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ohio securities bulletin

State of Ohio
John J. Gilligan, Governor

Department of Commerce
Dennis Shaul, Director

Division of Securities
William L. Case III, Commissioner

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COMMENTS OF THE COMMISSIONER

1. *Second Annual Securities Conference Scheduled:* As a result of the favorable reception accorded the first Securities Regulation Conference held by the Division in Columbus in November of last year by members of the Bar and Securities Industry and in order to continue the meaningful dialogue which has been established between the Division and persons subject to its regulatory jurisdiction through publication of the *Bulletin* and participation by Division personnel in seminars, meetings and other educational programs sponsored by various groups, the Division will conduct a Second Annual Securities Regulation Conference at the Cleveland Plaza Hotel in Cleveland on Friday and Saturday, December 6 and 7, 1974. This year's conference will be presented in conjunction with the Securities Law Group of the Bar Association of Greater Cleveland, which has rendered invaluable assistance to the Division in completing necessary arrangements and in planning a program designed to aid the general legal practitioner as well as the specialist in securities law in maintaining familiarity with current policies and procedures being applied by the Division in connection with its administration of the Ohio Securities Act.

The format of this year's conference has been modified to place primary emphasis upon clarification of the most basic requirements for effectuating the registration of securities offerings, the licensing of broker-dealers and salesmen, and the satisfaction of reporting and other posteffectiveness compliance standards. In addition to presentations by Division personnel relating to current regulatory developments, the conference will feature two special demonstrations depicting the process of registering representative corporate and limited partnership offerings, involving commentary by a panel of experienced securities practitioners, and will include a series of practical workshops which will provide persons in attendance an opportunity to obtain from program

participants specific information regarding matters of particular individual concern.

A nominal registration fee of \$10 per person will be charged to defray the expenses of the conference. The registration desk will be open at 8:30 A.M. on Friday, December 6 and conference materials relating to the panel demonstrations will be distributed at that time. The program is scheduled to begin at 9:00 A.M. and will conclude at noon on the following day. Persons planning to attend the conference are encouraged to make individual luncheon arrangements. A special announcement of the conference, including a detailed agenda and an advance registration form, has been previously mailed to all *Bulletin* subscribers. An early delivery of conference materials may be obtained in the manner described in the foregoing announcement. All interested persons are invited and encouraged to attend this Second Annual Conference. The Division is making every effort to assure that it will be informative and beneficial to all those who attend.

2. *Division Completes Proposal for Revision of S. B. 338:* Subsequent to its withdrawal of Senate Bill 338 from consideration by the Senate Commerce and Labor Committee in March of this year as a result of difficulties in achieving a consensus concerning certain of its fundamental characteristics among various organizations which have assisted in the preparation of this legislation, the Division completed a thorough review of the proposed new law and prepared a comprehensive proposal for amendment of the Bill prior to its intended reintroduction into the 111th General Assembly next year. By letter of August 30, 1974, this proposal was communicated to the Securities Subcommittee of the Corporation Law Committee of the Ohio State Bar Association, which is continuing its consideration of the Bill. In addition to modifications previously suggested by the Division which have been reported in earlier issues of the *Bulletin*, the most significant revisions contained in the Division's proposal include the following:

(1) A resolution of the important question relating to the scope of Division jurisdiction and the most appropriate method for regulating small public offerings by (a) increasing the number of purchasers to which an offering may be sold and remain exempt pursuant to Section .04(G) from ten to fifteen persons, and (b) eliminating in its entirety the mechanism of registration by notification contained in Section .08. This proposed revision carries the advantage of simplicity and avoids most of the disadvantages and complications associated with three alternative approaches previously suggested by the Division and the Securities Subcommittee. By presentation of this new proposal the Division does not, however, intend to foreclose reconsideration of previously suggested alternatives or variations thereof. It is determined to accomplish a satisfactory resolution of this question so that a proper balance between the interests of encouraging new business enterprise and affording meaningful investor protection can be achieved;

(2) The provision of adequate assurances that the impact of Ohio's new Ethics Law will not be such as to unduly interfere with the regulatory operations of the Division by limiting the level of knowledge and experience which can be expected of members of the Securities Board of Review as a result of prohibitions contained in that law upon practice by such persons before all state agencies. The Division proposes that unless timely amendments to the Ethics Law can be accomplished or legal precedents established which will eliminate this problem, provisions of S. B. 338 relating to the Securities Board of Review be removed from the Bill prior to its enactment, thereby retaining generally the same structure for administration of the Act as exists under current law. In light of the fact that historic shortcomings of the Division have been related to the absence of affirmative regulation rather than to overly aggressive administration, abandonment of the Board of Review as a safeguard against potential abuse of authority should not be considered detrimental to the objective of assuring good government;

(3) The establishment of greater viability for the exercise of substantive fairness powers by the Division in connection with the registration of securities by substituting the term "fair, just, and equitable" for the term "grossly unfair" in Section .12(A)(6) of the Bill. This modification will serve to avoid confusion regarding authority of the Division to implement particular fairness standards by conforming to the language contained in securities laws of the great majority of other states which have incorporated fairness concepts into their regulatory systems. Unless adequate funding can be obtained for the completion of a comprehensive set of fairness standards prior to the effective date of the new law, the Division also proposes to incorporate into the Bill a grace period for the development of formal rules now required by Section .12(A)(6) to be promulgated before the application of specific fairness considerations. Although a significant upward revision in the general fee structure is contained in the proposed new law, resources presently available to the Division are insufficient to permit adequate advance preparation for satisfying the additional requirements necessary for full implementation of the law;

(4) The elimination of special statutory treatment for Foreign Real Estate and Whiskey Warehouse Receipts, by removal of Sections .15, .16, and .23 from the Bill, to reinforce the logical legislative determination that these two items should be regulated in accordance with securities regulation principles to the same extent as any other type of investment meeting the definition of "security" contained in Section .01(Q). Sections .10(B)(17) and .43(A) would appear to provide the Division with sufficient flexibility to require the filing of whatever additional information would be necessary for an evaluation of specialized types of securities. A subsection (I) of Section .43 should, however, be added to confirm such authority and a subsection (6) of Section .22(A) should be added to allow the requirement of additional information from applicants for broker/dealer and agent licenses. The Division also proposes to add to Section .22 a provision authorizing the issuance of licenses restricted to the sale of specific types of securities in order to enable the Division to exercise tighter control over securities sales activities;

(5) The addition of authority to limit the period of effectiveness of registrations, by amendment of Section .11(J)(1) of the Bill, so that improved regulatory standards which are developed may be implemented in connection with the re-registration of continuously offered securities in order to promote greater public protection and the equal treatment of persons similarly situated. The Division also proposes to modify the savings provision of Section .48(B) to require the reregistration of all currently registered offerings within a maximum of one year following the effective date of the new law in order to avoid allowing the large number of currently outstanding registrations containing no termination date to escape the application of new regulatory standards to which future applicants will be subject; and

(6) Adoption of the federal codification approach to civil liability by amendment of Section .37 of the Bill to incorporate the most current proof, defense, damage, and limitation structure of the proposed new Federal Securities Code. The Division does not propose to further alter the language of Sections .01(E) or .31 or to remove the language of Section .37(N) limiting implied private rights of action based upon violation of other statutory provisions, rules, and conditions of Division orders. Amendment of Section .37 should not substantially alter the basic civil liability structure of the Bill. All of the appropriate provisions included for the protection of both purchasers and issuers will be retained in a reorganized but essentially equivalent form.

It is not presently anticipated that the final form of modifications to S. B. 338 will be drafted by the Division and a new Bill prepared for introduction into the legislature until further discussions with the Bar Association and other interested parties in response to the Division's proposals for amendment have been completed. The Division does, however, desire to proceed toward the completion of such discussions at as early a date as possible.

3. Division Budget Request for Fiscal 1976-77 Emphasizes Increase in Resources for Enforcement Activities: The Division of Securities has prepared and submitted to the Office of Budget and Management, as a part of the overall Depart-

ment of Commerce funding package, a budget request for Fiscal 1976-77 representing an increase of 43% over its allotment of approximately \$3,000,000 for the current Biennium ending June 30, 1975. Of this amount, 25% has been requested for the purpose of adding personnel and equipment needed to improve Division operations in various respects. The remaining 18% has been included to offset projected inflation in payroll, fringe benefits, maintenance, and equipment costs based upon standard factors being applied to all state agencies.

Of the 25% increase computed on an uninflated basis, approximately 3% is designed to expand the policy staff of the Division's Administrative Section, responsible for the development of legislation, rules, guidelines, and interpretations. An additional 14% is intended to be devoted to enforcement-oriented activities in five operating Sections of the Division, specifically the addition of personnel for: (a) The Registration Section - to assist in the examination of intra-state offerings, including registrations by description; (b) the Broker-Dealer Section - to provide a more thorough review of financial statements and field examination reports; (c) the Foreign Real Estate Section - to increase its capacity to analyze and evaluate development activities; (d) the Credit Union Section - to provide accounting and management training assistance to smaller and less sophisticated institutions; and (e) the Consumer Finance Section - to increase the thoroughness of the extremely large number of examinations required by statute. The remaining 8% is requested for the purpose of virtually doubling the capacity of the Enforcement Section of the Division to process complaints, conduct investigations, and initiate administrative proceedings, legal actions, and criminal prosecutions by adding attorneys, accountants, investigators, and secretaries to its staff. Moreover, an increase in the allocation of funds for special counsel fees to be expended in connection with particularly complicated litigation, in which the Division is frequently involved, has been included in the budget request of the Administrative Division of the Department.

The budget increase which has been requested is considered essential by the Division to effective administration of the various regulatory statutes for which it is responsible. As has been the case for many years, present resource levels are woefully inadequate for the provision by this agency of meaningful investor protection. Administrative agencies are capital intensive in the sense that expensive screening mechanisms for gathering and processing information must be established as a foundation for more substantive affirmative action and the Division has only recently, by redistributing existing resources, progressed beyond the mechanical stages of regulation. At this point, incremental increases in resource levels can substantially multiply the extent of real results capable of being produced through effective enforcement. Unlike those of many other states, Ohio's localized public financing activities are of such a magnitude that Federal government regulation cannot be solely relied upon for protection of the public interest. Since our greatest regulatory problems arise out of such intra-state activity, the increased costs of state government are more than amply justified in this area.

Revenues are currently being generated by the Division through registration, licensing, and other fees at a level of approximately \$1,600,000 per year or \$3,200,000 per biennium. A budget increase of 43% for Fiscal 1976-77, without a corresponding increase in statutory fee schedules, would produce a considerable operating deficit, which has not been experienced by the Division in recent years. The proposed new Ohio Securities Act (S.B. 338) contains revised fee schedules which are expected to produce approximately \$4,800,000 in revenues per biennium if and when this legislation takes effect. Enactment of the new law would therefore provide funds sufficient not only to cover currently projected expenditures but also to allow a further expansion in Division capabilities beyond that anticipated by the present budget increase request. In the event that progress toward enactment of the new securities law is not achieved during the next legislative session, it would be the intention of the Division to introduce a separate Bill to amend the existing Ohio Securities Act for the purpose of increasing registration and licensing fees so that the costs of administering this law would not be borne by general revenue sources of the state.

4. Esoteric Securities: In recent years, securities administrators, both state and federal, have become confronted with a steadily increasing number and variety of investment schemes associated with areas of commercial activity not previously considered to be properly within the jurisdiction of agencies responsible for the regulation of securities transactions. Pyramid sales promotions related to the distribution of almost every conceivable type of consumer product which proliferated during the early 1970's and resulted in aggregate losses of huge sums of money of a multitude of small investors represent perhaps the most familiar form of such activity which has through judicial determination been brought within the "investment contract" language of the definitions of "security" contained in the various statutes which they administer. Several other investment arrangements evidencing the characteristics of securities (the investment of funds in a common venture involving an expectation of some sort of return resulting primarily from the efforts of others) for which familiar regulatory practices have long been accepted as essential for public protection, have spread recently throughout the country at a rate which has severely taxed the capacity of regulatory agencies to react with effective enforcement programs.

Examples of the most common forms of new securities being sold without adequate regulation are multi-level distributorships and other unconventional franchise arrangements, commodities options and other hybrid commodities investment schemes including precious metals contracts (especially in gold and silver), and developmental real estate promotions including installment land purchase contracts, recreational developments and condominiums with rental pool or time-share arrangements. All of these types of investment arrangements have particular characteristics which present special hazards to the unsophisticated investor in the form of unusual degrees of risk and opportunities for fraud which warrant the application of disclosure and fairness requirements by securities regulation agencies in connection with their sale.

Wide variations in the form of each of the types of investment arrangements mentioned above make it extremely difficult to determine as a technical matter which individual offerings would be determined by the courts to be securities and therefore subject to regulation and which ones would not be so determined. Due to the considerable expense of litigation and to the natural tendency of the promoters of these various arrangements to resolve the question of regulatory jurisdiction in their own favor in the absence of a judicial determination to the contrary, it is extremely difficult for securities administrators to regulate effectively on these broadening frontiers of investment activity. In its recent review of S. B. 338, the Division considered including in its proposal for revision of the Bill amendments to Section .01(Q) and .43 which would for purposes of clarification and administrative efficiency allow the Commissioner to define by rule those areas of investment activity involving substantial risk of loss which would be considered a "security" within the meaning of the new law and thus subject to Division regulation. Due to the reaction of various commentators who consider such a provision to represent an inordinate grant of power to the commissioner, the Division does not intend to pursue this objective. It will continue to attempt to regulate in these increasingly important fringe areas of securities activity as efficiently as its enforcement resources will allow. At the same time, the Division desires to caution potential investors and their attorneys to analyze with particular thoroughness any investment opportunities of the types referred to above which may be presented to them for consideration and to avoid making any binding commitments without a full investigation of the special characteristics of the investment involved and of the persons associated with its management and sale.

A particularly significant area of investment activity not heretofore commonly regulated in accordance with established principles of securities regulation is the marketing of developmental real estate. The sale of lots in extensive projects in the early stages of development or to be developed at a later date with funds obtained from persons of generally modest resources who are induced to purchase through installment contracts on the basis of representations of profits which may be expected through appreciation in values resulting from such developmental activity if and when it occurs involves all of the essential elements of "investment contracts" which constitute securities and all of the characteristics of investment risk and intangibility which make the application of disclosure and fairness standards by agencies responsible for securities regulation not only appropriate but necessary. Yet the multi-billion dollar interstate land sales industry remains for the most part regulated (and very ineffectively) by the real estate licensing agencies rather than the securities regulation agencies of all but a handful of states under license and registration laws (or recently more substantial but still inadequate subdivision laws) and by the Office of Interstate Land Sales of the Department of Housing and Urban Development rather than the Securities and Exchange Commission. Most securities administrators have authority under the laws which they administer to move into this generally neglected area. Even those few states which have statutes defining land located outside their respective states as a security

have refrained from regulating this type of investment as such through application of the same type of strict disclosure and fairness standards as they have applied to real estate limited partnerships and other specialized securities.

The Ohio Securities Act specifically defines land located outside the state as a security and thereby unmistakably implies the legislative determination that it be regulated as such by the Division of Securities. Until 1973, the Division made no effort to provide meaningful regulation in this area despite the fact that it had been receiving more complaints from purchasers of land being sold by 300 development companies than from persons purchasing all other types of securities combined from literally hundreds of thousands of issuers doing business in this state. Subsequently, however, the Division has prepared a set of Proposed Foreign Real Estate Regulations, the fifth and final installment of which (prior to refinement and promulgation) is set forth in the Policy Developments section of this issue of the *Bulletin*, and has conducted a series of meetings with and presentations to representatives of the interstate land sales industry for the purposes of eliciting comments upon and criticisms of the proposed regulations and of explaining the Division's current interpretation of the board statutory concepts of disclosure and fairness as they are currently being applied in adjudications relating to registration applications, price increase requests, and advertising submissions on a case by case basis (see the article contained in the Foreign Real Estate Section of this issue of the *Bulletin*.) The current regulatory program of the Division relating to interstate land sales is designed to eliminate widespread abuses historically associated with the development and sales activities of this industry in a manner which fundamental principles of securities regulation are especially well equipped to accomplish. The Division would like to encourage the securities administrators of other states to consider the adoption of similar programs in this area.

