the Division. Upon consideration of the problem, it was determined that the developer must maintain at all times $700 on deposit with the Division so long as the promised improvements have not been completed. Thus, if in any one year the Division spent $200 as a result of an on-site examination, the developer should send, within 30 days, an additional $200. The above requirement still applies even though the developer has stopped selling in Ohio, since his commitment does not end with the termination of his sales activities, but rather ends only upon completion of the improvements as represented to the Division and the purchasers. Registrants who have satisfactorily made improvements, as promised at the time of registration, will receive a refund of any unused portion of the funds on deposit.

2. *Registration Requirements upon Termination of Effectiveness of Original Division Orders*

In the November issue of the **Bulletin**, it was announced that all Division Orders issued as of November 1, 1973 would be effective for only one year. It was also indicated that at a subsequent time, additional information regarding registration requirements would be provided.

The determination has been made that upon expiration of the one year effectiveness, in the event the developer wants to continue his sales activities in Ohio, he must file a new Form 33 as if it was an original offering. The Division will entertain the incorporation by reference of documents and exhibits that remain unchanged. The above decision is based on the grounds that for re-registration purposes, there is no substantive difference between a Form 9 and a Form 33 filing. Since the Registration Section requires a new filing upon expiration of a Form 9 Division Order, it is felt that uniformity dictates that the same requirements should be imposed on Form 33 re-registration.

3. *Price Information*

As was indicated last month, the Foreign Real Estate Section will not allow any price increase that is not reasonably justified. Furthermore, it is not inconceivable that in the near future the Division will also apply fairness standards not only in connection with price increases, but also the original price per lot. In an attempt to obtain as much information as possible on the subject, all developers filing a Form 33 must provide the Division with some explanation and information about the formulation of the price list submitted with the application. Except in cases where it is obvious that the developer is attempting to perpetrate a fraud on the public, at this time, this Section is not yet prepared to apply substantive fairness standards to price lists.

Bernard Boiston

CONSUMER FINANCE SECTION
Review of Licensing Requirements

A. Small Loan Licenses 1321.01 through 1321.19, Ohio Revised Code.

1. New Licenses
a. Fees required are:
1. $100.00, January 1st through June 30th; and
2. $50.00, July 1st through December 31st.

b. A full application must be completely executed as set forth in 1321.04, Ohio Revised Code.

c. A formal administrative hearing must be held to prove convenience and advantage, entertain any formal objections and review 1321.04, Ohio Revised Code as to subdivisions (a), (b), and (c).

2. Relocation Within Same Municipality
a. No fee is required.

b. Written notice in advance to the Division is required. When such notice is received the Division will issue a license for the new address. 1321.06, Ohio Revised Code.

c. No publication, statutory notice to licensees or hearing is necessary.

3. Name Change
a. No fee is required.

b. The requirements are written notice in advance to the Division with a rider from the bonding company supplying the bond required by 1321.03, Ohio Revised Code, reflecting the new name.

c. No publication, statutory notice to licensees or hearing is necessary.

4. Relocation to Another Municipality within Same County
a. Fees required are:
1. $100.00, January 1st through June 30th; and
2. $50.00, July 1st through December 31st.

b. On page one of the application, questions No. 1 through No. 5 must be executed and a rider attached from the bonding company supplying the bond required by 1321.03, Ohio Revised Code, reflecting the new address.

c. No publication, statutory notice to licensees or hearing is necessary.

5. Relocation to Another County

The same fees, application and other requirements as for a new license are necessary except that the Division may waive its physical investigation.

6. Take-over of Ownership of Existing Licensed Entity

The details of take-over are to be submitted to the Division for approval. Schedule 16 (Statement of Officials or Directors), appointment of statutory agent and bond are to be attached. If the name is to be changed, add the procedure as stated in 3, ' Name Change", as enumerated above.

