

Ohio Securities Bulletin



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Governor

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Commissioner's Comments

Governor Rhodes on July 9, 1978, signed into law Substitute House Bill 356 which created two new Divisions in the Department of Commerce, a Division of Consumer Finance and a Division of Credit Unions. The regulation of consumer finance companies and credit unions has been the responsibility of the Division of Securities. Each Division will be headed by a Superintendent appointed by the Director of the Department of Commerce. These two new Divisions began functioning as autonomous units as of January 1, 1979.

The Division is undertaking to computerize its files. New registrations are entered into the computer as they come into the Division. Filings which came into the Division prior to the arrival of the computer in July 1978, will be entered, most recent first, going back five years. This should not only facilitate record-keeping, but should speed the internal processing of Division filings and actions.

Staff Changes

Dale Jewell, Supervisor of the Examination Section, has been named to head the Broker-Dealer Section, filling the slot vacated by Gordon Stott. Because a substantial number of examiners from the Examination Section have been reassigned to either the new Credit Union Division or Consumer Finance Division, the Examination Section has retained only registration and broker-dealer examiners. This change will permit Jewell to supervise both operations.

In March, 1979, Richard Slavin was promoted to Attorney Inspector, Chief Enforcement Attorney for the Division and Supervisor of the Enforcement Section. Mr. Slavin served as a Financial Examiner with the Division from July, 1972 to August, 1977 and as a Staff Attorney in the Enforcement Section from August, 1977 to February, 1979.

In August, 1978, Nodine Miller was promoted to Assistant Commissioner of Securities, a newly created position. Mrs. Miller served as the Attorney Inspector from May, 1977 until the appointment of Mr. Slavin. She began her tenure with the Division in July, 1976, as the Attorney assigned to the Commissioner.

On March 31, 1979, Deputy Commissioner, George A. Ward, retired from the Division of Securities. During his 25 year tenure, Mr. Ward had served the Division in a variety of administrative posts, including Commissioner of Securities. The Division appreciates George's efforts over the years and wishes him well.

In August, 1978, Kathleen Veach was promoted from Registration Clerk to Registration Examiner. Mrs. Veach reviews forms filed pursuant to Section 1707.03 and 1707.06 of the Revised Code.

Takeover Statute

On August 21, 1978, Occidental Petroleum Corporation ("Oxy"), pursuant to Section 1707.041 of the Revised Code, filed a Form 041 together with attached exhibits, with the Division of Securities and announced its intention to make an exchange offer to the holders of common shares and voting convertible preferred shares of The Mead Corporation ("Mead"). On the same day, Mead requested that a hearing on Oxy's exchange offer be held as provided for in Section 1707.04(B)(1)(b) of the Revised Code. Subsequent thereto on August 28, 1978, Mead filed a memorandum in support of jurisdiction pursuant to Section 1707.041(A)(1) of the Revised Code. Under the provisions of that section, jurisdiction is based upon: (1) a corporation's being organized under the laws of the State of Ohio, or (2) having its principal place of business and substantial assets within the State of Ohio.

The Mead Corporation was incorporated under the laws of the State of Ohio on February 17, 1930. Additionally, seven of Mead's wholly-owned subsidiaries are incorporated in Ohio. Mead's principal offices and headquarters for its worldwide operations are located in Dayton, Ohio. Mead operates several major manufacturing facilities in Chillicothe, Cincinnati, Toledo, Dayton, Washington Court-house and Norwood, Ohio. In a letter dated August 29, 1978, Oxy did not contest the jurisdictional statements made by the Mead Corporation.

On September 1, 1978, the Division of Securities found jurisdiction and granted Mead's request for a hearing.

Broker-Dealer Compliance

Accordingly, hearings relative to Oxy's exchange offer commenced on Monday, September 11, 1978, at 9:30 a.m. in Columbus, Ohio, continuing day-to-day and concluding on Saturday, September 23, 1978. Both Occidental and Mead were afforded thirty-six hours for case presentation, direct and cross-examination of witnesses and for opening and closing statements. The record in this proceeding consisted of nearly twenty-four hundred pages of testimony and approximately twenty-three thousand pages of exhibits.

On October 10, 1978, the hearing officer for the Division of Securities, Nodine Miller, presented her Findings of Fact, Conclusions of Law and Recommendations to the Commissioner of Securities. The hearing officer recommended that the offer not go forward until amended to provide fair and full disclosure to the Mead offerees of all information material to a decision to accept or reject the offer. Secondly, the hearing officer recommended that the offer not go forward until Occidental was in full compliance with the provisions of the Securities Act of 1933.

Prior to the final Division Order in the Mead-Occidental case, Occidental submitted Undertakings which related to the Conclusions of Law included in the report of the hearing officer. Each conclusion of law specified an area in which additional disclosure was necessary. Each related Undertaking provided additional disclosure relative to that subject area. In its final Order on October 20, 1978, the Division adopted ten of the fourteen disclosure undertakings submitted by Occidental. In addition to the four subject areas, where the Undertakings proved to be inadequate, the Division required additional disclosure by modifying the report of the hearing officer. The Division found in its Order that if amended, the proposed billion dollar exchange offer by Occidental Petroleum Corporation would not violate Chapter 1707. of the Revised Code and that effective provision would be made for fair and full disclosure to the shareholders of the Mead Corporation of all information material to a decision to accept or reject the offer pursuant to Section 1707.041(B)(4) of the Revised Code. Further, the offer could go forward if amended and if it was in full compliance with the provisions of the Securities Act of 1933. Subsequent to the Division Order, Occidental submitted additional Undertakings which satisfied the requirements of the Division as to full disclosure. Occidental subsequently withdrew its exchange offer from consideration by the Mead Corporation, stating the tenacity of the corporation and the inability of Occidental to work with the Mead management given the circumstances of the offer.