5. Securities Regulation in the Context of a Stagnant Economy: Although the primary responsibility of the Division of Securities is to protect the interest of public investors, it openly acknowledges a corresponding responsibility to promote the health of the state's economy by endeavoring to avoid any unnecessary restraints upon the development and expansion of legitimate business enterprise which might result from its regulatory activities. The art of administration in any economic environment is reflected in the ability to establish an optimum balance between restriction and freedom of action so as to separate dishonest, incompetent, and unproductive financial activity from activity conducive to economic growth and to the maintenance of confidence in the securities markets. Periods of economic recession accentuate the importance of maintaining the appropriate balance point, for the stakes for both companies struggling for survival and individuals seeking to preserve precious savings are raised to more critical levels.

One fact that is clear is that the failure of a particular corporation or real estate investment trust or credit union or consumer finance company causes more damage to the economy of the state than the particular jobs destroyed for its employees or savings lost to its investors. Witness the impact of the Welfare Finance Bankruptcy, the Federation

Workers Credit Union collapse, and the Ohio Real Estate Investment Company debacle on other companies in those same industries.

The Division considers its proper role during economic periods such as the one currently being experienced to be the achievement of an increase in vigilance with respect to financial risk and in the accomplishment of full and complete disclosure thereof to investors, prompt and dramatic legal action against substantive violations of the Ohio Securities Act, cooperation with the efforts of financial institutions and other companies to extricate themselves from economic difficulties to the extent consistent with enforcement of the law, the assurance of prompt and responsive service to applicants for registration, licensing and chartering, and the efficient transaction of all other business of the Division with persons and organizations subject to its regulation. It is our belief that efficient and effective regulation will do more to assist in economic recovery than a withdrawal from active involvement.

William L. Case, III

POLICY DEVELOPMENTS

Proposed Rules for Adjudication Proceedings

The following proposed Rules for Adjudication Proceedings are being published at this time for commentary only and not for promulgation as final rules pursuant to the Administrative Procedure Act (Chapter 119, Ohio Revised Code). The Division hopes that interested persons will provide comments and criticisms concerning the viability and practicality of these proposed Rules. [Such comments and criticisms should be addressed to Alan P. Baden, Special Counsel for Policy Matters.]

In its practical experience in the administration of the Ohio Securities Act (Chapter 1707, Ohio Revised Code), the Division has found that the Administrative Procedure Act does not provide sufficient specificity with respect to procedures to be followed in the conduct of administrative hearings. These proposed Rules are intended to supplement the Administrative Procedure Act in order to add additional substance to and to clarify administrative procedures. Rule 1 describing the scope of these proposed Rules indicates that the Administrative Procedure Act and these proposed Rules are to be read in conjunction and that any conflict between them is to be resolved in favor of the Administrative Procedure Act.

These proposed Rules are intended to cover only a limited time frame in the transaction of business before the Division, namely from "Pre-hearing Notice" to "Final Order". It is contemplated that persons can conduct administrative matters before the Division up to the point of Pre-hearing Notice without reference to these proposed Rules. These transactional matters would include the filing of applications for registration of securities, licenses for dealers and salesmen, etc. These proposed Rules are also inapplicable to investigatory proceedings under Section 1707.23, Ohio Revised Code and hearings for the promulgation of rules pursuant to Chapter 119, Ohio Revised Code.

These proposed Rules have direct applicability, however, where the Division takes administrative action adverse to the interest of any person, in which event, the procedures and requirements of these proposed Rules take effect and are set in motion. These situations include: refusals of qualification for registrations of securities; refusals to issue dealer's or salesmen's licenses; direction of hearings to be held pursuant to Sections 1707.04 and 1707.041, Ohio Revised Code; suspensions of registrations and rights to deal pursuant to Section 1707.13, Ohio Revised Code; and suspensions of licenses pursuant to Section 1707.19, Ohio Revised Code.

The "triggering" document is the Pre-hearing Notice. The nature of the items included in the Pre-hearing Notice will depend upon the type of adjudication proceeding, whether a hearing is required to be set or whether it must be requested, and what type of administrative power the Division is attempting to assert. These proposed Rules establish in several respects a somewhat different procedure for the Division's adjudication hearings than that which has existed in the past. First, these proposed Rules provide for certain pre-hearing motions such as a motion for more definite statement. In addition, the Rules allow the Division to require a formal answer, pursuant to Rule 6, to any allegations or averments contained in the Pre-hearing Notice. These proposed Rules also allow any party to an adjudication proceeding to proffer offers of settlement to the Division for its consideration in relation to any of the averments contained in the Pre-hearing Notice.

The role of the hearing officer has been limited by these proposed Rules to simply that of a person responsible for administering the conduct of the adjudication hearing. The hearing officer is still vested with the power to continue a hearing once it is commenced where he feels that it is in the best interests of establishing an adequate record. However, all rulings of the hearing officer during an adjudication hearing are subject to appeal through an "interlocutory review" procedure which is set forth in Rule 14. Where interlocutory review is requested or where the independence of the hearing officer is in question, a review by the Division is defined by Rule 3 to be a review by the Commissioner or any representative of the Division other than the Attorney-Inspector or a member of the staff of the Enforcement Section. This rule provides that the Division will be represented at adjudication hearings by the Attorney-Inspector or a member of the staff of the Enforcement Section in an advocacy role [in addition to representation by the office of the Attorney General]. Rule 3 attempts to insure that the Division's representation at the hearing does not conflict with its review of matters which are ruled upon by the hearing officer at the adjudication hearing.

These proposed rules provide for Initial Findings and Conclusions to be prepared by the hearing officer within specific time limits following the close of the adjudication hearing. For adjudication hearings other than those involved with adjudication proceedings under Sections 1707.13 and 1707.19, Ohio Revised Code, the hearing officer has sixty days following the conclusion of the hearing in which to prepare his Initial Findings and Conclusions.

Within that time period these proposed Rules contemplate that Proposed Findings and Conclusions may be submitted to the hearing officer by the Division and the parties to the adjudication hearing for his consideration. For adjudication proceedings conducted pursuant to Sections 1707.13 and 1707.19, Ohio Revised Code, the time limit for preparation of the Initial Findings and Conclusions is shortened to ten days following receipt of the Proposed Findings and Conclusions or within thirteen days following the close of the hearing, whichever time period is less. The Proposed Findings and Conclusions must be submitted within three days after the close of the hearing.

The Division pursuant to these proposed Rules and the Administrative Procedure Act will serve the Initial Findings and Conclusions of the hearing officer upon the parties to the adjudication proceeding within five days after receipt by the Division. After such service the Division is allowed thirty days in which to prepare a Final Order which will include Final Findings and Conclusions and will be based upon the record of the adjudication hearing including consideration of written objections to the Initial Findings and Conclusions and any rulings of the hearing officer during the course of the adjudication hearing. These written objections must be filed within ten days following service upon the parties and the Division, pursuant to the Administrative Procedure Act, may not render a decision in the form of a Final Order until that ten-day period has expired.

RULE 1. SCOPE OF RULES FOR ADJUDICATION PROCEEDINGS

The Rules for Adjudication Proceedings (Rules 1-20) are applicable to adjudication proceedings before the Division of Securities of the State of Ohio ("Division") which involve adjudication hearings or an opportunity for an adjudication hearing under the Ohio Securities Act, Chapter 1707, Ohio Revised Code, and the rules, regulations, and orders promulgated thereunder.

The provisions of the Administrative Procedure Act, Sections 119.01 to 119.13, inclusive, Ohio Revised Code, are incorporated herein by reference and where any provision of Rules 1-20 may conflict with any Section of the Administrative Procedure Act, Sections 119.01 to 119.13, Ohio Revised Code will be controlling and determinative.

RULE 2. DEFINITIONS

(a) "Adjudication" means the determination by the Division of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include acts of a ministerial nature. This term shall be defined in accordance with Section 119.01(D), Ohio Revised Code.

(b) "Adjudication proceeding" means a proceeding conducted by the Division pursuant to Chapter 119, Ohio Revised Code and Rules 1-20 in order to make an adjudication required or authorized by Sections 1707.04, 1707.041, 1707.09, 1707.13, 1707.19, 1707.33, and 1707.34, Ohio Revised Code. No matter before the Division shall be considered an "adjudication proceeding" unless a Pre-hearing Notice has been issued by the Division and no Final Order has been entered by the Division.

(k) "Adjudication hearing" means a public hearing by the Division in compliance with the procedural safeguards of Sections 119.01 to 119.13, Ohio Revised Code. This term shall be defined in accordance with Section 119.01(E), Ohio Revised Code.

(d) "Hearing officer" means a hearing examiner or referee appointed by the Division under Section 119.09, Ohio Revised Code, to conduct an adjudication hearing.

(e) "Division" means the Division of Securities of the Department of Commerce, State of Ohio which is the agency of the Department of Commerce created by the Director of Commerce to exercise the power, authority and responsibility of Chapter 1707, Ohio Revised Code. The Commissioner of Securities or any representative of the Division designated by the Commissioner of Securities shall exercise the authority of the Division in all adjudication proceedings except to the extent the Attorney-Inspector or a member of the Enforcement Section of the Division is specified in Rules 1-20 as the appropriate person to act on behalf of the Division.

(f) "Person" means a natural person, firm, partnership, limited partnership, partnership association, syndicate, joint-stock company, unincorporated association, trust or trustee except where the trust was created or the trustee designated by law or judicial authority or by a will, and a corporation organized under the laws of any state or of any foreign government, or political subdivision thereof. This term shall be defined in accordance with Sections 119.01(F) and 1707.01(D), Ohio Revised Code.

(g) "Party" means the person whose interests are the subject of an adjudication proceeding before the Division. This term shall be defined in accordance with Section 119.01(G), Ohio Revised Code.

(h) "Findings and Conclusions" means determinations of questions of law or fact, or matters of discretion, the accompanying rulings, orders, sanctions, relief, denials or recommendations as the case may be, and the basis and reasons therefor, as to matters relevant and material to an adjudication hearing which are present on the record. Under these Rules there are three types of Findings and Conclusions:

(1) Proposed Findings and Conclusions, which are suggested Findings and Conclusions submitted to the hearing officer by a party pursuant to Rule 15(b) and (c);

(2) Initial Findings and Conclusions which are Findings and Conclusions made by a hearing officer after an adjudication proceeding;

(3) Final Findings and Conclusions, which are the Findings and Conclusions contained in the Division's Final Order issued after review by the Division as required by Section 119.09, Ohio Revised Code.

(i) "Pre-hearing Notice" means written notice given by the Division to any party to any adjudication proceeding of interim or proposed administrative action, the time and

place at which an adjudication hearing will be conducted, and the right to an adjudication hearing.

For adjudication hearings pursuant to Rules 1-20 the Pre-hearing Notice under the following sections shall contain the following information:

- (1) Under Sections 1707.04 and 1707.041, Ohio Revised Code:
 - (a) Notice of the time and place of the adjudication hearing;
 - (b) Notice of the nature of the adjudication proceeding;
 - (c) Notice of averments of the Division, if any;
 - (d) Notice of the requirement of an answer, if any.
- (2) Under Sections 1707.09, 1707.33, and 1707.34:
 - (a) Notice of the intent of the Division to refuse qualification;
 - (b) Notice of the right to a hearing upon request;
 - (c) Notice of averments of the Division, if any;
 - (d) Notice of the requirement of an answer, if any.
- (3) Under Section 1707.13, Ohio Revised Code:
 - (a) Notice of the suspension of a registration or the suspension of a right to deal;
 - (b) Notice of the time and place of a hearing;
 - (c) Notice of averments of the Division, if any;
 - (d) Notice of the requirement of an answer, if any.
- (4) Under Section 1707.19, Ohio Revised Code:
 - (a) Notice of:
 - (i) the intent of the Division to refuse to grant a license pursuant to Sections 1707.15, 1707.16, or 1707.331, Ohio Revised Code, or
 - (ii) the intent of the Division to refuse to grant the renewal of a license pursuant to Sections 1707.19 or 1707.331, Ohio Revised Code, or
 - (iii) the suspension of a license granted pursuant to Sections 1707.15, 1707.16, or 1707.331, Ohio Revised Code.
 - (b) Notice of the right to a hearing upon request;
 - (c) Notice of averments of the Division, if any;
 - (d) Notice of the requirement of an answer, if any.

(k) "Final Order" means an order from which a party adversely affected may appeal to a court of common pleas of competent jurisdiction pursuant to Sections 119.12 and 1707.22, Ohio Revised Code. A Final Order may be issued in the following instances:

- (1) Where a Pre-hearing Notice with notice of the right to a hearing was given and no hearing was requested within the time prescribed.
- (2) Where a Pre-hearing Notice with the requirement of an answer pursuant to Rule 6 is given and no such answer is timely filed.
- (3) Where an adjudication hearing is scheduled, with or without request, and a party who was given adequate notice of such adjudication hearing fails to appear.
- (4) Where a person is excluded or expelled from an adjudication hearing for contemptuous conduct pursuant to Rule 4(e).
- (5) Where an adjudication hearing is held and after such adjudication hearing a final adjudication is made by the Division.

RULE 3. REPRESENTATION OF THE DIVISION

In every adjudication hearing the Division shall be represented by the Attorney-Inspector or a member of the Enforcement Section of the Division; provided however, that the Attorney General of the State of Ohio or one of his Assistant Attorneys-General shall present the Division's case at such adjudication hearings, examine and cross-examine witnesses and prepare briefs for presentation to the hearing officer on behalf of the Division, in accordance with Section 119.10, Ohio Revised Code. In any review by the Division of the hearing officer's Initial Findings and Conclusions or Rulings, objections thereto, or of Proposed Findings and Conclusions, or in any consideration of a petition for interlocutory review, the Commissioner of Securities or any representative of the Division designated by the Commissioner of Securities other than the Attorney-Inspector or a member of the Enforcement Section of the Division shall undertake the review on behalf of the Division. Except as provided for in this Rule, the Division shall be represented at every adjudication proceeding by the Commissioner or his designee, which designee may include the Attorney-Inspector or a member of the Enforcement Section of the Division.

RULE 4. APPEARANCE AND PRACTICE BEFORE THE DIVISION

- (a) By Non-Attorneys. An individual may represent himself, a general partner of a general or limited partnership may represent the partnership, and a duly authorized officer of a corporation, trust or association may represent the corporation, trust or association in any adjudication proceeding before the Division.
- (b) By Attorneys. A person may be represented in any adjudication proceeding before the Division by an attorney

at law admitted to practice before the Supreme Court of Ohio.

(c) Representation Only as Specified. A person shall not be represented in any adjudication proceeding before the Division except as stated in paragraphs (a) and (b) of this Rule or except as otherwise permitted by the Division.