B. Mortgage Loan Registrations 1321.51 through 1321.60, Ohio Revised Code

1. New Licenses
a. The fee requirements are $100.00 plus $100.00 for physical investigation fee if applicant resides in Ohio. If application involves investigation outside Ohio the applicant must advance an investigation fee of sufficient funds in excess of $100.00 to enable the Division to make such an investigation as will enable it to reach its decision.

b. An application as set forth in 1321.53, Ohio Revised Code, sub-sections (a), (b), (c) and (d) must be completely executed.

c. Although the Division will send statutory notices, no hearing is necessary unless the certificate of registration should be denied.

2. Relocation

Since there is no convenience and advantage requirement in this act, relocation can be accomplished anywhere in the State without fees by previous written notice to the Division and a rider from the bonding company supplying the bond required by 1321.53(d), Ohio Revised Code, reflecting the change of address.

3. Name Change
a. No fee required.

b. Written notice in advance to the Division is necessary with a rider from the bonding company reflecting the new name.

4. Take-over of Ownership of Existing Licensed Entity
The details of the take-over are to be submitted to the Division for approval. Schedule 16 (Statement of Officials or Directors) and bond are to be attached. If the name is to be changed, add the procedures in 3, "Name Change", as enumerated above.

Robert P. Fickell

RULES 1974-1
Credit Union Rules

COs-5-01 Notice of Promulgation of Rules and Regulations

A. When the Director of Commerce proposes to adopt, amend, or rescind a rule under Chapter 1733, Ohio Revised Code, he shall cause notice of such proposal to be published at least thirty (30) days prior to the date set for the public hearing on the proposal in at least one newspaper of general circulation in each of the following counties of his state: Franklin, Hamilton, Montgomery, Summit, Lucas, Mahoning and Cuyahoga, and at least one credit union publication of general circulation. Such notice shall include either the complete text or a synopsis thereof of the proposed rule, amendment, or rule to be rescinded, and the date, time and place of a hearing on said proposed action.

B. The Director shall be authorized to give such additional notice of the public hearing as he deems necessary; however, the giving of such additional notice shall not be mandatory, and failure to give said notice by any means other than as specified in division (A) of this rule shall not in any way invalidate any action which may be taken by the Director.

Effective date: February 1, 1974

This rule supercedes and repeals existing Rule COs-5-01

COs-5-02 Required Bond

A. Each credit union shall obtain and maintain a fidelity bond which includes employee faithful performance to cover any and all acts of its agents, directors, officers, committee members or employees in an amount not less than 100% of its assets up to $2,000,000. Such bond shall be approved by the Supervisor who may require such additional amounts as he deems necessary for credit unions with assets in excess of $2,000,000.

B. All bond claims shall be reported to the Supervisor.

Effective Date: February 1, 1974

This rule supercedes and repeals existing Rule COs-5-02.

COs-5-03 Preservation of Records

Each credit union shall preserve its corporate records either as originals or by some other method in accordance with generally accepted accounting principles and with the following schedule:

A. Records to be Permanently Maintained:

1. Articles of incorporation with any amendments thereto;

2. Code of regulations and amendments thereto;

3. Minutes of the meetings of the Board of Directors;

4. Minutes of the annual meeting of shareholders; and

5. Monthly financial statements.

B. Records to be Maintained for Six Years:

1. Minutes of all committees of the Board of Directors;

2. Minutes of the meetings of the credit committee and supervisory audit committee;

3. Subsidiary loan and share ledgers;

C. Records to be Maintained for Two Years:

1. Disclosure records as required by federal truth-in-lending laws and regulations;

2. Proxies, cancelled checks, or other records as the Supervisor may require.

Effective Date: February 1, 1974

This rule supercedes and repeals existing Rule COs-5-04.

COs-5-04 Special Reserve for Delinquent Loans

A. If the reserves required by Section 1733.31, Ohio Revised Code, are not in excess of the amount required by Rule COs-5-04(C)(1), (2) and (3), each credit union shall establish an account designated as a "Special Reserve For Delinquent Loans." In determining reserve requirements as required by Section 1733.31, Ohio Revised Code, or this rule, loans secured by a first mortgage on real estate, loans to other credit unions, or loans guaranteed by a government agency shall not be included.