On August 10, 1978, in the case of Leroy (Kidwell) v. Great Western United, 577 Fd. 2d. 1256 (5th Cir. 1978) (hereinafter "Sunshine Mining") the United States Court of Appeals for the Fifth Circuit determined that the Idaho Corporate Takeover Statute was unconstitutional affirming the decision made by the District Court for the Northern District of Texas. This decision was appealed to the United States Supreme Court in September 1978. In January, 1979, the United States Supreme Court granted certiorari. The State of Ohio filed an amicus curiae brief on February 22, 1979. Oral arguments in the Sunshine case were heard in April, 1979.

In January 1978, the Division became aware that it was expending too great a proportion of its limited resources on broker-dealer compliance problems. One enforcement attorney was devoting full time to the compliance problems of the Broker-Dealer Section. Additionally, the Division found that it was expending a great deal of time dealing with many of the same licensees. Approximately twenty to twenty-five percent of all Ohio broker-dealers were found not to be in compliance with the rules and statutes governing their operations. The goal of the Division in dealing with this problem was to bring its licensees into compliance; not to put the non-complying brokers out of business.

What evolved as a result of the above, was a multi-faceted approach to this substantial problem area. In April, 1978, the Division held hearings on amendments to its rules governing broker-dealers and salesmen. Amendments to these rules were made and became effective on August 3, 1978. There were five major changes in the rules relating to broker-dealers and salesmen:

1. The net worth requirements for broker-dealers was increased from \$10,000 to \$25,000.
2. Broker-dealers are required to file at least one audited financial statement with the Division per year. However the Division was given the authority to request additional statements if appropriate.
3. In determining net worth, certain adjustments are made on the balance sheet of the licensee. The rules now provide that securities with no readily determinable value will be valued at zero. "Readily determinable value" is defined to mean securities which are traded on a major exchange or actively over-the-counter.
4. An inactive status category was created for broker-dealers. Under this provision, a broker can shelve his license, continue to pay the annual renewal fee, for three years. Should he wish to resume business after having shelved his license, he must meet the requirements for licensing but is not required to take a new examination. However when a broker-dealer decides to shelve his license, it terminates all of the salesmen licensed to the dealer. Form 16-B's must be filed for each terminated salesman.
5. The "reasonable time" within which a Form 16-B must be filed after the termination of the salesman was determined to be within ten calendar days of his leaving his employing firm. The statute presently requires that the Division be notified "immediately" upon a salesman's termination. Because immediately often stretched into weeks or months, a rule setting a specific time was imperative.

The Division also undertook a stepped-up program of examining broker-dealers. These examinations resulted in the sending of notification letters to the non-complying licensee enumerating areas of non-compliance. The dealer is given a specific period of time within which to comply

with the statute and/or rule or his license is suspended. Non-compliance problems fall into three categories:

1. Inadequate net worth.
2. Failure to file an audited financial statement with the Division.
3. Inadequate books and records.

A number of licensees have chosen, because they are not actively engaged in the securities business, to either shelve or surrender their licenses. However we have found little difficulty with or resistance to our compliance efforts. Most of the licensees in question have been cooperative and quick to provide whatever is necessary to meet the requirements of the Ohio Securities Act and its administrative rules.

Provisional Registration for certain Oil and Gas Syndications

Because of certain contingencies which exist with respect to oil and gas leases, the Division is undertaking to accommodate these contingencies by providing for a provisional registration of certain oil and gas working interests on non-designated leases pursuant to Section 1707.10 of the Revised Code. Outlined below is the procedure which the Division has drafted to facilitate provisional registrations under this Section.

I. Initial Filing

- A. Form 9-OG or Form 6(A)(3)OG Application containing all of the exhibits usually required except for:
 1. The lease and assignment.
 2. The title opinion on the lease substantiating the right of the issuer to drill.
- B. An undertaking given by the issuer to provide to both the Division and to investors, prior to drilling, copies of:
 1. The lease and assignment.
 2. The title opinion on the lease substantiating the right of the issuer to drill.
- C. A written request for the Division's approval in writing of provisional registration with the final qualification being given, by order, following the receipt of the required documentation. (Lease and title opinion)

- D. An undertaking signed by the issuer agreeing:
 1. To deposit all proceeds of sale in an escrow account.
 2. To provide the Division a copy of the escrow agreement and the escrow account number.
 3. That no deductions will be made from the proceeds of sale for commissions or other charges until final approval of the registration has been given by the Division of Securities.
 4. That drilling will not commence until the registration is complete and the Division Order of Qualification has been issued by the Division of Securities.

E. The appropriate filing fee.

II. Approval of Provisional Registration.

- A. The Division will notify the issuer, in writing, of its approval or disapproval of provisional registration of the oil and gas syndication when and if:
 1. It is satisfied that the issuer is solvent and of good business repute.*
 2. The preliminary offering will not deceive or defraud or tend to deceive or defraud investors.
- B. The issuer can begin selling upon receipt of the Division's approval of its request for provisional registration.