(d) Notice of Appearance; Request for Adjudication Hearing; Designation for Service; Power of Attorney. When a person other than an attorney at law appears before the Division pursuant to paragraph (a) herein in a particular adjudication proceeding which involves an adjudication hearing or an opportunity for an adjudication hearing, in addition to a request for hearing where required, he shall file with the Division or otherwise state on the record prepared in accordance with Rule 10(g) an address at which any notice or other written communication required to be served upon him or furnished to him may be sent. When an attorney appears before the Division in a representative capacity in a particular adjudication proceeding which involves an adjudication hearing or an opportunity for an adjudication hearing, he shall file with the Division a written notice of such appearance, which shall state his name, address, and telephone number and the name and address of the person or persons on whose behalf he appears. Any additional notice or written communication required to be served or furnished to the client may in lieu of such service be sent to the attorney at the attorney's stated address. Any person appearing before the Division in a representative capacity in an adjudication proceeding may be required to file with the Division a power of attorney showing his authority to act in such capacity. Where a Pre-hearing Notice with notice of a right to a hearing is issued, the filing of a notice of appearance shall be deemed a proper request for hearing.

(e) Contemptuous Conduct. (1) Contemptuous conduct at any adjudication hearing by any person shall constitute grounds for the hearing officer to summarily exclude or expel without a hearing such person from the adjudication hearing.

(2) If the person excluded or expelled is not a party, such person may be excluded or expelled for the duration of the adjudication hearing.

(3) If the person excluded or expelled is an individual representing himself, the hearing officer shall grant a continuance, until such time, not exceeding 30 days, as the hearing officer, in his sole discretion, has been satisfied by the excluded or expelled individual that such individual will not engage in any future contemptuous conduct at the adjudication hearing. If such individual fails to so satisfy the hearing officer within 30 days, such failure shall constitute a failure to appear within Rule 5(c), and the proceeding may be determined against such individual in accordance with that Rule.

(4) If the person excluded or expelled is other than an individual representing himself, the hearing officer shall grant a continuance until such time, not exceeding 30 days, as the party whose representative was the excluded person

has obtained another representative permitted by Rule 4(a)-(c), or until such time as such party, if an individual, has notified the Division in writing that he will thereafter represent himself. If the party whose representative was the person excluded or expelled fails within 30 days to obtain proper representation, or fails to notify the Division in writing that he will represent himself, such failure shall constitute a failure to appear within Rule 5(c), and the proceeding shall be determined against such party in accordance with that Rule.

(5) "Contemptuous conduct" means boistrous, outrageous, harrassing, obstructive, or other opprobrious conduct disruptive of the orderly processes of an adjudication hearing.

(f) Service on Attorneys. In any adjudication proceeding where an attorney has filed an appearance pursuant to paragraph (d) hereof, any notice or other written communication required to be served upon or furnished to the client shall also be served upon or furnished to the attorney (or one of such attorneys, if the client is represented by more than one attorney) in the same manner as prescribed for his client, regardless of whether such communication is furnished directly to the client.

RULE 5. PRE-HEARING NOTICE AND NOTICE OF ADJUDICATION HEARING

(a) Pre-hearing Notice; Notice of Adjudication Hearing. Whenever a Pre-hearing Notice containing a notice of time and place of adjudication hearing is issued by the Division or when an adjudication hearing is scheduled to be held subsequent to the issuance of the Pre-hearing Notice containing only notice of the right to a hearing upon request, a notice of adjudication hearing shall be given by the Division to each party to the proceeding and any other person entitled to notice or to the person designated by any such party or person as being authorized to receive on his behalf notices issued by the Division. The parties or persons entitled to notice shall be timely informed of the time and place of the adjudication hearing and shall receive a copy of the Pre-hearing Notice. In proceedings in which an answer is directed pursuant to Rule 6, the Pre-hearing Notice shall set forth the action proposed and the factual and legal basis alleged therefor in such detail as will permit a specific response thereto.

(b) Amendment of Pre-hearing Notice. In any adjudication proceeding, amendments to the matters of fact and law to be considered at an adjudication hearing may be authorized, for cause shown, by the hearing officer during the course of the adjudication hearing, or by the Division at any time.

(c) Effect of Failure to Appear. If any person who is named in a Pre-hearing Notice as a person against whom a Final Order may be issued in the adjudication proceeding does not file a notice of appearance [which includes a request for hearing where required as provided in Rule 4(d)] in the adjudication proceeding within 30 days after service upon him of the Pre-hearing Notice (unless a different period is specified in the Pre-hearing Notice), or if he fails to appear at an adjudication hearing of which he has been duly

notified, such person shall be deemed in default and the Division may issue a Final Order against him upon the basis of the Pre-hearing Notice, the allegations of which may be deemed by the Division to be true. For purposes of this paragraph, an answer shall constitute a notice of appearance.

RULE 6. ANSWERS

(a) When Required. In any Pre-hearing Notice issued by the Division, the Division may direct that any party shall file an answer to the allegations contained in the Pre-hearing Notice, and any party in any proceeding may also be directed by the Division to file an answer, or may file on his own initiative.

(b) Time to File Answer. Except where a different period is provided by the Pre-hearing Notice, a party directed to file an answer as provided in paragraph (a) of this Rule shall do so within 30 days after service upon him of the Pre-hearing Notice. Where amendments to the matters of fact and law to be considered at an adjudication hearing are authorized subsequent to the issuance of the Pre-hearing Notice, an additional period of time may be allowed for the filing of an answer relating to the matters of fact and law to be considered as amended.

(c) Requirements of Answers; Effect of Failure to Deny. Unless otherwise directed by the Division, an answer required by this Rule shall specifically admit, deny, or state that the party does not have and is unable to obtain sufficient information to admit or deny each allegation in the Pre-hearing Notice. A statement of lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party intends in good faith to deny only a part or a qualification of an allegation, he shall specify so much of it as is true and shall deny only the remainder.

(d) Motion for More Definite Statement. A party may file with the Division together with an answer required by this Rule, a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state in what respect, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted by the Division, it shall establish the time period in which such statement, and any answer thereto, shall be respectively issued and filed.

(e) Effect of Failure to File Answer. If a party fails to file an answer required by this Rule within the time provided, such person shall be deemed in default and the Division may issue a Final Order against him upon the basis of the Pre-hearing Notice, the allegations of which may be deemed to be true.

(f) Signature on Answer; Requirement and Effect. Every answer filed pursuant to this Rule shall be signed by the party filing it or by at least one attorney, in his individual name, who represents such party. This signature constitutes a certificate by the signer that he has read the answer, that to the best of his knowledge, information and belief there is

good ground to support it, and that it is not interposed for delay.

RULE 7. PARTIES AND LIMITED PARTICIPATION

(a) Limited Participation - Leave To Be Heard. Any person may, at the discretion of the Division, be given leave to be heard in any adjudication proceeding as to any matter affecting his interests. Requests for leave shall be in writing, shall set forth the nature and extent of the applicant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than two (2) days prior to the date fixed for the commencement of the adjudication hearing, or where a party is required to answer, requests for leave to be heard shall be filed within the time provided for the filing of the answer. The Division may direct any person requesting leave to be heard to submit himself to examination by the Division as to his interest in the adjudication proceeding.

(b) Rights of Participants. Leave to be heard pursuant to paragraph (a) hereof may include such rights of a party as the Division may deem appropriate. Persons granted leave to be heard shall be bound, except as may be otherwise determined by the Division, by any stipulation between the Division and the parties to the proceeding with respect to procedure, including submission of evidence, substitution of exhibits, corrections of the record, and the time within which briefs or objections may be filed or Proposed Findings and Conclusions may be submitted. Where the filing of briefs or objections are waived by the parties to the adjudication proceeding, a person granted leave to be heard pursuant to paragraph (a) hereof shall not be permitted to file a brief or objection except by leave of the Division. Except as otherwise may be specifically directed by the Division at the request of any person, granted leave to be heard, such person shall be expected to inform himself by attendance at adjudication hearings of steps taken in the adjudication proceeding including continuances, the filing of amendments, answers, motions, or briefs by parties to the adjudication proceeding, or the fixing of the time for any such action, and such persons shall not be entitled as of right to order notice thereof, or to service of copies of documents.

(c) When Intervention as Party Granted. Except as provided in paragraph (a) hereof, no person shall be allowed to intervene as a party to an adjudication proceeding unless the Division is satisfied on the basis of the written application of such person (and any evidence taken in connection therewith) that he may be adversely affected by a Final Order of the Division, and that leave to be heard pursuant to paragraphs (a) and (b) hereof would be inadequate for the protection of his interests.

(d) Permission to State Views. Any person who has not complied with requirements of paragraph (a) hereof may, in the discretion of the Division, be permitted to submit a written memorandum or make an oral statement of his views, and the hearing officer shall accept for the record prepared in accordance with Rule 10(g) written or oral communications received from any such person. Unless offered and admitted as evidence of the truth of the statements therein made, the written or oral communications sub-

mitted pursuant to the provisions of this paragraph will be considered only to the extent that the statements therein made are otherwise supported by the record prepared in accordance with Rule 10(g).

RULE 8. CONSOLIDATION

Adjudication proceedings involving a common question of law or fact may be consolidated by the Division for an adjudication hearing.

RULE 9. SETTLEMENTS, SPECIFICATION OF PROCEDURES, AND AGREEMENTS

(a) Offers of Settlement. Parties may propose in writing offers of settlement which shall be submitted to and considered by the Division where time, the nature of the adjudication proceeding, and the public interest permit. Such offers may be made at any time during the course of the adjudication proceeding. If the Division deems it appropriate, it may also give the party making the offer an opportunity to make an oral presentation to the Division. Where the Division rejects an offer of settlement, the party making the offer shall be notified of the Division's action, the offer of settlement shall be deemed withdrawn, and such offer and any documents relating thereto shall not constitute a part of the record prepared in accordance with Rule 10(g). Final acceptance by the Division of any offer of settlement will be only by the Final Findings and Conclusions issued in the proceeding.

(b) Specification of Procedures. Where an adjudication hearing is to be held the Division shall, in the Pre-hearing Notice if that is practicable, or it not, as early as practicable in the course of the adjudication hearing, specify the procedures, in accordance with Rules 1-20, considered necessary or appropriate in the adjudication hearing. Any party may object promptly or within such time as shall be designated by the Division, having due regard for the circumstances of the case and for the procedure so specified, and such party may propose such additional or alternative procedures as he considers necessary or appropriate; in the absence of such objection or proposal of additional or alternative procedures, such party may be deemed to have waived objection to the specified procedures or to the proposal of any procedure, unless the Division, for good cause shown and upon taking into account any resulting prejudice to other parties, determines to the contrary.

(c) Agreements of Procedure. Any proposal of additional or alternative procedures enumerated in paragraph (b) of this Rule which is agreed upon by the Division and all parties present and which is not contrary to any specific provision of this part, shall be embodied in an appropriate stipulation which shall become part of the record prepared in accordance with Rule 10(g), and shall determine the procedure in that respect, except that in the absence of agreement or waiver the Division shall establish the procedure.

RULE 10. CONDUCT OF ADJUDICATION HEARING; MOTIONS AND APPLICATIONS TO HEARING OFFICER; RECORD

(a) When Held. Adjudication hearings shall be held at the time and place prescribed by the Division in the Pre-hearing Notice or notice of adjudication hearing.

(b) Presiding Officers; Public Hearings. All adjudication hearings shall be held before the Division, or a hearing officer who shall be duly designated by the Division, but who shall not be the Attorney-Inspector or a member of the Enforcement Section of the Division. The hearing officer shall regulate the course of the adjudication hearing. Adjudication hearings shall be conducted in an impartial and orderly manner.

(c) Conferences. At the opening of an adjudication hearing or at any other time during the course of any adjudication hearing, to the extent practicable, where time, the nature of the adjudication proceeding, and the public interest permit, the hearing officer shall, at the request of any party or the Division or upon his own motion, conduct or allow conferences for the purpose of clarifying and simplifying issues, including where practical and reasonable, consideration of (1) the possibility of obtaining stipulations and admissions of facts and of authenticity of contents of documents which will avoid unnecessary proof; (2) expedition of the presentation of evidence; (3) the exchange of copies of proposed exhibits; and (4) such other matters as will promote a fair and expeditious adjudication hearing or aid in the disposition of the proceeding. Where such conferences are held without the presence of the hearing officer, the hearing officer shall be advised promptly by the parties and the Division of any agreements reached. At or following the conclusion of such conferences the hearing officer shall recite on the record prepared in accordance with paragraph (g) of this Rule any matters agreed upon by the Division and the parties.

(d) Rulings by Hearing Officer; Objections. Except as otherwise directed by the Division, or where Rules 1-20 specifically provide otherwise, all applications, motions and objections made during an adjudication hearing prior to the filing of Initial Findings and Conclusions shall be made to or referred to and decided by the hearing officer. Any application or motion shall be in writing and shall be accompanied by a written brief of the points and authorities relied upon in support, and any party may file an answer within five days after service upon him of such motion or application as provided in Rule 19, except where the hearing officer allows such application or motion and accompanying arguments to be made orally on the record prepared in accordance with Paragraph (g) of this Rule, with the consent of the Division and all parties. Objections to the admission or exclusion of evidence shall be made orally on the record prepared in accordance with paragraph (g) of this Rule and shall be in short form, stating the grounds of objections relied upon, and the record prepared in accordance with paragraph (g) of this Rule shall not include argument or debate except as ordered by the hearing officer. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling in order to

be argued before the Division. Objections will be deemed waived, however, unless raised (1) in accordance with paragraph (e) of this Rule, (2) in Proposed Findings and Conclusions in accordance with Rule 15(b), or (3) in written objections to Initial Findings and Conclusions filed with the Division in accordance with Rule 17.

(e) Interlocutory Review of Hearing Officer's Rulings. The Division will not review a ruling of the hearing officer in conducting the adjudication hearing prior to its consideration of the entire adjudication proceeding, except as provided herein and in paragraph (g) of this Rule. The hearing officer shall certify a ruling for interlocutory review by the Division if the Division or a party so requests and the hearing officer finds, either on the record or in writing, that in his opinion a subsequent reversal of his ruling would cause unusual delay or expense, taking into consideration the probability of such reversal. The certification by the hearing officer shall be in writing and shall specify the material relevant to the ruling involved. The Division may decline to consider the ruling certified, if it determines that interlocutory review is not warranted or appropriate under the circumstances. If the hearing officer refuses to certify a matter for interlocutory review, a party who had requested certification may apply to the Division for review, or the Division on its own motion may direct that any matter be submitted for review. An application for review shall be in writing and shall briefly state the grounds relied upon. Review will not be granted unless the Division concludes that the hearing officer erred in failing to certify the matter. Unless otherwise directed by the hearing officer or the Division, the adjudication hearing before the hearing officer shall proceed whether or not such certification or application is made. Failure to request certification or to make such application will not waive the right to seek review of the ruling of the hearing officer after the close of the adjudication hearing pursuant to Rules 12 and 17(b). The Division will prescribe the procedure for each application hereunder as the circumstances warrant, and Rule 14(b) shall not apply.

(f) Disqualification of Hearing Officer. In any adjudication hearing the hearing officer may withdraw from the adjudication hearing when he deems himself disqualified by reason of personal bias, conflict of interest, on other circumstance not conducive to the conduct of an impartial adjudication hearing. In such event he shall immediately notify the Division of his withdrawal and inform it of his reasons for such action. At any time, the Division may remove and replace the hearing officer for such cause. Any party or any person who has been granted leave to be heard pursuant to Rule 7 may in good faith request a hearing officer to withdraw on similar grounds. If such request is refused by the hearing officer, the person seeking disqualification shall file with the hearing officer and the Division a timely affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the hearing officer may file a response with the Division. If the Division finds no grounds to disqualify the hearing officer, it shall so rule and direct the hearing officer to proceed with the adjudication hearing. The Division may rule on the question without hearing it or may require testimony or argument on the issues raised. The affidavit and response, any testimony taken,

and the decisions thereon shall be part of the record prepared in accordance with paragraph (g) of this Rule.