B. For the purpose of the Special Reserve for Delinquent Loans, a loan shall be deemed to be delinquent when a full installment payment has not been made within thirty-one (31) days of the original contract installment date, except:

1. When an extension agreement has been granted, the payments under the extension agreement are current and a minimum of three payments have been made under the terms of the extension agreement; or

2. Upon the written approval of the Supervisor for good cause shown.

C. The Special Reserve for Delinquent Loans shall be established and maintained from the undivided earnings before any dividends are declared for any dividend payment. Such reserve shall be at least equal to the amount by which the projected losses on loans exceed the amount of reserves actually established and maintained under the provisions of Section 1733.31, Ohio Revised Code. Such special reserve shall be computed by totaling the following items in accordance with the following schedule:

1. Fifteen percent (15%) of the unpaid balances of all loans delinquent from one through eleven months.

2. Thirty-five percent (35%) of the unpaid balances of all loans delinquent from twelve through seventeen months.

3. One hundred percent (100%) of the unpaid balances of all loans delinquent eighteen (18) months or over.

Effective Date: February 1, 1974

This rule supercedes and repeals existing Rule COs-5-06.

COs-5-05 Charge-Off of Uncollectible Loans and Other Losses.

A. All losses resulting from uncollectible loans shall first be charged against the Special Reserve for Delinquent Loans, if established, until said reserve is exhausted. Additional losses on loans shall then be charged against the statutory reserve, established by division (A) of Section 1733.31, Ohio Revised Code.

B. A record shall be maintained of all loans charged off against either the Special Reserve for Delinquent Loans or the statutory reserve. Said record shall contain the following information: account number, name, original date, amount of original loan, security, balance at time of charge-off, and what, if any, recovery has been made on the security. This record shall be kept current and made available to the examiners at each examination.

C. Extraordinary losses may be charged off pursuant to a plan of amortization over a period of years upon written application to the Supervisor who may, in his discretion, authorize such a plan of amortization.

Effective Date: February 1, 1974

This rule supercedes and repeals existing Rule COs-5-05.

COs-5-06 Impairment

A. An impairment of share capital shall be deemed to exist if the credit union is unable to provide for a Special Reserve for Delinquent Loans from its undivided earnings account according to the schedule in Division Rule COs-5-04(C) or any other reserve required by the Supervisor.

B. In determining the degree of capital impairment which may exist, personal loans receivable shall be valued as follows: Book value less the amount of reserves required by Section 1733.31(A), Ohio Revised Code, and Division Rule COs-5-04. The total of the credit union's assets, valued according to generally accepted accounting principles, including loans receivable, less current and long-term liabilities, shall be considered to be net assets. If share deposit balances exceed net assets so determined, an impairment shall be deemed to exist.

C. Whenever it is determined that there exists an impairment of capital, the Board of Directors shall notify the Supervisor. If required by the Supervisor, the Board of Directors shall disclose to all shareholders the impairment of capital and such other matters regarding the financial condition of the credit union as deemed relevant by the Supervisor.

Effective Date: February 1, 1974

COs-5-07 Dividends and Interest Rebate

A. The Board of Directors of a credit union or the members, upon recommendation of the Board of Directors, as is provided in the regulations, may declare dividends on shares annually, semiannually, quarterly or for any other period deemed reasonable and proper, from "Earned Surplus." Shares purchased during the dividend period may be entitled to a proportionate part of said dividend providing said shares are on record at the close of such period.

B. "Earned Surplus" shall mean the balance of the undivided profit accounts for all periods through which the books of the credit union have been balanced, less all the amounts required to be charged against earned surplus. The amounts required to be charged against earned surplus include but are not limited to dividends previously declared, amounts required to be placed in statutory or special reserves, and other amounts transferred or required to be transferred, in the discretion of the Supervisor, to any other reserve account.

C. No dividend may be declared or paid unless the credit union has satisfied the reserve requirements of Division Rule COs-5-04 and any other reserve account that is required to be maintained in the discretion of the Supervisor pursuant to Section 1733.31(A), Ohio Revised Code. Where losses have been charged to such accounts, no dividends may be declared or paid until such reserve fund is restored to its required level. However, the Supervisor may permit the payment of dividends subject to a plan of restoration in such amount and to such extent deemed necessary.