III. Final Approval.

- A. The issuer files with the Division the lease and assignment and the title opinion on the lease substantiating the right of the issuer to drill.
- B. The Division reviews the aforementioned documentation then notifies the issuer of its final approval of the registration by qualification or description, by Division Order.
- C. Upon notification of final approval from the Division, the issuer will pay the registration qualification fee prescribed by Sections 1707.09 or 1707.06 of the Revised Code.

IV. Failure to Grant Final Approval.

- A. If the issuer fails to complete its registration the Division will, in writing, order the withdrawal of the interest from the market and specify the terms of the refund of all investor funds.
- B. If the Division refuses to grant final approval of the registration, it shall so notify the issuer, in writing, and order it to withdraw the interest from the market and specify the terms of the refund of all investor funds.

*Because provisional registration is permissible under both Sections 1707.09 and 1707.06 of the Revised Code, it will be necessary for an issuer filing under Section 1707.06 of the Revised Code to file a financial statement with its initial filing substantiating its solvency. Should you have any questions or suggestions relative to this new procedure, please forward them to the attention of Jim Warneka, the Division's Oil and Gas Registration Examiner.

Final Rules to Implement Senate Bill 139

On April 20, 1978, Governor Rhodes signed into law Amended Substitute Senate Bill 139. This act represented the first major alteration in the Ohio Securities Act since its passage fifty years ago. Amended Substitute Senate Bill 139 (hereinafter "S.B. 139") was originally prepared by representatives of the Ohio Bar Association. Concurrently, the Department of Commerce prepared what subsequently became H.B. 339 which was introduced in the House of Representatives.

In its concern for facilitating the raising of venture capital, the Bar's original bill focused on increasing the number of exemptions under the Ohio Securities Act. H.B. 339 characterized as Ohio's "Investors Protection Act" concentrated on safe-guarding the Ohio investor. The version of S.B. 139 which passed the Ohio General Assembly on April 4, 1978, was a combination of both goals. It creates three new exemptions from registration under the Ohio Securities Act, provides for registration by coordination, grants the Division cease and desist powers and expands its rulemaking authority. S.B. 139 became effective on Thursday, July 20, 1978.

In May, 1978, the Division began its analysis of this legislation in an effort to prepare itself for the substantive changes. The Division drafted rules and forms relating to the new sections. In drafting its rules, the Division attempted to balance its off-time conflicting responsibilities in the following major areas:

1. The need to provide a regulatory scheme for the protection of investors which did not unduly interfere or complicate the process of raising capital in Ohio.
2. The need to provide within the regulatory scheme objective standards to guide issuers, Division personnel, and investors in their dealings within the state.
3. To coordinate regulation under S.B. 139 to the established systems of registration and securities enforcement in effect under Ohio's blue sky law.

Central to the consideration of the S.B. 139 amendments were the three exemptions included in Revised Code Section 1707.03. By the process of exemption, certain transactions were expedited by being excused from compliance with the process of prior review by the Division of Securities. As a consequence, the sole judge of the adequacy of the disclosures made or the fairness of the offering rests with the one claiming the exemption.

That legitimate issuers would claim a .03 exemption was of little concern to the Division. However, shortly after the passage of S.B. 139, the Division was confronted by a variety of questionable and unscrupulous issuers who expressed their intention to utilize these exemptions. As a result, the Division became increasingly concerned about its regulatory responsibilities under the new Section 1707.03 of the Revised Code in the face of the potential for abuse of that section.

In consulting with members of the Bar, the Division discovered early in its discussions that few, if any, of the attorneys coming forward with comments or suggestions on drafting rules and on the drafted rules, represented defrauded investors. Because most represented legitimate issuers, it was difficult for them to share and understand our increasing concern for the fate of Ohio investors who might be harmed by sales under these exemptions.

In 1977, the Ohio General Assembly enacted H.B. 257 which created the Joint Committee on Agency Rule Review. This Joint Committee is responsible for determining whether the proposed rules comport with the intent of the legislation to which the rules relate. On July 24, 1978, the Division filed its draft rules with the Secretary of State and with the Joint Committee on Agency Rule Review (hereinafter "Joint Committee"), pursuant to the provisions of H.B. 257. The Division's draft rules and explanations relating thereto appeared in a special edition of the Ohio Securities Bulletin published in early August, 1978.

On August 17, 1978, in a hearing before the Joint Committee, the Division presented explanatory testimony and answered questions relating to its draft rules. Testimony before the Committee, other than that given by the Division, complained that the Division had been overzealous in its attempt to protect Ohio investors and its rules would inhibit the raising of venture capital in Ohio. They complained the draft rules exceeded the scope of the Division's statutory authority.

Subsequent to the August 17th hearing before the Joint Committee, the Division withdrew a substantial portion of its draft rules, held public hearings on the remainder of the draft rules and scheduled a series of conferences with securities lawyers who testified, both before the Joint Committee and at the Division's public hearing, in opposition of the draft rules. On September 7, 1978, the Division appeared before the Joint Committee to report its progress in revising its draft rules.

Between September 5, 1978 and September 13, 1978, the Division met continuously with representatives of the Ohio Bar Association from around the state in an effort to reach a compromise on the rules. On September 13, 1978, the Division filed the final draft of its rules with the Joint Committee on Agency Rule Review. On the same day at a hearing before the Joint Committee, attended by both representatives of the Bar Association and the Division, the Division explained the final draft of its rules for the implementation of S.B. 139. These draft rules became effective

on October 23, 1978. The Division has been the target of much criticism for its paternalistic approach to this rule-making task. We hope that our critics will take into account statistics which reflect a substantial annual increase in securities fraud and the dollar amount of investor losses.