(g) Record of Adjudication Hearings. A record of each adjudication hearing shall be made and transcripts of the record may be made as necessary. The record shall contain the following:

- (1) the Pre-hearing Notice, the Notice of Adjudication Hearing, and amendments to either;
 - (2) any answers filed by the parties and amendments thereto;
 - (3) proofs of service;
 - (4) any stipulations between the parties and the Division as to any matter of fact, law or procedure;
 - (5) a stenographic report of all testimony and all objections, corrections and rulings relevant thereto;
 - (6) any exhibit received at the hearing;
 - (7) any written communication accepted by the hearing officer pursuant to Rule 7(d);
 - (8) any application, motion or objection made in the course of the adjudication hearing and rulings thereon,;
 - (9) any affidavit and response, testimony taken and decisions in connection with a request for a hearing officer to withdraw under paragraph (f) of this Rule;
 - (10) any Proposed or Initial Findings and Conclusions;
 - (11) any objections to Initial Findings and Conclusions and rulings; and
 - (12) the Final Order of the Division.
- (h) Record of Adjudication Hearings in Case of Default.

In the event of a determination of default pursuant to Rule 4(e), the Division shall prepare a record in accordance with paragraph (g) of this Rule to the extent applicable. In the event of determinations of default pursuant to Rules 5(c) and 6(e), no record will be prepared unless Notice of Appeal is received in accordance with Section 119.12, Ohio Revised Code. The record made upon receipt of Notice of Appeal shall be prepared in accordance with paragraph (g) of this Rule to the extent applicable, and in addition shall contain the reasons for the determination of default.

RULE 11. EVIDENCE

(a) Presentation and Admission of Evidence. All witnesses at an adjudication hearing shall testify under oath or affirmation, which shall be administered by the stenographer, hearing officer or other duly authorized person. Each party and the Division shall have the right to present such oral or documentary evidence and to conduct such cross exam-

ination as may be required for a full and fair disclosure of the facts. The hearing officer shall receive relevant and material evidence, shall rule upon offers of proof and may exclude irrelevant, immaterial or unduly repetitious evidence.

(b) Subpoenas; Motions to Quash or Modify; Service. The Division may, in connection with any adjudication hearing issue subpoenas requiring the attendance and testimony of witnesses and subpoenas requiring the production of documentary or other tangible evidence upon its own motion or at the request of a party; provided, however, that where it appears that a requested subpoena may be unreasonable, oppressive, excessive in scope or unduly burdensome, the Division may, in its discretion, as a condition precedent to issuance require the party requesting the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the Division shall, after consideration of all of the circumstances, determine that a subpoena or any of its terms are unreasonable, oppressive, excessive in scope or unduly burdensome, or that the subpoena or any of its terms constitute an unwarranted or overly broad inquiry into non-public investigatory files or privileged information in its possession, the Division, may in its sole discretion refuse to issue the subpoena or condition its issuance upon such terms as it considers fair and reasonable. In making the foregoing determination, where the Division can do so without undue inconvenience to the parties to the adjudication proceeding, the Division may inquire of the other parties whether they will concede the facts sought to be proved; but in this connection, except with permission of the party seeking the subpoena, the Division shall not disclose the identity of the person sought to be subpoenaed.

(c) Official Notice. In any adjudication proceeding, official notice may be taken of any matter of fact or law of which judicial notice might be taken by a court of common pleas, or any matter which is peculiarly within the knowledge of the Division as an expert authority. If official notice is requested or taken of a material fact not appearing as evidence in the record prepared in accordance with Rule 10(g), the parties and the Division upon timely request shall be afforded an opportunity to establish the contrary state of fact or law.

RULE 12. BRIEFS

Briefs shall be confined to the particular matters at issue in an adjudication proceeding. Briefs not filed within the time provided will not be accepted without special permission of the Division. Any issue which is briefed shall be supported by a concise argument and by the citation of such statutes, decisions and other authorities and, if practicable, by page references to such portions of the transcript of the adjudication hearing as may be relevant. If an issue to be briefed relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, and, if practicable, accompanied by appropriate references to the transcript of the adjudication hearing. Reply briefs shall be confined to matters presented in the original briefs of other parties or the Division.

RULE 13. EXTENSION OF TIME AND CONTINUANCES

(a) Granting of Extensions, Postponements, and Continuances. Except as otherwise provided by law the Division at any time, or the hearing officer at any time after the commencement of the adjudication hearing and prior to the filing of his Initial Findings and Conclusions may, for good cause, extend or shorten any time limits prescribed by Rules 1-20 for filing any papers and may postpone or continue any adjudication hearing.

(b) Limitation on Extensions. In no event shall any extension of time for filing papers which is granted by a hearing officer pursuant to this Rule exceed a total of 30 days.

(c) Limitations on Postponements and Continuances. Within the limits provided by statute, the Division may for good cause, postpone the commencement of an adjudication hearing for not more than 30 days or change the location of an adjudication hearing. Any adjudication hearing which has been convened may be continued at such time and place as may be ordered by the Division or by the hearing officer. No such continuance shall exceed 30 days.

(d) Reopening of Adjudication Hearing. Upon notice to all parties, the hearing officer may reopen any adjudication hearing prior to the filing of Initial Findings and Conclusions therein.

RULE 14. MOTIONS AND APPLICATIONS

(a) Motions to the Division. All motions and applications not required to be made to the hearing officer pursuant to Rule 10 shall be made to and ruled upon by the Division.

(b) Filing of Motions to the Division; Briefs; Stays. Motions or applications calling for determinations by the Division shall be filed with the Division in writing. Any such motion or application shall be accompanied by a written brief of the points and authorities relied upon in support. The Division or any party may file an answering brief within 5 days after service upon him of such motion or other application as provided in Rule 19 unless otherwise directed by the Division. Motions and applications will be considered on the briefs filed following the time for filing the answering brief, unless otherwise directed by the Division. No oral argument will be heard unless the Division so directs.

RULE 15. FINDINGS AND CONCLUSIONS

(a) When Initial Findings and Conclusions Required. The hearing officer shall make Initial Findings and Conclusions in all adjudication hearings.

(b) Proposed Findings and Conclusions; Briefs. In any adjudication proceeding involving an adjudication hearing, the parties and the Division may file with the hearing officer in writing Proposed Findings and Conclusions. The basis for such Proposed Findings and Conclusions shall be indicated by appropriate citations to the record prepared in accordance with Rule 10(g) in an accompanying brief. Any Pro-

posed Findings and Conclusions not briefed may be regarded as waived.

(c) Time for Filing Proposed Findings and Conclusions and Briefs Prescribed by Hearing Officer. At the close of every adjudication hearing, the hearing officer shall, after consultation with the parties and the Division, prescribe the period within which Proposed Findings and Conclusions and supporting briefs are to be filed and shall direct such filing to be either simultaneous or successive; provided, however, that the period within which the latest filing is to be made shall not exceed 30 days following the close of the adjudication hearing. If successive filings are directed, the Proposed Findings and Conclusions of the moving party or the Division shall be set forth in serially numbered paragraphs and any counterstatement of Proposed Findings and Conclusions must, in addition to any other matter, indicate as to which paragraphs of the moving party's or the Division's proposals there is no dispute. Reply briefs may be filed by the moving party, or, where simultaneous filings are directed, reply briefs may be filed by all parties within the period prescribed therefor by the hearing officer.

(d) Preparation, Filing and Notice of Initial Findings. The hearing officer shall file his Initial Findings and Conclusions with the Division within 60 days following the close of the adjudication hearing. The Division shall within 5 days after receipt thereof serve the Initial Findings and Conclusions of the hearing officer upon the parties or their attorneys.

(e) Oral Argument. At his discretion the hearing officer may hear oral argument by the parties and the Division at any time before he files his Initial Findings and Conclusions with the Division.

RULE 16. SPECIAL TIME LIMITS FOR BROKER-DEALER, SALESMEN, REGISTRATION AND RIGHT-TO-DEAL SUSPENSION CASES

In any adjudication proceeding pursuant to Sections 1707.13 or 1707.19, Ohio Revised Code, involving a pre-hearing suspension of a registration, a Broker-Dealer's or Salesman's license, or the right of any Issuer or Broker-Dealer to buy, sell or deal in any security, the following time limits shall be applicable in lieu of the time limits prescribed by other provisions of these Rules, unless otherwise ordered by the Division:

(a) Proposed Findings and Conclusions and briefs. Proposed Findings and Conclusions and briefs in support thereof shall be filed within 3 days following the close of the adjudication hearing.

(b) Initial Findings and Conclusions. The Initial Findings and Conclusions of the hearing officer shall be filed with the Division within 10 days following the receipt of Proposed Findings and Conclusions, or within 13 days following the close of the hearing, whichever first occurs.

RULE 17. CONSIDERATION BY THE DIVISION OF THE INITIAL FINDINGS AND CONCLUSIONS OR RULINGS OF THE HEARING OFFICER AND OBJECTIONS THERETO, AND ISSUANCE OF FINAL ORDER

(a) Written Objections; When Available. Any party who would have been entitled to judicial review of the Final Order entered in an adjudication proceeding by the Division may file written objections to the Initial Findings and Conclusions or rulings of the hearing officer in accordance with Section 119.09, Ohio Revised Code, which are to be considered by the Division before confirmation, modification or disapproval of the hearing officer's Initial Findings and Conclusions.

(b) Written Objections; Procedure. Any party who seeks the Division's consideration of objections to Initial Findings and Conclusions or rulings of a hearing officer shall, within 10 days after service of the Initial Findings and Conclusions, serve and file a petition with the Division indicating the specific Initial Findings and Conclusions or rulings to which objections are being made together with the reasons for such objections, which may be stated in summary form. Any objections to Initial Findings and Conclusions or rulings not perfected by means of written objections filed pursuant to the provisions of this Rule shall be deemed to have been abandoned and may be disregarded by the Division in reaching its final determination.

(c) Review by the Division of Initial Findings and Conclusions; Final Order. The Division shall confirm, modify or disapprove the Initial Findings and Conclusions of the hearing officer and enter a Final Order containing the Division's Final Findings and Conclusions in accordance with such confirmation, modification or disapproval within 30 days following service of the Initial Findings and Conclusions on the parties or their attorneys, except that such time limit will be deemed inapplicable where the Division chooses to reopen the record prepared in accordance with Rule 10(g) to receive additional testimony.

RULE 18. FILING FORMALITIES: COMPUTATION OF TIME

(a) Filing with the Division. All papers required to be filed with the Division or the hearing officer in any adjudication proceeding must be actually received by the Division within the time limit, if any, for such filing, or they shall be deemed to have not been filed.

(b) Number of Copies. Unless otherwise specifically provided in Rules 1-20 or by specific direction of the Division an original and 3 copies of all papers shall be filed.

(c) Length and Form of Briefs. All briefs filed with the Division or with the hearing officer containing more than 10 pages shall include an index and table of cases. The date of each brief must appear on its front cover or title page. No brief shall exceed 60 pages in length, except with the permission of the Division.

(d) Paper, Spacing, Type. All paper filed under Rules 1-20 shall be typewritten, mimeographed, xeroxed or printed

shall be plainly legible, shall be on one grade of good unglazed white paper approximately 8 1/2 inches wide by 11 inches long, and shall be bound on the left-hand side. They shall be double-spaced, except that quotations shall be single-spaced and indented. If printed, they shall be in either 10- or 12- point type with double-leaded text and single-leaded quotations.

(e) Signatures. All papers filed must be signed in ink by the filing party, or his duly authorized agent or attorney, and must show the address of the person signing.

(f) Title Page. All papers filed must include, on a title page, the Division, the name of the Commissioner of Securities, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the adjudication proceeding.

(g) Signature on Orders. All orders of the Division shall be signed by the Commissioner of Securities or by such other representative of the Division as may be authorized by the Commissioner of Securities.

(h) Computation of Time. In computing any period of time prescribed or allowed by Rules 1-20 or by order of the Division the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. Intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less.

RULE 19. SERVICE OF PLEADINGS, ETC. OTHER THAN MOVING PAPERS

(a) Service of Documents Filed with the Division. All amendments to motions, all answers, all motions or applications made in the course of an adjudication proceeding (unless made orally during an adjudication hearing), all Proposed Findings and Conclusions, and all briefs shall be filed with the Division and shall, at the time of personal delivery or dispatch to the Division, be served upon all parties to the proceeding.

(b) How Service Made. Service of such documents shall be made by personal service on, or by mail address to, the party or his attorney or other agent for service. Where service is made by mail on a person located more than 500 miles from the point of mailing, airmail must be used. Where the document being served is printed, 2 copies shall be served on each party or his attorney or other agent for service. Service shall be deemed made at the time of deposit in the mails properly addressed and post-paid. Where a party makes service by mail, any specific limitation on the time within which the person on whom such mail service has been made may respond thereto shall be increased by 2 days.

(c) Proof of Service. Proof of service must be made by filing with the Division an affidavit of service or, in the case

of any attorney at law, a certificate, simultaneously with the filing of the required number of copies with the Division.

(d) Service of Rulings and Final Orders. Copies of all rulings and Final Orders by the Division on any written application and decisions and orders of the Division shall be served by the Division on all parties to the adjudication proceedings.

RULE 20. ADDRESS

Any papers, documents, motions, answers and any other information or material required or permitted to be filed with the Division in an adjudication proceeding shall be legended and mailed or delivered to the address of the Division as follows:

Division of Securities
Suite 1300
180 East Broad Street
Columbus, Ohio 43215.

ATTENTION: Matters Relating To Adjudication Proceeding.

Alan P. Baden

PROPOSED FOREIGN REAL ESTATE GUIDELINES (CONTINUED)

The following represents the fifth installment of proposed Guidelines governing the offering and sale of foreign real estate in Ohio currently being prepared by the Division of Securities. Some inconsistencies may exist between statements contained in this and in earlier installments of these Guidelines. To the extent that such inconsistencies exist, statements contained in later installments should be construed to supersede those contained in earlier installments.

I. Disclosure (continued)

The offering circular will be the only sales document to be used in connection with the offering of foreign real estate in Ohio. In order to assure that a prospective purchaser has an opportunity to fully examine the offering circular, the Division will require that the offering circular be delivered by mail to every Ohio offeree no less than three (3) days prior to the date of any personal solicitation or offer for sale except pursuant to advertising permitted by the Division employed for the sole purpose of soliciting indications of interest regarding receipt of the offering circular. To further insure that the purchaser is aware of the information set forth in the offering circular, in addition to the requirement that the risk factors and special considerations set forth in Item No. 4 of the offering circular shall be read verbatim to the purchaser, and the salesman and the purchaser shall each initial the space provided for that purpose in Item No. 4 prior to execution of the purchase agreement.

In preparing the offering circular, the applicant should present the material as clearly and briefly as possible while disclosing all material facts regarding the property and the terms of the offering. Applicants should limit the length and complexity of the offering circular by careful organization, the use of non-technical language and avoidance of unnecessary detail. Repetition should be avoided. Where the same information is required in more than one section of the offering circular, additional references to the same information should be brief with an appropriate cross-reference to that portion of the offering circular where such material is more fully treated.

The staff of the Foreign Real Estate Section of the Division will be available for consultation with applicants regarding matters related to the preparation and disclosure required in the offering circular. A draft of the offering circular relating to a proposed offering may be submitted to the Division for comment prior to the qualification of the offering. Thereafter, the final form of the offering circular, incorporating any changes required by the Division must be filed for approval. The Division shall not issue an order qualifying the offering until the final printed form of the offering circular conforming to the approved draft has been submitted to the Division.