D. The Board of Directors may authorize the payment of an interest rebate on loan accounts upon such reasonable terms as are consistent with the following provisions:

1. The Board of Directors shall authorize the method of computation, payment and qualifications for participation in such rebate;

2. Any rebate of interest shall be recorded as a reduction of loan interest for the accounting period to which it applies.

Effective Date: February 1, 1974

This rule supercedes and repeals existing Rule COs-5-07.

COs-5-08 Depreciation and Amortization Schedules

A. Each credit union shall maintain a schedule of and a reserve for depreciation on all items of real and personal property owned by the credit union. However, at the option of the Board, personal property may be charged off as an operating expense, in accordance with the following schedule.

1. Items of $100.00 or less, for credit unions under $1,000,000 in total assets;

2. Items of $300.00 or less, for credit unions over $1,000,000 in total assets.

B. The depreciation schedule for real and personal property purchased in accordance with Section 1733.04(B)(4), Ohio Revised Code, shall be consistent with depreciation schedules established by the Internal Revenue Service. However, the Division may, when good cause is shown, approve any other plan of depreciation submitted to it.

C. The expense of conversion from one accounting system to another may be amortized over a period not exceeding three years.

D. The expense of organizing a new credit union shall be amortized over a period not exceeding three years.

Effective Date: February 1, 1974

This rule supercedes and repeals existing Rule COs-5-08.

COs-5-09 Statement of Accounts

Each credit union member shall be furnished, at least semi-annually, a statement of accounts. Such statement shall clearly reflect all transactions involving a member's account during the previous accounting period. Any member, pursuant to request, shall receive within a reasonable time, a statement reflecting his current outstanding balances in his account.

Effective Date: February 1, 1974

This rule supercedes and repeals existing Rule COs-5-09.

COs-5-10 Voting by Proxy

Voting by proxy may be permitted pursuant to articles or regulations so providing under Section 1733.13(C) of the Ohio Revised Code. All proxy solicitation materials shall first be approved in writing by the Supervisor.

Irrespective of whether a vote is accomplished by actual vote or by proxy, only qualified members may vote. Each member is entitled to one vote on each matter properly submitted to the membership.

Effective Date: February 1, 1974

COs-5-11 Display of Financial Statements

Each credit union shall display at all operating locations, copies of its current and previous month's financial statements. Such statements shall be posted in both a conspicuous and available manner, so as to be accessible for inspection by all members.

Effective Date: February 1, 1974

COs-5-12 Independent Audits

A. Upon evidence that a credit union is operating in an unsafe or unsound manner and at his discretion, the Supervisor may, by written notice, require an audit of the books and records of such credit union to be conducted by an independent qualified public accountant.

B. Before commencement of the independent audit, and within fifteen days of the written notice from the Supervisor, the name and address of the qualified public accountant shall be submitted to the Supervisor in writing for approval.

C. The credit union shall file, or cause to be filed, with the Supervisor, a copy of the report of audit no later than fifteen days following the receipt thereof. For the purpose of this filing requirement, the term "report of audit" includes, in addition to the audit report itself and the accountant's certificate, any special or supplemental reports, letters or reports to management, or any other documents which are related to the audit or the report thereof. Notwithstanding the foregoing, in no event shall the audit report itself and accountant's certificate be filed with the credit union later than ninety days after the end of the reporting period for which the audit is conducted unless the credit union has received a prior written extension of the time for filing.

D. The cost of any audit made pursuant to this rule shall be paid by the credit union audited.

E. This rule shall not in any manner modify or limit the Supervisor's responsibility or authority to examine credit unions as set forth in Section 1733.32, Ohio Revised Code, and shall not modify or limit the Supervisor's authority to assess the cost of the examination pursuant to such section against any credit union.

Effective Date: February 1, 1974.