We have provide below the three provisions of Chapter 1707. of the Revised Code, under which rules were promulgated, and the new rules relating to each quoted provision.

1707.03(O)

“(O) The sale of any equity security is exempt if all the following conditions are satisfied:

- (1) The sale is by the issuer of the security;
- (2) The total number of purchases in this state of all securities issued or sold by the issuer in reliance upon this exemption during the period of one year ending with the date of the sale does not exceed ten, provided that this exemption is limited to a total of twenty-five purchasers and that all such sales shall be made within five years after the date of incorporation. A sale of securities registered under sections 1707.01 to 1707.45 of the Revised Code or sold pursuant to an exemption other than this exemption shall not be integrated with a sale pursuant to this exemption in computing the number of purchasers hereinunder.
- (3) No advertisement, article, notice, or other communication published in any newspaper, magazine, or similar medium, or broadcast over television or radio is used in connection with the sale, but the use of an offering circular or other communication delivered by the issuer to selected individuals does not destroy this exemption.
- (4) The issuer reasonably believes after reasonable investigation that the purchaser is purchasing for investment.
- (5) The aggregate commission, discount, and other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly does not exceed ten per cent of the initial offering price.
- (6) Any such commission, discount, and other remuneration for sales in this state is paid or given only to dealers or salesmen registered pursuant to Chapter 1707. of the Revised Code.
- (7) The issuer files with the division of securities not later than sixty days after the sale, a report of sale setting forth the name and address of the issuer, the total amount of the securities sold under this exemption, the number of persons to whom the securities were sold, the price at which the securities were sold, and the commissions or discounts paid or given.
- (8) The issuer pays a filing fee of twenty-five dollars.

For the purpose of this Division, each of the following is deemed to be a single purchaser of a security: husband and wife, a child and its parent or guardian when the parent or guardian holds the security for the benefit of the child, a corporation, a partnership, an association or other unincorporated entity, a joint-stock company, or a trust, but only if the corporation, partnership, association, entity, company, or trust was not formed for the purpose of purchasing the security.

As used in this division “equity security” means any stock or similar security of a corporation; or any security

of a corporation; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right, or any other security that the division considers necessary or appropriate, by such rules as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

1707.03(Q)

“(Q) The sale of any security is exempt if all of the following conditions are met:

- (1) The provisions of section 5 of the security act of 1933 do not apply to the sale by reason of an exemption under either section 4(2) of that act or any rule of the securities and exchange commission made to carry out section 4(2) of that act in effect at the time of such sale.
- (2) The aggregate commission, discount, or other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly does not exceed ten per cent of the initial offering price.
- (3) Any such commission, discount, or other remuneration for sales in this state is paid or given only to dealers of salesmen registered under Chapter 1707. of the Revised Code.
- (4) The issuer or dealer files with the Division of Securities not later than sixty days after the sale, a report setting forth the name and address of the issuer, the total amount of the securities sold under this division, the number of persons to whom the securities were sold, the price at which the securities were sold, and the commissions or discounts paid or given.
- (5) The issuer pays a filing fee of twenty-five dollars.

Rule 1301:6-3-03 Exempt Transactions

“(A) Disposition of report of sales improperly made under section 1707.03(O) or section 1707.03(Q) of the Revised Code.

(1) When the division receives a form 3-O or 3-Q which appears to be defective on its face, the division shall so notify claimant and shall allow not more than thirty days for the amendment of such report of sales. If such defects are remedied by amendment, the report of sales shall be deemed filed as of the date of original filing. If such defects are not remedied by proper amendment, the division shall note on its records that the report of sales is defective and that no effective claim be issued until the report of sales, in original form or as amended, fully complies with the requirements of section 1707.03(O) or section 1707.03(Q) of the Revised Code.

(2) If it shall subsequently appear upon examination or otherwise that the alleged facts upon which an exemption under section 1707.03(O) or section 1707.03(Q) of the Revised Code was claimed were nonexistent at the time such claim was made, or that existing facts were not stated which would have made impossible a claim of exemption, the division shall so notify claimant and shall afford claimant an opportunity to appear before the division to present proof as he may wish to offer that such exemption was properly claimed. In the absence of satisfactory proof to the division that claimant was entitled to claim such exemption, the division shall make a finding that the facts neces-

sary for claiming such exemption did not exist at the time such exemption was claimed and that the claim of exemption theretofore made was null and void and of no effect when made. The division shall thereupon order its records endorsed in accordance with such filing.

(B) For the purposes of division (O) and (Q) of section 1707.03 of the Revised Code, "ten per cent of the initial offering price" means one tenth of the number of securities sold, multiplied by the offering price of such securities.

(C)(1) No licensed salesman, employed by a licensed dealer, shall sell securities under divisions (O) or (Q) of section 1707.03 of the Revised Code except with the knowledge and prior written consent, and under the supervision of, the employing dealer.

(2) The failure of a salesman to obtain such prior written consent shall in no manner affect the availability of the exemption to an issuer.

(D) The issuer shall maintain or cause to be maintained books and records which reflect all material transactions involving the sale of equity securities under division (O) of section 1707.03 of the Revised Code for a period of four years from the date of the last sale by the issuer under such claim of exemption.

(E) The issuer shall file with the division of securities a report of sales on form 3-O not later than sixty days after each purchase of an equity security under division (O) of section 1707.03 of the Revised Code. All sales within such sixty day period which have not been reported on a prior form 3-O may be included in such form 3-O.