II. *Unfair and Deceptive Practices (continued)*

In addition to those practices previously designated, the following, when made or engaged in by the owner, developer, dealer, salesman or any person acting on behalf of the owner or developer in offering the property, shall be considered by the Division to be unfair and deceptive sales practices;

- (i) Any representation that the property or the terms of sale are favorable because of the Division's regulation of the offering or any representation that the Division has approved the offering because it has qualified the same for sale in Ohio;
- (ii) Any statement, representation or implication which is a material variance from any state of facts presented in the offering circular;
- (iii) Offering or purporting to offer any property or interest therein which the dealer, salesman, owner or developer does not, in fact, intend to sell;
- (iv) Inducement of a purchaser to execute a purchase agreement or any other document in connection with the offering of such property in which all blank spaces are not filled in or inapplicable spaces clearly stricken;
- (v) Altering, deleting or adding any terms to the purchase agreement or any other document executed by the purchaser in connection with the offering without such purchaser's written consent;

(vi) Any attempt to persuade or obtain a waiver by the purchaser of the rescission rights established by these Guidelines without the written approval of the Division;

(vii) Use of any advertising, sales or promotional material in connection with the offering of the property other than the offering circular most recently approved by the Division, any property report or other disclosure material required by federal law and advertising, sales and promotional material approved by the Division;

(viii) Advice against the purchaser's use of an attorney in any foreign real estate transaction;

(ix) Any representation that the purchaser has been contacted for any reason other than the sale of the property or soliciting the purchaser's interest in receiving a copy of the offering circular, including any representation that the purchaser has been contacted for purposes of a poll, survey or other similar inquiry.

III. *Contract Provisions and Title Considerations (Formerly Contract Restrictions) (continued)*

A. *Contract Provisions* — The purchase agreement contained in the offering circular will be the only contract for purchase and sale of the property which the Division will approve. Provisions in addition to those set forth in the proposed format of the offering circular may be included in the purchase agreement, subject to the Division's approval of the same. Variances in the form of the purchase agreement required by the law of the state in which the property is located will be permitted upon proper showing.

In addition to the provisions set forth in the proposed format of the offering circular and purchase agreement, the purchase agreement shall include a provision requiring that the seller deliver at the closing of the sale of the property or upon conveyance of the property pursuant to the land installment contract a commitment for a policy of title insurance substantially conforming to the ALTA 1970 format or an abstract of title showing or insuring marketable title to the property subject only to the exceptions set forth in the offering circular or other exceptions which do not interfere with the purchaser's intended use of the property. The deed or other instrument of conveyance delivered to the purchaser pursuant to such purchase agreement or land installment contract shall contain only such exceptions.

The provisions relating to damage or destruction of the property to be incorporated in the purchase agreement shall require that in the event of such damage or destruction, the purchaser may elect not to proceed with the purchase of the property, in which event, he shall receive any deposit or installment payments made and any and all further liability under the contract shall cease or the purchaser may elect to proceed with the closing of the sale and receive a reduction in the

purchase price proportionate to such damage or any insurance proceeds payable to the developer as a result of such damage.

B. Title to the Property — The Division will consider grossly unfair any sale of property subject to a blanket encumbrance unless one or more of the following conditions are fulfilled:

(i) In the case of an installment land contract, the blanket encumbrance and the installment land contract provide that in the event of default in payment of the indebtedness secured by such blanket encumbrance, written notice will be given to the purchaser and the purchaser may pay a portion of each installment of such indebtedness prorated on the basis of the amount of the property he has purchased and deduct such payments from sums payable under the land installment contract. The blanket encumbrance must further provide that, so long as the purchaser pays such portion of the installments of indebtedness and performs the other terms and conditions of such blanket encumbrance applicable to the property in which he has an interest, a foreclosure action will not be commenced against such portion of the property;

(ii) The blanket encumbrance provides for the release of the property from such encumbrance upon payment of specific sum which sum does not exceed the purchase price to be paid by the purchaser and the purchase agreement provides that the purchaser may pay such sum to the holder of the blanket encumbrance and reduce payment to the seller accordingly;

(iii) All sums paid by the purchaser or such portion thereof as the Division may determine to be sufficient to protect the interests of the purchaser, shall be deposited in escrow with a third party acceptable to the Division until (a) a valid release of the property is obtained from such blanket encumbrance or the seller fails to obtain such release or (b) in the case of an installment land contract either the vendor or the vendee defaults under such contract, and a determination is made as to the deposition of such sums;

(iv) A bond, cash, certified check or an irrevocable letter of credit is deposited in trust for the benefit of purchasers of the property in such amount and subject to such terms as may be approved by the Division. Each bond or the agreement governing the deposition of such cash, certified check, or letter of credit is provided for the return of all sums paid by any purchaser of the property if a valid release from such blanket encumbrance is not obtained. If it is determined that the purchaser, by reason of default or otherwise, is not entitled to a return of all or a portion of such sums, then such bond, cash, certified check or letter of credit may be released to the developer upon approval of the Division in the amount of such sums to which the purchaser is not entitled. Any bond and letter of credit shall be issued by a responsible surety company or a financial institution authorized to do business in this state and which has given its irrevocable consent to be issued in this state.

V. Advertising (continued) (This section also contains the Division's policies in regard to promotional materials.)

In addition to the offering circular, the only form of printed advertising including advertisements in newspapers, magazines and other publications, cards, pamphlets, letters and other sales literature, which may be used will be that approved by the Division in the format set forth below. Such printed advertising may be employed only for the purpose of eliciting indications of interest from Ohio purchasers so that they may obtain a copy of the most recently approved offering circular and such printed advertising may contain no more than the following:

1. The name of the owner and the developer of the property.
2. A brief description of the property limited to the name of the project or development, the location of the property, its proposed use and the number of parcels, lots or units offered.
3. The interest (i.e., fee simple, leasehold) in the property being offered.
4. Per-unit offering price or, in the event that all units of the property are not offered at the same price, the per-unit offering price of each category of units together with the number of such units in each price category.
5. A photograph or photographs which are not greater in total surface area than ninety-three and one-half square inches and which accurately represent the state of development and/or characteristics of the property, and which, when taken in the context of all material facts pertaining to the property would not tend to deceive purchasers.

All such advertisements, cards, pamphlets, letters and other literature shall contain the following:

1. The following legend in type equal in size to that used in the remainder of the text of the advertisement:

"A copy of the offering circular filed with the Division of Securities of the State of Ohio must be delivered to you by mail no less than three days prior to any personal solicitation whatsoever. This offering circular contains information which is relevant and important to your decision to purchase the property. You should read this offering circular carefully to make up your mind on the suitability to you of this property."

2. Name and address of the licensed Ohio dealer from whom a copy of the offering circular may be obtained.

Television and radio commercials conforming to the foregoing standards for printed advertising will also be permitted. These commercials, to be approved by the Division, may contain only the information set forth above and must contain the statement regarding the above legend and the name and address of the licensed dealer from whom a copy of the offering circular may be obtained. The limitation as to the size of photographs is obviously not applicable.

Other information in addition to that permitted for printed advertising may be included in movies and slide presentations. All such information must, however, consist of facts which are set forth in the offering circular. All movies and slide presentations shall contain a reasonable discussion of the risk factors and special considerations set forth in the offering circular. This discussion should be at least one-sixth of the length of the movie or slide presentation.

VII. *Selling and Marketing Methods (continued)*

The use of dinner parties and other sales meetings conducted for the purpose of soliciting purchases shall be prohibited. The Division will also prohibit the offering of free and low-cost gifts in connection with the sale of foreign real estate in Ohio.

Any offer or certificate for a free or expense-paid trip to visit the property must fully describe the trip offered and must disclose all of the terms, conditions and limitations upon which such trips may be made. In addition to a statement that the purpose of such trip will be to subject the offeree to a land sales presentation, such disclosure should also include the length of the trip and the schedule to be followed by the offeree on such trip; the identity of hotels, motels, places of lodging, transportation companies, restaurants, attractions and similar establishments which will honor or participate in such trip; the date of the offeree's right to embark on such trip; the cost and expenses of such trip to be paid by the offeror and any conditions imposed upon such payment and the costs and expenses of such trip to be paid by the offeree.

The text of any sales presentation to be made to prospective purchasers on such inspection trips shall be submitted and approved by the Division. Inspection trips sponsored by the owner, developer or one acting on its behalf shall be prohibited where prospective purchasers would be presented with unfair or deceptive sales practices or statements or representations which tend to be misleading.

The text of all such sales presentations and all certificates or any other material offering such inspection trips or evidencing the rights of a prospective purchaser to take such trip shall be submitted to the Division for its approval prior to the date of their intended use, dissemination or publication. The Division shall also be informed of and shall review any material change in the inspection trip as described in

the certificate or other material previously submitted to the Division and any material in such sales presentations prior to the intended date of institution of such material change.

A copy of the most recent Ohio offering circular shall be delivered to each prospective purchaser at least three (3) days prior to his embarkation of any inspection trip. Further, the purchase agreement regarding the property shall contain a provision that such agreement shall be void and of no force and effect if executed by the purchaser less than ten (10) days after his return from any inspection trip offered by the dealer, salesman, owner, or developer.

IX. *Prices; Price Increases (continued)*

In addition to the requirement that the initial per-unit offering price of the property must bear a reasonable relationship to the cost of the property, the Division will also require that such offering price not exceed the fair market value of the property. A satisfactory appraisal prepared by a qualified independent appraiser acceptable to the Division must accompany the application for registration.

XII. *Licensing of Dealers and Salesmen (continued)*

Dealers and salesmen of foreign real estate must comply with the general regulations of the Division regarding dealers and salesmen engaged in the sale of securities, where applicable. In addition, the requirements set forth below must be fulfilled. An applicant may be licensed as a dealer in both foreign real estate under Section 1707.33.1, and securities under Section 1707.15 of the Ohio Revised Code. If a dealer is licensed to sell both foreign real estate and securities, the salesmen he employs may also be so licensed. The Division will issue one license for each such dealer and salesman bearing restrictions for both securities and foreign real estate. In order to obtain both of these restrictions, the applicant must meet the Division's criteria for the issuance of each license, complete the application, pass the examinations, publish notices and pay the fees required for both licenses.

In order to qualify as a licensed dealer in foreign real estate, the applicant must have a high school education, five (5) years experience in the field of real estate and at least two (2) years experience as a real estate salesman. A salesman, to qualify for a license to sell foreign real estate, must have a high school education and one (1) years experience in the real estate field.

A license will not be issued to any dealer or salesman who has been convicted of a felony or against whom a judgment has been rendered or an action is pending for fraud or misrepresentation under the securities or consumer laws of the United States, Ohio, or any other state. No license will be issued to any corporation, partnership or association if any principal off-

icer, general partner or manager of such applicant has been convicted of a felony or if such a judgment has been rendered or such action pending against such entity or any principal officer, general partner or manager.

An applicant for a dealer's license will be required to file with his application a sworn financial statement prepared as of a date not more than ninety (90) days prior to the date of such application establishing a net worth of \$25,000. Such net worth will be calculated exclusive of home, home furnishings and automobiles. The valuation of other assets and liabilities may be adjusted by the Division when they are of doubtful or uncertain value. In addition to compliance with such net worth requirement, the dealer must file a surety bond in the amount of \$100,000 acceptable to the Division and conditioned upon compliance with the securities laws of the State of Ohio and the rules and regulations promulgated by the Division regarding the sale of foreign real estate.

Note: The Division is in the process of revising its existing regulations regarding dealers and salesmen engaged in the sale of securities. Such revised regulations, where appropriate, will also be applied to foreign real estate dealers and salesmen.

XIII. Remedies (continued)

A purchaser shall have the right to rescind any sale or other disposition of the property under the following circumstances:

(i) Failure to deliver by mail a copy of the most recent offering circular at least three (3) days prior to the date of any personal solicitation or offer for sale except pursuant to advertising approved by the Division and employed solely for the purpose of soliciting indications of interest in receiving such offering circular;

(ii) The use of any sales, advertising or promotional material other than the most recently approved Ohio offering circular, any property report or other disclosure material required by federal law and advertising approved by the Division;

(iii) Failure of the salesman to read verbatim the risk factors and special considerations set forth in Item 4 of the offering circular to the purchaser prior to execution of the purchase agreement;

(iv) Failure of the purchaser and the salesman to initial the space provided for such purpose in Item 4 of the offering circular, prior to execution of the purchase agreement;

(v) An unconditional right of rescission exercisable within ten (10) days after the date of execution of the purchase agreement;

(vi) An inspection of the property by the purchaser, or his agent, within six (6) months after the date of closing and an exercise of such right of rescission within thirty (30) days thereafter;

(vii) Any violation by the owner, developer, dealer, salesman or any other person acting on behalf of the owner or developer of any of these Guidelines which is substantially prejudicial to the interests of the purchaser or the engaging by any of said persons in practices which the Division has defined in these Guidelines to be grossly unfair or deceptive;

(ix) Any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

The foregoing rights of rescission shall be set forth in Item 12 of the offering circular and incorporated in the purchase agreement. In addition, a statement must appear in the purchase agreement immediately below the signature spaces for the purchaser and seller setting forth the rescission rights noted in subsections (v) and (vi) above.

XIV. Applicability (continued)

The foreign real estate transactions to which these Guidelines apply are those involving lots, parcels, undeveloped acreage and, to the extent applicable, camp sites, mobile home sites, apartments, cooperative apartments, condominiums and other real estate. The Division recognizes that there may be certain types of real estate to which all or a portion of these Guidelines are not applicable. Application will therefore be discretionary. The Division may selectively waive such application in whole or in part where, in the judgment of the Division, there is little need for the protection of Ohio investors.

The applicability of these Guidelines will, to some extent, vary with the maturity of the project. For example, completion bonds or escrows for maintenance and operation of common areas and recreational improvements will not be required for mature projects and lower suitability standards will be imposed. Moreover, the resale requirements imposed on the developer, including the requirement that purchasers are entitled to list their lots or units with the developer for resale and the requirement that the developer make a standing offer to repurchase the property shall also not apply to mature developments. For these purposes, a project having the following characteristics will be regarded as "mature":

(i) All lots or units contained in the portion of the project being registered have the minimum characteristics of habitability set forth in Section VI including potable water, sewer, or municipal approval for septic tanks, municipal services, utilities, available commercial facilities, roads and grading;

(ii) At least sixty percent (60%) of all lots or units in that portion of the project being registered in Ohio have been sold; and

(iii) At least thirty-five percent (35%) of all lots or units in that portion of the project being registered are actually occupied or used.

In addition, the applicability of these Guidelines will, to some extent, vary with the purpose for which the property is offered. For example, any requirement that the developer repurchase the property or list for resale will not apply to residential property. "Residential property" will be regarded as property on which a residence has been constructed or on which the construction of a residence will be commenced within one (1) year. The developer will be required to establish to the satisfaction of the Division that it has made adequate assurances that construction will be commenced within the time period allowed.

The applicability of these Guidelines will further vary to some extent with the experience and financial responsibility of the developer. For example, bonds and deposits of funds insuring completion of the project, sufficient funds for the exercise of rescission rights and maintenance and operation of common areas and recreational improvements may not be required to as great an extent from seasoned developers who demonstrate to the satisfaction of the Division that they have sufficient assets and liquidity for such purposes. A "seasoned developer" for the purposes of these Guidelines is one who has been engaged in the business of real estate development for a period of at least ten (10) years, has completed construction of a development of the same type or similar to the property offered, and whose most recent financial statement shows a substantial excess of assets over liabilities and considerable liquidity.

XV. *Miscellaneous (continued)*

Each developer will be required to make arrangements with an attorney who shall act as a representative of the purchasers as a class in the event of bankruptcy, receivership, or any other insolvency proceedings brought by or against the developer. Such attorney shall also represent such purchasers at their option, in the event of an abandonment of construction of fundamental improvements.