COs-5-13 Authorized Investments

A. In addition to investments, under Section 1733.30, Ohio Revised Code, credit unions may invest in the following:

1. Bonds, debentures, notes, and other debt obligations of corporations organized under the laws of the United States, any state or territory of the United States or the District of Columbia, provided that at the time of the investment said investment is rated in one of the three highest grades shown by the most current publication of two nationally recognized investment rating services.

2. Any securities or other properties irrespective of whether they are specifically described in Section 1733.30, Ohio Revised Code, or paragraph (1) of this section.

B. All investments of the capital, surplus, and reserves of credit unions, except as otherwise specifically provided by law, are subject to the following restrictions:

1. No credit union shall invest in any securities described in paragraphs (1) or (2) of Section (A) of this rule which shall have a maturity date in excess of 12 years from the date of purchase.

2. No investment in any securities of the United States, any state or territory of the United States, or the District of Columbia, or any municipal corporation may be made if such municipal corporation has not been in existence for at least 10 years. Nor may any such aforementioned investment be made if the government in which the investment is contemplated has within the preceding 10-year period from which the investment is to be made defaulted for more than 90 days in the payment of any part of either principal or interest on any debt contracted by it.

3. A credit union shall not invest in excess of 10% of its capital and surplus as of the previous 31st day of December in the securities described in Paragraph (1) of Section (A) of this rule.

4. Notwithstanding any other provision of Section (B) of this rule, a credit union may invest in securities described in Paragraph (2) of Section (A) to an extent not exceeding in the aggregate 5% of the capital and surplus of such credit union as of the previous 31st day of December.

C. No credit union shall invest any of its funds in any securities or other property except as specifically permitted by statute or this rule unless the Supervisor shall have given prior written approval to such investment or to an investment policy under which such investment was made. No such investment or investment policy of a credit union will be approved by the Supervisor unless there is submitted with the application for approval a copy of a resolution of the Board of Directors of such credit union approving such investment or investment policy.

D. For any investments not expressly authorized in Section 1733.30(A), Ohio Revised Code, the Supervisor may require a reserve to be established and maintained to be used as a reserve against losses resulting from authorized investments. The Supervisor may, in his discretion, require a reserve based on the degree of risk and exposure of the investment and may specify an amount equal to the net excess of book value over current market value as of the date immediately prior to the declaration of dividend or any other amount deemed adequate.

E. The provisions of this rule shall not affect the propriety or legality of an investment made by any credit union which was in accordance with the laws of this state at the time such investment was made, nor shall this rule affect the propriety or legality of any investment or investment policy authorized by the Division of Securities prior to the effective date of this rule except, however, where a program exists which provides for the automatic reinvestment of income or capital gains in additional securities from which such income is derived, and the reinvestment of which income would exceed the limits of this rule.

Effective Date: February 1, 1974.

COs-5-14 Service Facilities

A credit union may, subject to the approval of the Supervisor, provide one or more service facilities for the transaction of any credit union business. A set of all accounting records of the service facilities shall be maintained at the central office of the credit union.

Effective Date: February 1, 1974

This rule supercedes and repeals existing Rule COs-5-11

COs-5-15 Purchase of Notes of Liquidating Credit Unions.

A. The notes of a liquidating credit union may be purchased by another credit union at a price agreed to by both the purchasing and selling credit unions, subject to the approval of the Supervisor.

B. No credit union shall be permitted to purchase notes of another credit union if the aggregate of the unpaid balances of notes purchased would exceed 10% of the unimpaired capital and surplus of the purchasing credit union.

Effective Date: February 1, 1974.

COs-5-16 Document Service Charge and Filing Fees

A. As specified in Section 1733.32(G), Ohio Revised Code, the Supervisor may charge a fee not to exceed the following:

1. Fifty cents ($.50) per page for the reproduction of articles of incorporation, code of regulations and amendments thereto.

2. Twenty-five cents ($.25) per page for the reproduction of examination reports and other documents.

B. The documents necessary to organize a credit union shall include the articles of incorporation, the code of regulations, and the appointment of statutory agent. Said documents shall be filed in duplicate with the Supervisor and shall be accompanied by the fee of twenty dollars ($20.00) of which ten dollars ($10.00) shall be a check made payable to the Secretary of State, and ten dollars ($10.00) in a check made payable to the Division of Securities.