(F) Under division (O) of section 1707.03 of the Revised Code an issuer shall be entitled to reasonably believe that a purchaser is purchasing for investment, in the absence of information to the contrary, when the issuer obtains a signed statement from the purchaser prior to purchase wherein the purchaser states:

(1) That he is aware that no market may exist for the sale of such securities.

(2) That he is purchasing for investment and not for the distribution of such securities.

(3) That he is aware of any and all restrictions imposed by the issuer on the further distribution of such securities, including, but not limited to, any restrictive legends appearing on the certificate, required holding periods, stop transfer orders, or buy back rights of the corporation of securities holders thereof.

Failure to obtain any or all of the foregoing statements does not create a presumption of lack of investment intent.

(G) Solely for the purpose of computing the total number of purchases under division (D)(2) of section 1707.03 of the Revised Code, successive sales by an issuer to a single purchaser shall not be considered to be sales to additional purchasers.

(H) The issuer or dealer shall maintain or cause to be maintained books and records which reflect all material transactions involving the sale of securities under division (Q) of section 1707.03 of the Revised Code which are part of the same offering for a period of four years after the date of the last sale in that offering.

(I) Each dealer involved in the sale of securities under divisions (O) or (Q) of section 1707.03 of the Revised Code shall maintain books and records which reflect all material transactions by such dealer or affiliated salesmen involving such securities which are part of the same offering for a

period of four years after the date of the last sale in that offering.

(J) The issuer or dealer shall file with the division of securities a report of sales on form 3-Q not later than sixty days after each purchase of a security under division (Q) of section 1707.03 of the Revised Code. All sales within such sixty day period which have not been reported on a prior form 3-Q may be included in such form 3-Q.

Section 1707.091

"(A) Any security for which a registration statement has been filed pursuant to section 6 of the Securities Act of 1933 or for which a notification form or offering circular has been filed pursuant to Regulation A of the general rules and regulations of the Securities and Exchange Commission, 17 C.F.R. sections 230.251 to 230.256 and 230.258 to 230.263, as amended before or after the effective date of this section in connection with the same offering may be registered by coordination.

(B) A registration statement filed by or on behalf of the issuer under this section with the division of securities shall contain the following information and be accompanied by the following items in addition to the consent to service of process required by section 1707.11 of the Revised Code.

(1) Three copies of the latest form of prospectus or offering circular and notification filed with the Securities and Exchange Commission;

(2) If the division of securities by rule or otherwise requires, a copy of the Articles of Incorporation and Code of Regulations or Bylaws, or their substantial equivalents, as currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the division of securities requests, any other information, or copies of any other documents, filed with the Securities and Exchange Commission;

(4) An undertaking by the issuer to forward to the division, promptly and in any event not later than the first business day after the day they are forwarded to or thereafter are filed with the Securities and Exchange Commission, whichever occurs first, all amendments to the federal prospectus, offering circular, notification form, or other documents filed with the Securities and Exchange Commission, other than an amendment that merely delays the effective date;

(5) A filing fee of twenty-five dollars;

(C) A registration statement filed under this section becomes effective either at the moment the federal registration statement becomes effective or at the time the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the Securities and Exchange Commission, if all of the following conditions are satisfied:

(1) No stop order is in effect, no proceeding is pending under section 1707.13 of the Revised Code, and no cease and desist order has been issued pursuant to section 1707.23 of the Revised Code;

(2) The registration statement has been on file with the division for at least fifteen days or for such shorter period as the division by rule or otherwise permits; provided, that if the registration statement is not filed with the division

within five days of the initial filing with the Securities and Exchange Commission, the registration statement must be on file with the division for thirty days or for such shorter period as the division by rule or otherwise permits.

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file with the division for two full business days or for such shorter period as the division by rule or otherwise permits and the offering is made within those limitations;

(4) The division has received a registration fee of one-twentieth of one per cent of the aggregate price at which the securities are to be sold to the public in this State, which fee, however, shall in no case be less than twenty-five or more than five hundred dollars.

(D) The issuer shall promptly notify the division by telephone or telegram of the date and time when the federal registration statement became effective, or when the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the Securities and Exchange Commission, and of the contents of the price amendment, if any, and shall promptly file the price amendment.

"Price Amendment" for the purpose of this division, means the final federal registration statement amendment that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

If the division fails to receive the required notice and required copies of the price amendment, the division may enter a provisional stop order retroactively denying effectiveness to the registration statement or suspending its effectiveness until there is compliance with this division, provided the division promptly notifies the issuer or its representative by telephone or telegram, and promptly confirms by letter or telegram when it notifies by telephone, of the entry of the order. If the issuer or its representative proves compliance with the requirements of this division as to notice and price amendment filing, the stop order is void as of the time of its entry. The division may by rule or otherwise waive either or both of the conditions specified in divisions (C)(2) and (3) of this section. If the federal registration statement becomes effective, or if the offering may otherwise be commenced in accordance with the rules, regulations, or order of the Securities and Exchange Commission, before all of the conditions specified in divisions (C) and (D) of this section are satisfied and they are not waived by the division the registration statement becomes effective as soon as all of the conditions are satisfied.

If the issuer advises the division of the date when the federal registration statement is expected to become effective, or when the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the Securities and Exchange Commission, the division shall promptly advise the issuer or its representative by telephone or telegram, at the issuer's expense whether all of the conditions have been satisfied or whether the division then contemplates the institution of a proceeding under section 1707.13 or 1707.23 of the Revised Code, but such advice does not preclude the institution of such a proceeding at any time.