XVI. *Common Areas and Recreational Improvements (New Section)*

Where the developer includes common areas or recreational improvements in the development, adequate provision must be made for maintenance and operation of the same. In the case where the developer retains ownership of the common areas and recreational improvements, the offering will be considered grossly unfair unless the developer agrees to maintain such common areas and improvements in a condition of reasonable safety, order, cleanliness and repair. Such agree-

ment must be set forth in the purchase agreement and shall survive the closing of the purchase of individual units in the development.

Where the developer will not retain ownership of such common areas and recreational improvements, provision shall be made for the creation of an owners' association or the execution of a management agreement or other contractual arrangement for the maintenance and control of such areas and improvements.

The fees for use or maintenance of these common areas and improvements charged by the owner or developer assessed by the owners' association, or provided by the maintenance contract shall not without justification be greater than fees charged for maintenance or other services for similar common areas and recreational improvements in the geographical area of the development.

In order to assure that there are sufficient funds for maintenance of common areas and recreational improvements by the developer or owners' association prior to the time that all units in the development are sold, the Division may require the posting of a surety bond or other adequate security. Alternatively, the Division may require an escrow of an amount equal to the estimated costs of operation and maintenance of the common areas and recreational improvements during the period that the units in the project are being sold. No bond or escrow will be required, however, in the case of immediately available projects in which sixty percent (60%) of the units have been sold.

In the case of developments in which undivided interests in any part of the property are to be owned in common or in which any part of the property will be owned or controlled by an owners' association, the Division will require that the covenants, conditions and restrictions, articles of incorporation, bylaws and other instruments for the management and control of these developments contain at least the following provisions, the substance of which must be satisfactory to the Division:

(i) Provisions for creation of such association and transfer of title or control of such property to such association;

(ii) Procedures for calculating and collection of regular assessments to defray expenses of ownership and operation of such property, which assessments must be levied against each owner, including the developer, according to the ratio of the number of lots or units owned by each owner to the total number of lots or units in such development subject to the assessment, or on some other reasonable and equitable basis, such as the ratio of the selling price of each lot or unit to the aggregate selling price of all lots or units subject to such assessment;

- (iii) Procedures for establishing and collecting special assessments for capital improvements or other purposes on the same basis as for regular assessments with suitable monetary limitations on special assessments or expenditures without the prior approval of a majority of the owners affected;
- (iv) Where appropriate, liens against the individual lots or units in the development and the foreclosure thereof in the event of the failure to pay duly levied assessments;
- (v) Where appropriate, annexation of additional land to the existing development with suitable substantive and procedural safeguards against increased per capital assessments on account of such annexation;
- (vi) Fines or suspension of members' use privileges and voting rights in the event of breach of the restrictions, bylaws or other instruments for management and control of such property with procedures for hearings for disciplined members;
- (vii) Creation of a board of directors or other governing body for the owners' association with the members of said body to be elected by a vote of members of the association at an annual or special meeting to be held not later than six (6) months after the sale of the first lot or unit of the development;
- (viii) Procedures for the election and removal of members of the governing body, including provisions for concurrent terms of office and cumulative voting in the election and removal of such members;
- (ix) Provisions requiring the owners' association to maintain such property and, where applicable, to operate the same;
- (x) Enumeration of the powers of the governing body which shall normally include at least the following:
- (a) Enforcement of applicable provisions of restrictions, bylaws, and other instruments for the management and control of such property;
- (b) Payment of taxes and assessments which are or could become a lien on such property or any portion thereof;
- (c) Delegation of its powers to committees, officers or employees;
- (d) Power to contract for materials and services for the owners' association and the maintenance and operation of such property with the term of any service contract limited to a duration of one (1) year where such contract has not been approved by a majority of the members of the owners' association, except in those developments where the terms of the management contract have been approved by the Federal Housing Administration or Veterans Administration;
- (e) Power to contract for fire, casualty, liability and other insurance on behalf of the owners' association;
- (f) Entry upon any privately owned lot or unit where necessary in connection with construction, maintenance or repair of such property for the benefit of the owners in common;
- (ix) Allocation of voting rights to members of the owners' association on the basis of lot or unit ownership or on some other reasonable and equitable basis;
- (xii) Preparation of an annual operating statement reflecting income and expenditures and distribution of a copy of such report to each member within ninety (90) days after the end of such fiscal year;
- (xiii) Annual and special meetings of members of such owners' association;
- (xiv) Reasonable written notice, in no event less than ten (10) days notice, to members of annual and special meetings of the owners' association, specifying the place, date and hour of such meetings, and in the case of special meetings, the nature of the business to be undertaken at such meeting;
- (xv) Quorum requirements for such members' meetings of fifty percent (50%);
- (xvi) Voting proxies for such members' meetings;
- (xvii) Requirement of the consent of at least fifty-one percent (51%) of all owners to the amendment of restrictions, bylaws or rules regarding the management, operation and control of such property and the owners' association;
- (xviii) Prohibition or restrictions upon the severability of commonly owned interests through partition or otherwise;
- (xix) Procedures to be followed in the event of destruction or extensive damage to such property including provisions respecting the use and disposition of insurance proceeds payable to the association on account of such destruction or damage.

XVII. *Governmental Requirements. (New section)*

An offering will be regarded as grossly unfair unless such offering has been registered, where required, with the federal government including registration with the Department of Housing and Urban Development under the Interstate Land Sales Act 15 U.S.C. 1701 *et. seq.* and the state or any subdivision thereof in which the property is located. Accordingly, the Division will require that the application for qualification be accompanied by evidence of registration of the offering where such registration is required by any law, ordinance, rule or regulation of the federal government or the state in which the property is located, or any subdivision thereof.

The Division will also regard an offering as grossly unfair unless all licenses, permits, inspections and approvals relating to the development of the property and construction of the offered or promised improvements required by the laws, ordinances, rules and regulations of the federal government and the state, county, and local government where the offered property is located and appropriate to the stage of development of the project have been obtained. The Division will recognize, however, that such licenses, permits, inspections and approvals which must be obtained will vary to some extent with the stage of construction of such improvements. Thus, by way of illustration and not limitation, the offering will be deemed grossly unfair unless, where applicable, the following are obtained at the time indicated below:

(i) Prior to the filing with the Division of the application for qualification of the offering, regardless of the stage of development of the property or construction of the improvements:

(a) In the case of a subdivision, planned unit development or other project for which a recorded plat is required, recording of the plat by which lots, parcels or units are offered for sale in the plat records of the county or other political subdivision where the property is located;

(b) zoning corresponding to the use for which the property is offered;

(ii) Prior to the commencement of construction of the promised improvements:

(a) sewer tap permit or the approval of the local authority for the installation of septic tanks;

(b) water tap permit or any approval of the local authority required for the drilling of wells;

(c) permits or approvals regarding the construction of storm sewers and drains;

(d) building, electrical and plumbing permits;

(e) permits to install elevators and heating, ventilating and air conditioning equipment;

(f) permits or approvals of the local governing body for the construction or installation of advertising signs;

(iii) If the improvements have been completed, the following must be obtained prior to the commencement of the activities set forth below:

(a) occupancy permits for apartment projects, cooperative apartments or condominiums;

(b) licenses or permits pertaining to the operation of a mobile home park or campgrounds;

(c) licenses and health and fire inspections relating to the operation of a resort or restaurant; and

(d) a liquor license for an establishment serving intoxicating beverages.

XVIII. REPORTING

(Statements in earlier installments of these proposed Guidelines regarding the filing of annual and quarterly reports have been set forth in Section XV, Miscellaneous.)

(A) *Annual Reports.* In the case of offerings having, pursuant to the terms of the Division Order qualifying such

offerings, registrations effective for a period in excess of one (1) year, applicants shall file an annual report with the Division within ninety (90) days after the end of the fourth fiscal quarter after the effective date of their registration. Such annual report shall be typed on 8½" X 14" paper in the following form:

ANNUAL STATISTICAL PROGRESS REPORT

Ohio Division of Securities
Foreign Real Estate Section
180 East Broad Street
Columbus, Ohio 43215

Registration Number: _____
Reporting Period:
_____ 197__ to
_____ 197__

Instructions: Answer each of the items set forth below in seriatim and appropriately identify each response, exhibit and cross reference to correspond with the question posed. *To the extent that information required by this report has been previously filed with the Division in the most recent offering circular or in earlier Statistical Progress Reports, the relevant portions of such offering circular or earlier reports may be attached as exhibits to this report.* Any additional information required hereby should be fully and completely stated herein. Return these materials with the required certification to the Ohio Division of Securities at the address indicated above.

Name of Registrant
 Address of Registrant
 Name of Developer (if different than registrant)
 Name of Development

**I.
 RISK FACTORS AND SPECIAL CONSIDERATIONS**

A. Explain in detail any material change in any of the risks, uncertainties and speculative factors inherent in the offering, development and ownership of the property stated in

Item 4 of the offering circular, Risk Factors and Special Consideration.

**II.
 SALES ACTIVITY**

A. *Information Required* Provide a table in the form set forth in section II(B) stating for the most recent quarter of the annual reporting period, the annual reporting period and totals for the entire period of the development, the following information:

1. Number of lots staked;
2. Number of lots recorded;
3. Number of lots or units sold:
 - a) All sales;
 - b) Ohio Sales;
4. Ohio Sales and total sales in dollars;
5. Number of lots listed for resale by present owners with the developer or any dealer or salesman acting on behalf of this developer;

B. Table of Sales Information.

Information Required	Most Recent Quarter of Annual Reporting Period	Annual Reporting Period	Total

**III.
 PATTERN OF DEVELOPMENT**

A. *Description of the Property.* Describe fully any material changes in the facts stated in the following subdivisions of the offering circular:

1. Item 5A, General Location
2. Item 5B, Physical Characteristics of the Property
3. Item 5G, Development and Use Restrictions
4. Item 5I, Public Health, Safety and Welfare.

B. *Development Information Required.* Provide a table in the form set forth in section III(C) stating, for the most recent quarter of the annual reporting period, the annual reporting period and totals for the entire period of the development, the following information:

1. Population of the development:
 - a.) Original estimate;
 - b.) Current projection;
 - c.) Present population;
2. Single family units constructed in the development:
 - a.) Under construction;
 - b.) Completed;
3. Multi-family units constructed in the development;
 - a.) Under construction;
 - b.) Completed.

Note: Items 2 and 3 above should be further stated by price range.

C. Table of Development Information.

Information Required	Most Recent Quarter of Annual Reporting Period	Annual Reporting Period	Total

IV.
CONSTRUCTION OF IMPROVEMENTS

A. *Basic Improvements.* Provide a table in the form set forth in subsection IV(C) below stating for each of the basic improvements to the subject property, a description of such improvement, the number or quantity promised, the number or quantity completed both during the annual reporting period, and in toto, the construction expenses incurred during the annual reporting period, the total construction cost as of the end of such reporting period and the cost as of the end of such reporting period and the cost to complete. The term "basic improvements" for purposes of this section IV shall be deemed to include, without limitation, the following:

1. Graded streets;
2. Paved streets;
3. Electrical service;
4. Central water supply;
5. Sanitary sewer and/or septic tank (if sewer, state the number, average distance, size and invert of nearest main);
6. Drainage and storm sewers;
7. Curbs and gutters;
8. Sidewalks;
9. Street lighting;
10. Gas supply;
11. Telephone service;
12. Parking facilities;
13. Single family dwelling units (if to be constructed by the developer); and

14. Multi-family dwelling units (if to be constructed by the developer).

B. *Recreational Improvements.* Provide a table in the form set forth in subsection IV(C) below stating for each of the recreational improvements to or serving the property a description of such improvement including the number or quantity promised, the number or quantity completed, both during the annual reporting period and in toto, the construction expenses incurred during the annual reporting period, the total construction cost as of the end of such reporting period and the cost to complete. The term "recreational improvements" for purposes of this section II shall be deemed to include, without limitation, the following:

1. Golf course;
2. Pro shop, locker rooms;
3. Swimming pool;
4. Tennis courts;
5. Marina;
6. Canals, waterways;
7. Hiking trails;
8. Bridle trails;
9. Fishing areas;
10. Ski area;
11. Open or wooded areas;
12. Cable television;
13. Community building; and
14. Exercise facilities.

C. *Completion Table of Basic and Recreational Improvements.*

Description of Improvement Including Number or Quantity Promised	Number or Quantity Completed During Reporting Period	Total Number or Quantity Completed	Construction Costs for Annual Reporting Period	Total Construction Cost to End of Reporting Period	Complete Cost to

D. Explain in detail any material delay in completing the basic and recreational improvements to the subject property as promised.

E. Fully describe any change in plans or circumstances which would materially affect the type, quantity or schedule of completion of any of the basic or recreational improvements to the premises.

V. ENFORCEMENT ACTIONS, LITIGATION AND PURCHASER COMPLAINTS

A. Fully describe all enforcement actions including, without limitation, suspensions or revocations by any governmental agency having jurisdiction over the offering of the subject property which have been taken or pending against the developer during the annual reporting period.

B. Fully describe all pending litigation or any judgments rendered within the annual reporting period in any action in which the developer was party.

C. Fully describe the substance of all complaints made during the annual reporting period to the developer by purchasers residing in Ohio regarding the property, the subject offering or methods employed in selling the subject property. State the name and address of each such complainant and the disposition by the developer of each such complaint.

D. State the name and address of each purchaser who is an Ohio resident who has exercised or attempted to exercise during the annual reporting period any right of rescission in connection with the sale of a lot or unit of the subject property. Describe the grounds for rescission asserted by each such purchaser and the disposition made by the developer of each such rescission or attempt to rescind.

E. State the name and address of each purchaser residing in the State of Ohio who, during the annual reporting period, has forfeited his interest in the property under the terms of a land installment contract or against whom a foreclosure action has been commenced by the developer or his assignee for failure to pay the installments due under a mortgage or deed of trust of the purchaser's interest in the property.

VI. CAPITAL STRUCTURE OF THE DEVELOPMENT

A. *Financial Disclosure.*

1. Briefly describe any material change in the terms of the financing used for the developers acquisition of the subject property or the construction of the basic or recreational improvements described herein.

2. If there is a mortgage or deed of trust on the subject property securing the payment by the developer of the purchase price or an acquisition or construction loan, provide the following information:

- a.) Mortgage or deed of trust:
 - (i) Original amount
 - (ii) Balance at end of annual reporting period
 - (iii) Payments made during annual reporting period
 - (iv) If the payments are interest only, so indicate

b.) Owner's equity in the property at the end of the annual reporting period.

c.) Has there been any default in the payment of any sums required to be paid or the performance of any of the other terms and conditions required to be performed by the developer under such mortgage or deed of trust? If so, explain in detail.

B. *Financial Statement.* Attach a detailed financial statement consisting of at least an income statement and balance sheet of the developer and any other affiliate or control person of the developer who is liable to purchasers for the completion of the improvements to the subject property. Such financial statement of the developer must be prepared as of a date not more than ninety (90) days after the end of the most recent fiscal quarter of the developer. The attached financial statement of such affiliate or control person must be prepared as of a date within ninety (90) days after the end of the most recent fiscal quarter of such affiliate or control person. Such financial statements must be certified by an independent certified public accountant or a duly authorized officer of the developer or such affiliate or control person.

C. *Financial Analysis.* Provide the financial information set forth below regarding the subject development for the annual period:

1. Gross income;
2. Interest on mortgage;
3. Amount of mortgage payments applying to principal;
4. Annual depreciation;
5. Accumulated depreciation;
6. Advertising expenses;
7. Promotional expenses;
8. Taxes other than real estate;
9. Insurance expenses;
10. Commissions;
11. Maintenance expenses;
12. Administration expenses;
13. Total cash expenses; and
14. Percent return on cash investment - net after taxes.