Effective Date: February 1, 1974.

COs-5-17 Loans

A. No credit union shall loan, directly or indirectly to any member, association member, or other credit union more than 10% of the lending institution's paid-in and unimpaired capital and surplus.

B. Official family members, including directors, officers, employees, and members of the credit committee or supervisory audit committee, shall not act as co-makers, endorsers, guarantors, or sureties, for any loan or advance made by the credit union, except a loan made to a member of such official family member's immediate family.

C. In the discretion of the Supervisor, all corporate loans shall be reported quarterly to the Supervisor by the borrowing credit union on a form supplied by the Supervisor and shall contain the following information: name of borrowing credit union, name of lender, date of loan, repayment schedule, amount of loan, the aggregate total of notes payable to each source.

D. The total of all loans secured by first mortgages on real estate shall not exceed 25% of the credit union's paid-in and unimpaired capital and surplus. No loan shall exceed 80% of the fair market value of the property as determined by a qualified appraiser, and shall be written to mature within twenty years. Such loan shall provide for equal monthly installments that shall include interest and amortization of the principal within terms of the agreement.

E. In addition to other documents as may be required by the credit union, on all loans secured by a first mortgage on real estate, the borrower shall furnish a policy of title insurance in at least the amount of the mortgage, naming the credit union as the insured, and a copy of a casualty policy in at least the amount of the mortgage with a mortgage clause in favor of the credit union.

F. If requested by a credit union, the Supervisor may approve a less restrictive real estate loan policy. No such real estate loan policy shall be approved by the Supervisor unless a certified copy of a resolution by the Board of Directors adopting such policy is submitted with the application for approval.

Effective Date: February 1, 1974.

COs-5-18 Official Family Borrowing

Any member of the official family, as that term is used in Division Rule COs-5-17(B), may borrow from the credit union provided the following requirements are satisfied:

1. Upon the making of the loan, the amount of each official family member's loans and/or contingent obligations pursuant to Division Rule COs-5-17 outstanding under authority of this rule shall not exceed 5 percent of the unimpaired capital and surplus of the credit union or a maximum of $10,000.

2. The borrower takes no part in the consideration of his loan application and is not present at any committee meeting while his application is under consideration.

3. In addition to the approval of the credit committee notice of the loan application of any member of the official family must have been given to the Board of Directors.

4. Fully secured loans to members of the official family shall not be considered in the limitation of this rule. The term, "fully-secured loans" includes loans secured by new automobiles (not exceeding the purchase price), loans secured by shares in the credit union, loans secured by real estate to the extent permitted by Division Rule COs-5-17(D), loans secured by the cash value of an insurance policy, and loans secured by marketable securities which have a current market value in the amount of the loan, or other equivalent securities.

Effective Date: February 1, 1974.

COs-5-19 Management Duties

All credit unions shall conduct their business and the selection of their employees using a sufficiently high degree of management skills to assure the safe and sound operation of the credit union. All management personnel shall avail themselves of the educational opportunities necessary to maintain familiarity with current developments in the field of credit union management.

Effective Date: February 1, 1974.

OTHER DEVELOPMENTS

On Tuesday, January 8, Mr. Nicholas Schaus of Farmington, Connecticut, visited the Division to discuss with Registration Section examiners the practical aspects of analyzing a real estate investment. Mr. Schaus is a developer and consultant who has participated in a variety of projects on the East Coast. For fifteen years he was associated with the Connecticut General Life Insurance Company, the national leader among financial institutions in real estate equity investment, and he headed the real estate investment department of that company for several years. Among the observations which he expressed: (1) real estate with the highest intrinsic value is generally financed privately and is not available for public investment through syndication; (2) blind pools are a particularly dangerous form of real estate investment and should be tightly regulated or prohibited; (3) self-dealing and large front end fees to the promoter are the most objectionable features of any real estate investment, public or private; and (4) there is a very important subjective element in the evaluation of a real estate investment, and no regulatory agency can expect to separate the intrinsically good investments from the bad ones without having experienced field men examining the property and personally interviewing the principals involved, as do all major financial institutions who invest in real estate.