Rule 1301:6-3-09.1

"(A) A registration statement under section 1707.091 of the Revised Code, shall contain the following information and be accompanied by the following documents in addition to the information specified in division (B)(1) and (B)(4) of the Revised Code, and the consent to service of process required by section 1707.11 of the Revised Code, unless the commissioner in a specific instance permits otherwise:

(1) A copy of the articles of incorporation and code of regulations or by-laws, or their substantial equivalent, as currently in effect.

(2) A copy of any agreements with or among underwriters.

(3) A copy of any indenture or other instrument governing the issuance of the security to be registered.

(4) A specimen or copy of the security and, if requested by the division of securities, any other information or copies of any other documents filed with the securities and exchange commission.

(B) The division may issue a stop order denying the effectiveness of the registration statement or suspending its effectiveness, provided the division promptly notifies the issuer or its representative by telegram or telephone, and promptly confirms, when it notifies by telephone, by letter or telegram, if the division finds that the business of the issuer is fraudulently conducted, that the proposed offer or disposal of securities is on grossly unfair terms, or that the plan of issuance and sale of securities would defraud or deceive, or tend to defraud or deceive purchasers. The stop order shall set forth the reasons for such order. When the issuer has complied with the requirements of the division, the division shall promptly notify the issuer or its representative by telegram or telephone, and promptly confirm, when it notifies by telephone, by letter or telegram that the stop order has been terminated. The stop order shall then be void as of the time of entry.

(C) The commissioner of securities or his designate may by order in a specific instance permit, pursuant to divisions (C)(2) and (C)(3) of section 1707.091 of the Revised Code, a reduction of the time period, prior to effectiveness, during which a registration statement, and a statement of the maximum and minimum proposed offering prices and the maximum underwriting discount and commissions are required to be on file with the division to such shorter period as he or his designate may deem appropriate.

(D) If the issuer or its representative pursuant to division (D) of section 1707.091 of the Revised Code, notifies the division of securities by telephone of the date and time when the federal registration statement became effective or when the offering may otherwise be commenced in accordance with the rules, regulations or orders of the securities and exchange commission, and of the contents of the price amendments, if any, it shall promptly, and in any event not later than the first business day after the day on which the telephone notification was made, confirm the information conveyed in such telephone notification by letter or telegram.

Criminal Cases

1. In the case of State of Ohio vs. Gerald Cain, Gerald Cain was indicted in Columbiana County during the week of April 24, 1978. He has subsequently pled guilty to the sale of unregistered securities. Cain raised over \$200,000 through the sale of unregistered common shares and notes. Cain is awaiting sentencing in Columbiana County.

2. John Miodragovic was indicted on March 20, 1979 in Cuyahoga County for the sale of unregistered securities, misrepresentation, and theft by deception. Miodragovic solicited investors in Country Jewelers of Westlake Inc. to become part owners of jewelry stores. He represented that he would effect registration of the sales and formation of the corporation which never occurred.

3. Indictments were returned in Auglaize County against Tyree Gibson, James Krisinger, Paul Ash. These individuals, principals in AKG Oil and Gas No. 1 Ltd., sold limited partnership interests which had not been registered with the Division. Neither had they obtained a broker-dealer license as required under the Ohio Securities Act. These same principals have also been involved in similar sales of unregistered interests in KAGS Oil and Gas No. 1 Ltd. and KA Oil and Gas No. 1 Ltd. Over \$870,000 has been raised through these partnerships. In addition to the above individuals an indictment has also been returned against Paul Thobe who acted as a salesman for the limited partnership interests.

Civil Action

J. Gordon Peltier, et al. v. Condo-Mobile, Inc., et al., Franklin County Common Pleas Court, Case No. 77CV-03-1323, was filed against two corporations, Condo-Mobile, Inc. and National Management, Inc., and numerous individual defendants for violations of the Ohio Securities Act. Among other things, the complaint alleged that the defendants were unlicensed brokers selling unregistered securities in the form of investment contracts. A temporary restraining order was obtained against the defendants restraining them from the above sales. The defendants, however, continued to sell the investment contracts and, as a result, the plaintiffs filed a contempt action for violation of the temporary restraining order and a motion for the appointment of a receiver in accordance with Ohio Revised Code Section 1707.27 for Condo-Mobile, Inc. and National Management Inc. After a protracted procedural struggle with the appropriate appeals, a hearing was conducted on the above matters. Judge Fais presided at the hearing and took the matter under advisement. On April 9, 1979, a decision was rendered by Judge Fais finding the defendant corporations in contempt of the temporary restraining order and ordering that an operating receiver be appointed for the defendants Condo-Mobile, Inc. and National Management, Inc.

The receiver will be appointed and appropriate fines imposed at a hearing scheduled for May 14, 1979.

Administrative Actions

On January 26, 1979, the Division suspended the exemption of Gentry Oil and Gas Limited, No. 1. The basis of this suspension was the language in Sections 1707.13 which allows the Division to "suspend the registration by description or by qualification of any securities, or the right to any dealers or of the issuer, or of both, to buy, sell, or deal in any particular security whether it is registered, qualified, or exempt or even though transactions in it are registered or exempt, if the division finds that the issuer has violated sections 1707.01 to 1707.45, inclusive, of the Revised Code,....has fraudulently conducted its business, or has been engaged or about to engage in deceptive or fraudulent acts, practices, or transactions; that such security is being disposed of or purchased on grossly unfair terms, in such manner as to deceive or defraud or as to tend to deceive or defraud purchasers or sellers,...."