D. *Certification.* This report and all exhibits and attachments must be signed and acknowledged by a duly authorized officer of the registrant. Such person must appear before a notary public or other person authorized by law to administer oaths and certify that the information set forth in this report is, to the best of his knowledge and belief, true and that the same is an accurate representation of the status of the development.

E. *Quarterly Reports.* All registrants will be required to file quarterly reports in the form set forth below within forty-five (45) days after the end of each fiscal quarter of the registrant during which the qualification of the subject

offering is in effect. If the initial qualification of an offering becomes effective in the first half of a fiscal quarter of the registrant, financial statements in the form as provided in the Quarterly Report shall be filed with the Division within forty-five (45) days after the end of the preceding fiscal quarter. In regard to registrants filing Annual Reports, an Annual Report shall be filed in lieu of the quarterly report for each fourth fiscal quarter of the registrant during which the qualification of the offering is in effect.

QUARTERLY STATISTICAL PROGRESS REPORT

Ohio Division of Securities
 Foreign Real Estate Section
 180 East Broad Street
 Columbus, Ohio 43215

Registration Number:
 Reporting Period:
 _____ 197__ to
 _____ 197__

Instructions: Answer each of the terms set forth below in seriatim and appropriately identify each response, exhibit and cross reference to correspond with the question posed. *To the extent that information required by this report has been previously filed with the Division in the most recent offering circular or in earlier Statistical Progress Reports, the relevant portions of such offering circular or earlier reports may be attached as exhibits to this report. Any additional information required hereby should be fully and completely stated herein.* Return these materials with the required certification to the Ohio Division of Securities at the address indicated above.

B. Table of Sales Information

Information Required	Most Recent Quarter of Annual Reporting Period	Annual Reporting Period	Total

III. ENFORCEMENT ACTIONS, LITIGATION AND PURCHASER COMPLAINTS

A. Fully describe the substance of all complaints made during the quarterly reporting period to the developer by purchasers residing in Ohio regarding the property, the subject offering or methods employed in selling the subject property. State the name and address of each such complainant

I. RISK FACTORS AND SPECIAL CONSIDERATIONS

A. Explain in detail any material change in any of the risks, uncertainties and speculative factors inherent in the offering, development and ownership of the property stated in Item 4 of the offering circular, Risk Factors and Special Considerations.

II. SALES ACTIVITY

A. Fully describe all enforcement actions including, without limitation, suspensions or revocations by any governmental agency having jurisdiction over the offering of the subject property which have been taken or pending against the developer during the quarterly reporting period.

1. Number of lots staked;
2. Number of lots recorded;
3. Number of lots or units sold;
 - a.) All sales;
 - b.) Ohio Sales;

4. Ohio sales and total sales in dollars.

B. Fully describe all pending litigation or any judgments rendered within the quarterly reporting period in any action in which the developer was party.

5. Number of lots listed for resale by present owners with the developer or any dealer or salesman acting on behalf of this developer.

and the disposition by the developer of each such complaint.

B. State the name and address of each purchaser who is an Ohio resident who has exercised or attempted to exercise during the quarterly reporting period any right of rescission in connection with the sale of a lot or unit of the subject property. Describe the grounds for rescission asserted by each such purchaser and the disposition made by the developer of each such rescission or attempt to rescind.

C. State the name and address of each purchaser residing in the State of Ohio who, during the quarterly reporting period has forfeited his interest in the property under the terms of a land installment contract or against whom a foreclosure action has been commenced by the developer or his assignee for failure to pay the installments due under a mortgage or deed of trust of the purchaser's interest to the property.

IV.

CAPITAL STRUCTURE OF THE DEVELOPMENT

A. *Financial Disclosure.*

1. Briefly describe any material change in the terms of the financing used for the developers acquisition of the subject property or the construction of the basic or recreational improvements described herein.

2. If there is a mortgage or deed of trust on the subject property securing the payment by the developer of the purchase price or an acquisition or construction loan, provide the following information:

a.) Mortgage or deed of trust:

- (i) Original amount
- (ii) Balance at end of quarterly reporting period
- (iii) Payments made during quarterly reporting period
- (iv) If the payments are interest only, so indicate;

b.) Owner's equity in the property at the end of the quarterly reporting period;

c.) Has there been any default in the payment of any sums required to be paid or the performance of any of the other terms and conditions required to be performed by the developer under such mortgage or deed of trust? If so, explain in detail.

B. *Financial Statement.* Attach a detailed financial statement consisting of at least an income statement and balance sheet of the developer and any other affiliate or control person of the developer who is liable to purchasers for the completion of the improvements to the subject property. Such financial statement of the developer must be prepared as of a date not more than forty-five (45) days after the end of the most recent fiscal quarter of the developer. The attached financial statement of such affiliate or control person must be prepared as of a date within ninety (90) days after the end of the most recent fiscal quarter of such affiliate or control person. Such financial statement must be certified by an independent certified public accountant or a duly authorized officer of the developer or such affiliate or control person.

C. *Certification.* This report and all exhibits and attachments must be signed and acknowledged by a duly authorized officer of the registrant. Such person must appear before a notary public or other person authorized by law to administer oaths and certify that the information set forth in this report is, to the best of his knowledge and belief, true and that the same is an accurate representation of the status of the development.

Ann Casto

INTERPRETIVE OPINION

Joint Ownership of Shares and the Fifteen Shareholder Limitation of Section 1707.06(a)(92)

Inquiries have been made to the Division concerning the effect of joint ownership of securities on the fifteen-shareholder limitation set forth in Section 1707.06(a)(2), Ohio Revised Code. In this regard, the Division recognizes that the joint owners are, for most purposes, treated by the corporation as a single shareholder.

The Division is also concerned that, in the relationship of such joint owners, there be a sufficient identity of interest to justify their treatment as a single shareholder. In this regard, the Division will adopt the standards enunciated in subdivisions (g)(2)(i)(a), (b) and (c) of Rule 146, SEC Release 33-5487. For purposes of computing the number of shareholders under Section 1707.02(a)(2) of the Ohio Revised Code, the following persons, owning shares as joint tenants or tenants in common with another purchaser, will be regarded, with such other purchaser, as a single shareholder:

(a) Any relative or spouse of such purchaser and any relative of such spouse, if such person has the same home as such purchaser;

(b) Any trust or estate in which such purchaser or any of the persons related to him as specified in subparagraph (a) above collectively own one hundred percent (100%) of the beneficial interest (excluding contingent interests); and

(c) Any corporation or other organization of which such purchaser or any of the persons related to him as specified in subparagraph (a) above collectively are the beneficial owners of all the equity securities (excluding directors' qualifying shares) or equity interests.

THE SECTIONS

FOREIGN REAL ESTATE SECTION

1. *Comments on the Proposed Guidelines*

This article will attempt to clarify the character and role of the Proposed Policy Guidelines concerning foreign real estate published in this and previous editions of the *Bulletin*.

The Proposed Policy Guidelines represent an element of the Division's continuing policy development program. They are an attempt to lay a foundation from which more definitive standards may be developed with the aid of Bar and industry comments. It is anticipated that subsequent to further refinement the Division will commence the adoption and promulgation of such standards in final form.

The Division's regulatory philosophy in this area as reflected in the Proposed Guidelines results in great measure from its perception of abuses existing in the foreign real estate industry which have been identified during the course of interviews and conversations with public investors, discussions with industry representatives in connection with the processing of applications, advertising and other matters, analysis of the legal and financial structure of particular developments, and communications between this Division and other state and federal government agencies. The Division's Proposed Policy Guidelines therefore constitute a catalog of the most salient problem areas prevalent in the industry.

Publication of the Proposed Policy Guidelines represent an intermediate stage of a long-term policy development project. In the interim period, prior to the completion of this project the Division will not apply nor enforce the Proposed Guidelines in connection with the specific adjudications it is obligated and empowered by statute to undertake. All applications and other matters requiring determinations by the Division will be handled strictly on a case by case basis. The Division will evaluate the merits of a particular offering in terms of the statutory requirements of fairness and disclosure and will take whatever action it deems to be in the public interest as mandated by the Ohio Securities Act.

Division personnel will review the fundamental aspects of all pending applications with a view toward the identification of characteristics deemed objectionable in light of the public interest and require that applicants propose and effect satisfactory solutions.

It is envisioned that during this interim period when the Division identifies certain problem areas in the consideration of a Form 33 application and proposes solutions which upon compliance would allow the qualification, the applicant, where appropriate, may in response: a) show that such problems either do not exist or have been satisfactorily dealt with; or b) propose optional solutions which provide by different means substantially the same degree of public protection as those proposed by the Division.

In summary, during the period prior to the adoption of the Division's Proposed Policy Guidelines concerning foreign real estate, applications for registration will be handled on a case by case basis. Specific problems will be identified by Division personnel and applicants will be required to respond to such problems prior to qualification.

2. Offering Circular - Disclosure Problems

The Division views the absence of full and fair disclosure of the material facts pertaining to the purchase of foreign real estate to involve sales in a method that might defraud or deceive purchasers and will therefore request Form 33 applicants to remedy any such situation and exercise due diligence to insure that widespread and recurring patterns of misrepresentation by

salesmen are eliminated. The Division believes that the utilization of an offering circular or a similar document is perhaps the best solution to disclosure problems.

In the interim period prior to adoption of the Proposed Guidelines concerning foreign real estate, the Division will not necessarily require that an offering circular be submitted with a pending Form 33 application. Previous correspondence from the Division which may have been construed to that effect should be disregarded, as should contrary language heretofore appearing in the *Ohio Securities Bulletin*. The Division will entertain and consider on a case by case basis alternative proposals by applicants to accomplish full and complete disclosure, including the delivery to prospective purchasers of a sales package incorporating the applicable HUD property report, an adequate statement of risk factors and other significant information, and advertising approved by the Division which adequately discloses material facts pertaining to the development. The staff of the Foreign Real Estate Section will make itself available to discuss the issue of disclosure with all interested parties.

Questions relating to the adequacy of disclosure are being raised not only in connection with new registrations, but also in the context of making determinations whether or not to suspend registrations of developers making sales presentations with respect to previously registered developments. Furthermore, advertising to be utilized in sales presentations (as opposed to advertising designed to elicit initial public interest) by existing registrants is not being approved unless the Division is satisfied that adequate disclosure will be made in connection with such presentations as considered in their entirety.

3. Advertising.

The Division does not necessarily consider advertising which depicts a "way of life" or "life style" (whether utilized to elicit initial public interest or in connection with a sales presentation) to be deceptive or misleading where property is being sold as a residence rather than as an investment and where the contents of such advertising are not calculated to produce an emotional response on the part of the prospective purchaser. The characteristics of the property which determine the "life style" advertised should be presently existing or at a sufficient stage of completion to assure its realization in order that any tendency to deceive or mislead may be avoided.

In addition to advertising approved for inclusion in offering circulars or other sales packages utilized in connection with sales presentations, the Division will approve separate advertising pieces to be utilized for the purpose of eliciting initial public interest which are confined to the presentation of information essential to the facilitation of a response from interested persons. This type of advertising need not, however, be so limited in tenor and content as traditional "tombstone" presentations in order to be considered acceptable.

4. Price Increase Amendments

The Division is considering price increase requests primarily in terms of the relationship between selling prices and the value of property as improved and is receptive to a variety of different approaches to the demonstration of property value, including the selling price of comparable properties and the inflated cost of land and improvements. Persons submitting applications to effect price increases under extant Division Orders will not necessarily be required to submit an independent fair market value appraisal of the subject real estate where other reliable and substantive evidence is presented which clearly justifies an increased selling price. However, with respect to applications for which other justifications are not brought forward, the Division will reserve the right to request independent appraisals or other objective and rational justifications.

In response to comments received from industry representatives, in certain "developmentally intensive" subdivisions where the installation of improvements has progressed consistently subsequent to the date of original qualification where no indication exists that the current price is unreasonable in relation to the value of the property, and where the developer is able to present reliable data which clearly indicates that there have been substantial increases in the costs of construction and construction financing necessary to install such improvements, the Division will favorably consider such increases to constitute a proper justification for price increases. The Division is allowing price increases in amounts determined by multiplying the proportion of existing prices represented by the cost of improvements and interest on construction financing by the percentage increases in such costs subsequent to initial qualification of the developments.

Price increases will also be considered justified in other instances where there is a clear demonstration that the value of the property has been enhanced by the developer's efforts to an extent commensurate with the proposed price increase. As noted in prior issues of the *Bulletin*, the Division considers the submission of a price increase request as constituting a new application for registration due to the change in terms of the security which would result from its approval. In the event of the rejection of a price increase request, the Division is allowing the withdrawal and cancellation of a registration. The Division is also willing to engage in pre-application conferences so that a developer will not be prejudiced by the filing of a formal request which might be rejected.

5. Quarterly Reports

In accordance with conditions imposed upon previously issued Division Orders approving registration applications and in the exercise of its authority pursuant to Ohio Revised Code Section 1707.23, the Division is requiring the submission by all registrants of quarterly reports relating to the progress of their respective developments for the purpose of determining whether or not developers are fulfilling their commitments to purchasers and assessing the continued financial viability

of individual projects. The Division is requiring a detailed report, in accordance with a format previously distributed to developers, to be submitted on an annual basis and is preparing a more simplified format for quarterly reporting which will be circulated among members of the industry for comment. Neither reporting format will require a profit and loss breakdown by project where a larger entity (such as a parent company) has currently assumed full financial responsibility to purchasers for completion of the project and only financial information of the larger entity is conveniently available.

6. Termination of Extant Division Orders

Registrants under extant Division Orders of Qualification requesting the voluntary termination or "withdrawal" thereof will be required to enter into an "Agreement of Termination" which sets forth the terms and conditions upon which such request will be approved.

The Agreement is necessary due to the fact that many developers have sold properties to a substantial number of Ohio residents and, although such sales efforts no longer continue in Ohio, the developer has not yet fulfilled its contractual obligations to complete improvements on such properties. Therefore, a continuing regulatory responsibility lies with the Division subsequent to the termination of effectiveness of the Division Order.

The *Agreement of Termination*, which will be mailed within 30 days following a request for withdrawal, will include, among other things, the following provisions:

- (1) Requirement of the submission of a final comprehensive report prior to termination.
- (2) Requirement of limited additional reporting with respect to material events which may affect Ohio purchasers including insolvency or the filing of a petition for bankruptcy by the developer, any modification to the developer's time schedule for the installation and construction of improvements, and other similar matters which might be adverse to the interests of purchasers.
- (3) Establishment and maintenance by the registrant of procedures for handling inquiries and complaints from Ohio purchasers.
- (4) Acknowledgement by the registrant of continuing obligations under the Ohio Securities Act with respect to previous purchasers.
- (5) Consent to service of process, where applicable.
- (6) Averment by the registrant that no offers for sale or sales of property subject to the termination order will occur prior to re-qualification.

7. Post Scripts

A common and perhaps cogent criticism of government

regulatory agencies is that they tend to be responsive to and serve the vested interests of the industries which they are designed to regulate. One need only to peripherally examine the voluminous body of evidence emanating from public proceedings at various levels of government to ascertain that the "public interest" has been frequently subverted by regulatory agencies in the face of well-organized industry opposition to consumer-oriented programs.

While it is believed that no one would argue with the premise that all government agencies should to a certain extent be responsive to and encourage participation from industry groups, it is likewise a fact of life that the "public interest" is diverse, not well organized, and incapable of mustering sufficient fundings to effectively bring pressure to bear upon regulatory agencies in its own behalf.