Henrietta Sims has retired as Chief License Clerk of the Broker/Dealer Section after 25 years of service with the State. A testimonial dinner was held in her honor on January 24, 1974 with both present and past Division employees and friends in attendance. Henri was an important cog in the delicate administrative licensing process and her retirement marks a quarter-of-a-century of dedicated work in a difficult and important job.

William L. Case, III

ADMINISTRATIVE ACTIONS

Summary of Credit Union Section Administrative Actions for November, 1973

Suspensions of Normal Activities

Anchor Fasteners Employees Credit Union	11-15-73
Title Workers Credit Union	11-15-73
Lorain County Employees Credit Union	11-15-73
Perry Rubber Employees Credit Union	11-26-73
Permold Employees Credit Union	11-28-73
B-C Cleveland Employees Credit Union	11-29-73

Vacations of Suspensions

Warren Metal Decorating Employees Credit Union	11- 6-73
Everybody's Credit Union	11- 5-73

Mergers Approved

Trio Employees merged with ORCO Employees Credit Union
Lima S&W Employees merged with Ohio Central
Warren Second Baptist merged with Ohio Central
C.C.I. merged with Ohio Central

Summary of Enforcement Activity for November

Salesman's License Denials

Merolillo
Ashworth

Hearings

Abbott & Associates, Inc.	11-27-73

Trials and Convictions

Ron Penn	12- 6-73

Indictments Sought and Returned in December

Robert Stone (Geauga County)	12- -73

STATISTICS

Registration	Certificates
2-B	28
3-0	443
5-A	0
6-A-1	111
6-A-1 with offering circular	3
6-A-2	76
6-A-3	20
6-A-3 OG	2
6-A-4	7

	Applications	Orders
Interstate Corporate	30	13
Stock Options & Purchase Plan	2	5
Intrastate Corporate	3	4
Investment Companies	25	8
R.E.I.T.	6	2
Real Estate Ltd. Partnerships	19	5
Oil & Gas Offerings	15	5
Cattle Funds	4	4
Other Non-Corporate	3	4

	Applications Received	Orders
Form 39	9	5

Note: 27 Requests for Cursory Review
8 Withdrawals

Securities Broker/Dealer Applications (Form 15) Received in November

Robert W. Baird & Co., Incorporated	11- 1-73
Alfred N. Tolan	11- 1-73
Albany International Corp.	11- 2-73
Harry Francis Malzeke	11- 5-73
Lester Industries, Inc.	11- 6-73
Dominick & Dominick Securities Corp.	11- 7-73
Shelter Equities Company	11- 8-73
Kenneth F. Cassell	11-13-73
Cleveland Freight Lines Corp.	11-15-73
Edward P. Warren	11-19-73
The Summit Bancorporation	11-21-73
EquiVest Funding, Inc.	11-21-73
Morgenthau & Associates, Inc.	11-23-73
Fastener House, Inc.	11-27-73
Chrysler Financial Corporation	11-29-73
American Standard Inc.	11-30-73
Petro Oil Co.	11-30-73
C. B. Richard, Ellis & Co.	11-30-73
Zeigler Coal Company	11-30-73

Foreign Real Estate Broker/Dealer Applications (Form 331-A) Received in November

Leisure Technology of Florida, Inc.	11- 2-73
Doe Valley Development Corporation	11- 8-73
Edward J. Plott	11-19-73

Salesman Applications Received in November

Form 16 - Securities	226
Form 331-B - Foreign Real Estate	98
Total Salesman Applications for November	324

Consumer Finance Section

	Issued	Cancelled
Small Loan Licenses	2	5
Second Mortgage Licenses	2	2
Premium Finance Licenses	0	0
Pawnbroker Licenses	1	0

Note: 328 Compliance Examinations Made
7 Financial Examinations Made