Gentry Oil and Gas Limited No. 1, through its general partner, Gentry Oil Co., Inc., and its principal Fred Ross, sold limited partnership interests to investors on the basis of private offering memorandum. This memorandum was obtained through an examination by the Division. On the basis of this memorandum, 14 separate terms were deemed to be grossly unfair by the Division. A hearing was held, the hearing officer's report upheld the suspension as did the final Order of the Commissioner.

The unique element of this process was the suspension of an offering exempt under Section 1707.03(Q). This suspension of a private offering exemption is the first since the 1978 amendments to the Securities Act became effective. It is also worth noting that this action occurred prior to the filing of a report of sale and arose through the normal complaint and examination procedures.

Referrals

Subsequent to the Cease and Desist Order issued March 28, 1979 to James Todd and Petro-Oil Co., Inc., the case has been referred to the Attorney General. The Division seeks a permanent injunction. The company solicited sales through the use of mailed advertising prior to the qualification of its offering.

ENFORCEMENT ACTION

NAME OF COMPANY OR INDIVIDUAL	ACTION TAKEN	DATE	CAUSE FOR ACTION
1. Tri-State Properties (Licensed Broker-Dealer)	Suspension and Notice of Opportunity for Hearing	January 2, 1979	Failure to maintain adequate books and records. Failure to maintain net worth requirement.
2. Silver Springs Shores (Licensed Broker-Dealer)	Suspension and Notice of Opportunity for Hearing	January 3, 1979	Insufficient net worth
2a. Silver Springs Shores	Termination of Suspension	March 23, 1979	Net worth requirement
3. Financial Directors Securities Corp.	Vacation of Suspension	January 18, 1979	Established adequate books and records. Maintained adequate net worth. Submitted current financial report.
4. Lark Bargo (Applicant FRE Sales License)	Refusal and Notice of Opportunity for Hearing	January 24, 1979	Not of good business repute. Fraudulently completed application form.
4a. Lark Bargo	Refusal of License	March 19, 1979	Applicant filed no objection to findings of hearing officer that license be denied.
6 5. Scarlet & Gray Agency (Licensed Dealer FRE)	Suspension and Notice of Opportunity for Hearing	January 25, 1979	Failure to submit certified annual financial statement
5a. Scarlet & Gray Agency	Vacation of Suspension	March 6, 1979	Statement submitted
6. Gordon L. Platt (Applicant FRE Sales License)	Refusal and Notice of Opportunity for Hearing	February 16, 1979	Not of good business repute
7. First Scioto Company (Licensed Securities Dealer)	Revocation of License	March 7, 1979	Failure to maintain adequate books and records. Failure to file financial statement
8. Gersten Investments, Inc. (Licensed Securities Dealer)	Suspension and Notice of Opportunity for Hearing	April 12, 1979	Insufficient net worth
9. Nicholas R. Wilson (Applicant Securities Sales License)	Refusal and Notice of Opportunity for Hearing	April 13, 1979	Not of good business repute. Has engaged in fraudulent acts in connection with sale of securities.
10. Monaterra Investment Corp. (License Securities Dealer)	Suspension and Notice of Opportunity for Hearing	April 18, 1979	Failure to comply with the lawful order and requirement of the Division
11. Chester L. Gerig, Jr. (Licensed Securities Salesman)	Suspension and Notice of Opportunity for Hearing	April 18, 1979	Failure to comply with the lawful order and requirement of the Division

ENFORCEMENT ACTION (Cont.)

NAME OF COMPANY OR INDIVIDUAL	ACTION TAKEN	DATE	CAUSE FOR ACTION
12. Lord Abbott Income Fund, Inc. (Form 9 registration)	Suspension of Registration Section 1707.13	April 24, 1979	Grossly unfair terms
13. Gene Goldberg re: Apple Skateboard Park	Cease & Desist	September 22, 1978	Sale of unregistered securities
14. American Wholesale Bait, Inc.	Cease & Desist	October 10, 1978	Sale of unregistered securities
15. Shawnee Capital Corporation	Cease & Desist	December 22, 1978	Unapproved advertising, false representation on registration
16. Shawnee Capital Corporation	Termination of C & D	January 24, 1979	Prior registration unlisted constituting violations were withdrawn; company submitted affidavit admitting violations and affirming no sales, following original Cease and Desist
17. Gentry Oil and Gas Limited No. 1 Gentry Oil Co., Inc.	Cease & Desist; Notice of Suspension and Opportunity for Hearing	January 26, 1979	Sale of securities on grossly unfair terms
18. Gentry Oil Co., Inc.	Cease & Desist	February 6, 1979	Sale of unregistered securities. Sale of securities by unlicensed dealer, misrepresentation
19. Jim Roberts Pipe & Plastics Corporation	Cease & Desist	February 22, 1979	Failure to submit advertising for approval
20. Auction America Corporation	Cease & Desist	March 8, 1979	Sale of securities by unlicensed salesman. Sale of unregistered Securities
21. Nunhahda Foundation, Inc.	Cease & Desist	March 12, 1979	Sale of unregistered securities
22. Jim Roberts Pipe & Plastics Corporation	Termination of C & D	March 13, 1979	Submitted affidavit admitting violations and affirming no sales subsequent to original Cease and Desist
23. Secret Springs, Incorporated	Cease & Desist	March 16, 1979	Sale of securities by unlicensed salesman
24. Petro Oil Co., Inc. James G. Todd, Pres.	Cease & Desist	March 28, 1979	Sale of unregistered securities, unapproved advertising
25. Efficiency Systems, Inc.	Cease & Desist	April 4, 1979	Material misrepresentation in offering circular
26. Efficiency Systems, Inc.	Suspension and Notice of Opportunity for Hearing	May 9, 1979	Insufficient net worth. Failure to submit audited financials

ENFORCEMENT ACTION (Cont.)