While the Division views industry participation and consultation in connection with the process of policy development to be indispensable and consistent with principles of due process, the public interest which the Division was created to serve and empowered to protect must receive paramount consideration. Accordingly, as the Division continues to develop its policy in connection with the sale of foreign real estate in Ohio, it is anticipated that participation by the general public will be sought through public meetings and by mail surveys of Ohio residents who have purchased property located outside the state. At the same time industry input and participation on an increased scale will continue to be encouraged.

R. Michael Jones

BROKER-DEALER SECTION

Licensing of Officers and Partners

Beginning on January 1, 1975, all officers of licensed broker-dealers with the Division of Securities previously exempted under 1707.01(F)(2) from being licensed will be required to submit a Form 16 salesman's application and hold a salesman's license. Companies licensed for the exclusive purpose of consummating an exchange offer, merger, consolidation or stock purchase plan will be exempt from this requirement for the single named officer, but any additional personnel involved in sales will be required to be licensed.

This requirement is being imposed pursuant to the discretionary power in Section 1707.01(F)(2), Ohio Revised Code:

The general partners of a partnership, and the executive officers of a corporation or unincorporated association, licensed as a dealer, are not salesmen within the meaning of this definition, nor are such clerical or other employees of an issuer or dealer as are employed for work to which the sale of securities is secondary and incidental; but the Division of Securities may require a license from any such partner, executive officer, or employee if it determines that protection of the public necessitates such licensing.

dary and incidental; but the Division of Securities may require a license from any such partner, executive officer, or employee if it determines that protection of the public necessitates such licensing.

Each officer to be licensed must submit a properly completed Form 16 with references — if not previously named for the applicant in the broker-dealer application — and the photograph; the examination requirement may be waived in certain circumstances.

James C. Warneka

CONSUMER FINANCE SECTION

Credit Insurance Requested by Borrowers

The question has been posed as to whether a registrant operating under Sections 1321.51 through 1321.60, Ohio Revised Code, the Mortgage Loan Act, could furnish joint credit life if such insurance was desired and optional on the part of the borrower.

Section 1321.57(C), Ohio Revised Code, deals with credit life and states in part: "A registrant may require credit life insurance providing for death benefits only on the life of one borrower, et seq."

This differs entirely from Section 1321.16 of the Small Loan Act which states in part: "... a licensee, at the request of the borrower, may obtain credit life insurance providing for death benefits only, on one borrower, but only one of them if there are two or more obligors, et seq." Thus under the Small Loan law, the licensee may not require credit life and under the context set up by the legislature, joint credit life insurance would be deemed prohibited.

Under the Mortgage Loan Act it would seem that the legislature has considered the traditional risk of this type of security for a much greater amount of money loaned and has permitted the lender to require credit life insurance; but if required as a prerequisite to a loan, it could only be written on the life of one of the borrowers, traditionally the "bread-winner".

Since this law was written, there have been major socio-economic changes in the credit system, credit laws and the use of credit by the consumer. The National Organization of Women advises that some 46% of married couples are sustaining or adding to the family income by the wives' employment and their budget is dependent upon this joint income. With a jointly employed couple securing a large loan under the Mortgage Loan Act, it is probable that the successful repayment of the resultant monthly obligation would depend upon both incomes. Thus, upon the demise of either spouse, the survivor could well be confronted with selling the security to satisfy the loan.

A national research study on credit life and disability insurance conducted by Ohio University and published in July, 1973, discloses that in a response to questionnaires sent to Ohio borrowers of personal finance companies, 92.82% would want the amount of their loans covered by credit life insurance. The significance of the popularity of credit insurance is further demonstrated in its spectacular growth from less than half a million in 1945 to \$88 billion by the end of 1970.

Joint credit life insurance is presently being arranged by banks, sales finance companies and credit unions upon the request of their borrowers. The cost of joint credit life, as set by the Ohio Department of Insurance, is less than two individual policies since the administrative costs are less to the insurer.

Section 1321.58(A), Ohio Revised Code, of the Mortgage Loan Act, which requires certain written disclosures to the borrower by the registrant at the time a loan is made, states at sub-paragraph (8): "A description of insurance required by the lender or purchased by the borrower in connection with the loan." It could be interpreted that the legislature considered that there could be other insurance requested and purchased by the borrower in addition to that required by the lender and that such insurance purchased by a borrower must be disclosed through additional description.

Federal Reserve Board Regulation Z, part 226, "Truth-in-Lending", exempts credit insurance from the A.P.R. (annual percentage rate) disclosure under Section 226.4(5) which states: "(i) The insurance coverage is not required by the creditor and this fact is clearly and conspicuously disclosed in writing to the customer; and (ii) any customer desiring such insurance coverage gives specific dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance".

It is, therefore, the opinion of the Division that credit insurance other than that required by the lender could be arranged by a registrant under the Mortgage Loan Act provided that such insurance be the documented request of the borrower, that the borrower has the option to purchase such insurance through any insurer authorized to transact an insurance business within this state, that the amount of such insurance shall not exceed the total amount repayable under the contract of indebtedness nor the scheduled unpaid balance, that full disclosure of effective date, amount of insurance, terms and cost be disclosed in conformance with 1321.58(A)(8), Ohio Revised Code, and that refund requirements of Sections 3918.01 to 3918.13, inclusive, Ohio Revised Code, be offered to the borrower should prepayment of the indebtedness occur prior to the scheduled term.

Caution in documentation of borrower-requested credit insurance is stressed, as failure to prove voluntary request by the borrower could result in violation of 1321.57(C), Ohio Revised Code.

R. P. Fickell

CREDIT UNION SECTION

Credit Union Examinations

The revision of the credit union examination procedure, from its inception in early 1974 to the present time, has progressed slowly and deliberately along lines designed to minimize interruption of staff assignments and yet capitalize on field personnel input. Significant input has been a direct result of the mobility assignment under the Intergovernmental Personnel Act of 1970. Under this program a senior field examiner has been actively at work with the federal authorities in reviewing the examination procedures and standards used by the National Credit Union Administration in their field review of credit unions under their jurisdiction. This three-week review has spearheaded the design and development of the examination procedure now being field-tested by all credit union examiners.

A major attempt in the development of the examination form is to reduce the stigma of "auditors" which has been placed on Division examiners by the industry. The duties of the Credit Union Section are explicit in examining for compliance with the statutes and regulations. As a part of the compliance procedure, certain audit procedures are employed, namely verification of cash and accounts and tests for adequacy of reserves. Beyond that the staff is not equipped nor required to perform the detailed procedures required of an audit.

To place the responsibilities for the internal audit where it belongs, the Division's examination form has been developed to review with the members of the Supervisory Audit Committee the audit steps, tests and procedures employed. During this review records are to be produced showing the degree to which the individual committees have performed, or are capable of performing, their specific duties. The limited experience with this procedure to date indicates that most credit union supervisory audit committees are quite willing to perform their tasks, but are lacking in direction. In those cases where professional auditors are employed, a review of such audit procedures has shown them to be excellent. Unfortunately, not all credit unions can afford to hire professional help.

A test for impairment is included in the new procedure and parallels Division Rule COs-5-06. The impairment test is vital during these economic times which have seen investment portfolio values eroded beyond established reserves provided by the credit unions. Further, during these difficult inflationary periods with the poor collection of loans and the resulting deficiency of loss reserves, the liberal impairment test discloses those credit unions against which tough administration action must be levied by the Division.

The Division anticipates that this examination form will be amended to include a mandatory "exit" interview with the boards of directors or executive committees of credit unions under examination. This procedure, used only in a few test cases, has proven to

be an effective tool in alerting credit unions to areas of abuses of management or those areas which demand immediate board attention. Often results of examinations are reported to the individual who is responsible for inconsistencies discovered. The Division is encouraging its field personnel to use this procedure on a discretionary basis.

One audit procedure employed in the past was the surprise or unannounced visit of Division examiners. The Division finds that this practice lends to the feeling on the part of credit union management that the Division's examination is an audit and is designed to test the accounts as to correctness and, perhaps, to catch a thief. In those cases where credit unions do not maintain regular office hours or where office hours are maintained off premises, Division examiners will be calling in advance, announcing that an examination is pending, requesting that books and records be made available. This enables the Division examiner to have access to all records, and provides the credit union sufficient notice to bring up to date records of meetings, minutes and other detail for Division examination. It has not been the Division's experience that the advance notice procedure has been abused by any credit union.

For those credit unions whose deposits are currently insured by the insurance fund of the National Credit Union Administration, the Division has agreed to furnish, on reporting forms furnished by that agency, a report to enable them to determine continued insurability. At the present time 182 state-chartered credit unions are insured by NCUA. This privilege has been extended to representatives of the Ohio Credit Union Shareowners' Guaranty Association to assist it in determining insurability of its applicants and members. The Division will strive for complete cooperation with both insurers.

The final phase of the development of this examination package is the design of an examiner's manual. Under several training programs already held and those planned for the future, the Division is attempting to have the examiners report, uniformly and objectively, the status of credit unions regardless of any peculiar circumstances relating to size or location. The current field test is aimed at locating those problem areas which need further definition and resolution. The Division anticipates that the effective date of the full implementation of this exam procedure will be sometime in January, 1975.

John Gouch

ADMINISTRATIVE ACTIONS

Summary of Credit Union Section Administrative Actions for the months of July and August, 1974

Suspension of Normal Activities

Ohio Glidden-Durkee Employees Credit Union	7-1-74
North Electric Employees Credit Union	8-12-74
A. S. F. (Alliance) Employees Credit Union	8-9-74

Vacations of Suspension

Cleveland YMCA Credit Union	7-12-74
Ohio Glidden-Durkee Employees Credit Union	7-22-74
North Electric Employees Credit Union	8-26-74
Cleveland Joint Board Credit Union	8-26-74

Mergers Approved

Precision Employees Credit Union	
Merged/Ohio Central	8-5-74

Summary of Enforcement Activity for July and August, 1974.

Broker-Dealer License Revocations

Allied Investment, Inc.	8-17-74
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Salesman License Refusals

James Harry Adams	8-17-74
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Registration Suspensions

The following registrations were suspended July 6 and hearings were held on the suspensions from July 15 through August 1:

Sea Pines Hilton Head (31544)
 Southeast Florida Properties (28652)
 Wild Horse Mesa (31916)
 Palmas Del Mar (30671 & 31761)
 Paradise View Estates (27882, 27881 & 28407)
 Lakewood Shores (28912)
 Woods & Lakes Subdivision (29341)
 Big Sky of Montana, Inc. (28990)
 Republic Properties, Inc. (27619)
 Leisure Technology of Florida, Inc. (30909)
 Happy Hollow Campground (29800)
 Kimberly Plantation Estates (29350)
 Atlantic International Investment Corporation (22526 & 22526-A)
 Pinehurst (30824)
 Outdoor Resorts of America (27609, 29000 & 29001)
 Grove Lake Estates Unit I (28641)
 Carolina Caribbean (31944)
 Kalmia Condominium Apartments (23421)

	<u>Hearings</u>
Vernon C. Barnhill	7-1-74
Cecil Berry	7-17-74

Indictments Sought and Returned

John King (41 Cattle Company)	8-26-74
Albert Lunstrum (41 Cattle Company)	8-26-74

	<u>August, 1974</u>	
Interstate Corporate	23	7
Stock-Option & Purchase Plan	4	8
Intrastate Corporate	14	4
Investment Companies	78	35
R.E.I.T.	0	2
Real Estate Ltd. Partnerships	19	22
Oil & Gas Offerings	20	15
Cattle Funds	3	0
Other Non-Corporate	14	12
Form 39	14	3

Note: 9 Requests for Cursory Review
8 Withdrawals

STATISTICS

<u>Registration</u>	<u>July, 1974</u>	<u>Certificates</u>
2(B)		15
3-0		416
5(A)		0
6(A)(1)		128
6(A)(1) With Offering Circular		2
6(A)(2)		52
6(A)(3)		28
6(A)(3)-OG		1
6(A)(4)		10

	<u>August, 1974</u>	
2(B)		18
3-0		383
5(A)		2
6(A)(1)		136
6(A)(1) With Offering Circular		4
6(A)(2)		61
6(A)(3)		17
6(A)(3)-OG		4
6(A)(4)		6

Securities Broker/Dealer Applications (Form 15) Received in July and August, 1974.

	<u>July, 1974</u>
First Kentucky National Corporation	7-1-74
DCC, Inc.	7-1-74
Robert L. Delaplane	7-2-74
ARA Services, Inc.	7-3-74
Sheller-Globe Corporation (Withdrawn 7-10-74)	7-3-74
Morgan, Keegan & Company, Inc.	7-5-74
Creative Capital Management Corp.	7-5-74
Billboard Publications, Inc. (a Delaware Corp.)	7-5-74
Fidelity Daily Income Trust	7-5-74
Foodplex, Inc.	7-8-74
I.M.S. International Inc.	7-9-74
Servicemaster Industries Inc.	7-11-74
TCG Corporation	7-15-74
MBPLX Corporation	7-16-74
C.P.I. Securities, Inc.	7-18-74
Shields Model Roland Incorporated	7-22-74
New Venture Securities, Inc.	7-24-74
AgMet, Inc.	7-25-74
Jerry L. Feldman dba The Equity Exchange	7-31-74
Yorke M. Ross	7-29-74

	<u>July, 1974</u>	<u>Orders</u>
Interstate Corporate	12	5
Stock-Option & Purchase Plan	6	2
Intrastate Corporate	2	2
Investment Companies	30	30
R.E.I.T.	3	0
Real Estate Ltd. Partnerships	18	7
Oil & Gas Offerings	26	8
Cattle Funds	1	0
Other Non-Corporate	16	4
Form 39	13	4

Note: 7 Requests for Cursory Review
4 Withdrawals

	<u>August, 1974</u>
Roger E. Owen	8-2-74
Townes & Co., Inc.	8-2-74
Rollins Burdick Hunter & Co.	8-2-74
North Shore Securities, Inc.	8-5-74
Michael J. Young	8-9-74
Olin Corporation	8-12-74
Louis Stile	8-13-74
Larry K. Kelly Securities Company	8-15-74
INA Corporation	8-19-74
Stephen Mikula	8-20-74
Gatehouse Associates	8-21-74
Daily Income Fund, Inc.	8-26-74

American Growth Fund Sponsors, Inc. 8-26-74
 FJC Investment, Inc. 8-26-74
 Thomas & Company, Inc. 8-27-74
 Victor Comptometer Corporation 8-30-74

Summary of Consumer Finance Activity for July and August, 1974.

	<u>July, 1974</u>		
	Issued	Cancelled	Suspended
Small Loan Licenses	0	6	0
Second Mortgage Licenses	0	6	0
Premium Finance Licenses	1	1	0
Pawnbroker Licenses	0	0	0

Salesman Applications Received in July and August, 1974.

<u>July, 1974</u>	
Form 16 - Securities	233
Form 331 - B - Foreign Real Estate	39
Total Salesmen for July	272

<u>August, 1974</u>	
Form 16 - Securities	162
Form 331 - B - Foreign Real Estate	41
Total Salesmen for August	203

Compliance Examinations Made - 245
 Financial Examinations Made - 3

<u>August, 1974</u>			
Small Loan Licenses	1	7	0
Second Mortgage Licenses	1	4	0
Premium Finance Licenses	1	1	0
Pawnbroker Licenses	0	0	0

Compliance Examinations Made - 232
 Financial Examinations Made - 6

Hearings Held Pursuant to Section 1321.04

August

Dial Finance Co. of Ohio No. 1, Inc.
 3277 W. Broad St.
 Columbus, Ohio