NAME OF COMPANY OR INDIVIDUAL	ACTION TAKEN	DATE	CAUSE FOR ACTION
27. AKG Oil and Gas Company "A" Ltd.	Cease & Desist	May 8, 1979	Sale of unregistered securities. Misrepresentation in offering material
28. KAGS Oil and Gas Company "A" Ltd.	Cease & Desist	May 8, 1979	Sale of unregistered securities. Misrepresentations in offering material
29. KA Oil and Gas Company "A" Ltd.	Cease & Desist	May 8, 1979	Sale of unregistered securities. Misrepresentations in offering material
30. Paul B. Thobe	Cease & Desist	May 8, 1979	Sale of securities without license. Sale of unregistered securities
31. Jojoba Oil International, Inc.	Cease & Desist	March 22, 1979	Sale of unregistered securities

STATISTICS

Summary of Statistics for January, February, March, and April, 1979

	January	February	March	April
<u>BROKER-DEALER SECTION</u>				
Applications Received:				
Securities Broker-Dealer (Form 15)	6	9	9	8
Foreign Real Estate Broker-Dealer (Form 331-A)	1	0	0	0
Securities Salesman (Form 16)	260	209	255	199
Foreign Real Estate Salesman (Form 331-B)	14	19	117	9
Licenses Issued:				
Securities Broker-Dealer (Form 15)	3	3	2	9
Foreign Real Estate Broker-Dealer (Form 331-A)	0	0	0	0
Securities Salesman (Form 16)	524	88	238	141
Foreign Real Estate Salesman (Form 331-B)	11	12	33	17
↺ Licenses Cancelled:				
Securities Broker-Dealer (Form 15)	1	2	9	1
Foreign Real Estate Broker-Dealer (Form 331-A)	0	0	0	0
Securities Salesman (Form 16)	123	79	82	58
Foreign Real Estate Salesman (Form 331-B)	0	2	0	3
Licenses Withdrawn:				
Securities Broker-Dealer (Form 15)	2	0	7	2
Foreign Real Estate Broker-Dealer (Form 331-A)	0	0	0	1
Securities Salesman (Form 16)	31	23	36	65
Foreign Real Estate Salesman (Form 331-B)	1	0	1	2
<u>ENFORCEMENT SECTION:</u>				
Inquiries				
Received or Assigned	211	140	232	169
Terminated or Closed	199	152	232	166
Active Cases:				
Received or Assigned	0	0	4	0
Terminated or Closed	0	0	0	0
Pending at end of the Month	171	171	175	175

Summary of Statistics for January, February, March, and April, 1979

	January	February	March	April
<u>ENFORCEMENT SECTION (Cont.):</u>				
Administrative Activities:				
Cease and Desist Orders	2	0	4	0
Subpoenas	15	12	39	16
Hearings	2	12	5	16
Investigative Interviews and Conferences	45	26	43	32
<u>EXAMINATION SECTION:</u>				
Broker-Dealer Examinations	22	22	25	24
Registration Examinations, i.e.				
3's and 6's	12	28	36	37
9's	3	7	14	3
Other Securities	1	2	11	13
<u>REGISTRATION SECTION:</u>				
Applications Received:				
2(B)	26	31	61	50
3-O	652	803	890	762
3-Q	159	74	57	60
5(A)	1	0	0	0
6(A)(1) & 6(A)(2)	116	123	145	103
6(A)(3)	13	14	30	26
6(A)(4)	2	8	15	9
Interstate Corporate	10	17	32	19
Stock Option & Purchase Plan	8	4	3	6
Intrastate Corporate	2	3	1	4
Investment Companies	32	33	49	27
R.E.I.T.	0	0	0	0
Real Estate Ltd. Partnerships	7	1	6	8
Cattle Funds	0	0	1	0
Other Non-Corporate	2	1	0	0
Oil & Gas Offerings	17	17	29	11
Form 33's Foreign Real Estate	0	0	0	0
Form 39's	17	16	28	25

Summary of Statistics for January, February, March, and April, 1979

	January	February	March	April
REGISTRATION SECTION (Cont.):				
Certificates and/or Orders Issued:				
2(B)	33	15	49	32
3-O	*685	*526	*961	*754
3-Q	* 75	* 28	* 78	* 48
5(A)	2	1	0	0
6(A)(1) & 6(A)(2)	190	114	117	87
6(A)(3)	13	8	6	27
6(A)(4)	5	2	9	12
Interstate Corporate	5	31	12	26
Stock Option & Purchase Plan	1	5	2	2
Intrastate Corporate	0	2	0	0
Investment Companies	19	60	46	40
R.E.I.T.	0	0	0	0
Real Estate Ltd. Partnerships	3	5	8	3
Cattle Funds	0	0	0	0
Other Non-Corporate	0	0	0	0
Oil & Gas Offerings	19	11	24	13
Form 33's Foreign Real Estate	0	0	0	0
Form 39's	6	17	43	26

*Filings Approved – (Certificates not required).

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES
180 EAST BROAD STREET
COLUMBUS, OHIO 43215
Equal Opportunity Employer

