

# Ohio Securities Bulletin



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*Director of Commerce*

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*Commissioner of Securities*

Issue 1 — 1980

## ANNOUNCEMENTS

### Division Sues Securities and Exchange Commission

On February 15, 1980, the Ohio Division of Securities filed suit against the Securities and Exchange Commission in the U. S. District Court for the Southern District of Ohio, Eastern Division. The suit asks that the Court declare that the Ohio Tender Offer Act, Section 1707.041, O.R.C., is not invalidated by certain tender offer regulations, (17 CFR sections 240.14d-1 et. seq.) recently promulgated by the Securities and Exchange Commission and to declare the S.E.C.'s Rule 14-d-2 invalid.

### December Rule Proposals Adopted

On January 8, 1980, the Division conducted a public hearing on the rule proposals outlined in the last edition of the Ohio Securities Bulletin. No adverse comment or testimony was received. The rule proposals were adopted without modification on February 12, 1980 and became effective on February 22, 1980.

### Testing Legislation — S.B. 363.

Senate Bill 363, introduced on February 27, 1980, will, if adopted, amend sections 1707.15, 1707.16 and 1707.17 of the Revised Code in such a manner as to enable the Division of Securities to participate in the acceptance of the Uniform State Law Exam administered by the N.A.S.D. The proposed language would enable the Division to specify, by rule, the types of examinations to be given to applicants.

The bill would also eliminate the requirements of personal references and publication of notice by salesman and dealers applicants. Upon passage, the Division of Securities will be able to accept the U-4 application form without supplement.

Dealers and salesmen are urged to contact their state representatives and senators to speed passage of this legislation.

### Advisory Committees Meet

During the month of January, the first meetings of the Advisory Committees were held in Columbus. The names of

the members of each committee appear on the attached appendix. Readers are urged to contact the Division of Securities or these individuals with suggestions as to agenda items. The Division proposes to conduct a securities seminar in September. Additional information on this seminar will be provided in the next issue of the Ohio Securities Bulletin.

### RECENT TENDER OFFERS

#### AMCA v. Warner & Swasey

As reported in the last edition of the Ohio Securities Bulletin, on October 19, 1979, AMCA International Corporation (AMCA) filed suit in the U. S. District Court for the Southern District of Ohio, Eastern Division against the Ohio Division of Securities and Warner & Swasey Company seeking a declaratory judgement that section 1707.041 (the take-over statute) is null and void, both on its face and as applied, because it violates the Constitution of the United States and is pre-empted by the Securities and Exchange Act of 1934.

On December 21, 1979, Judge Joseph P. Kinneary ruled in favor of the Division of Securities. He ruled that the Ohio take-over statute has not been pre-empted by federal law and does not impose an impermissible burden on interstate commerce in violation of the commerce clause of the United States Constitution.

Following the hearings held by the Division of Securities on the AMCA - Warner & Swasey take-over, the Hearing Officer on December 11, 1979 issued her report which called for certain additional and amended disclosures. On that same day, Bendix Corporation announced its offer to buy a portion of the shares of Warner & Swasey for \$70 per share. On December 14, 1979, AMCA increased its offer to \$75 per share. Hours later, Bendix increased its offer to \$83 per share. AMCA subsequently withdrew from the bidding.

#### MCA Recreation Enterprises v. Cedar Point

On December 4, 1979, MCA filed a form .041 in connection with its offer to acquire 11% of the outstanding shares

of common stock of Cedar Point, Inc. MCA previously owned 9% of the outstanding common stock of Cedar Point. On December 11, 1979, Cedar Point requested a hearing under section 1707.041. On December 14, 1979, the Ohio Division of Securities issued an order finding that "no cause" for a hearing existed.

On December 18, 1979, Cedar Point appealed this order in the Court of Common Pleas of Franklin County and sought a temporary mandatory injunction directing the Division of Securities to conduct a hearing. On December 21, 1979, Judge Marshall rendered a decision denying the request for an injunction. This decision was appealed by Cedar Point.

On January 10, 1980, the Court of Appeals of Franklin County issued its decision in favor of the Division of Securities.

#### Offering Memoranda - Form 3-Q

The Enforcement Staff of the Division of Securities has noted a distinct increase in the number of violations of private offering law by issuers claiming exemption under 1707.03(Q) of the Revised Code.

Discussions with the Enforcement Staffs of other states confirm that abuse of the private offering exemption is most frequent in mineral offerings (oil, gas, coal, etc.)

Accordingly, the Division will conduct examinations of all mineral issuers claiming exemption under 1707.03(Q). In addition, the Offering Memorandum used to sell such offerings will be a required submission with each Form 3-Q.

#### STATISTICS

The Division has compiled statistics on the number of registrations and claims of exemption received in recent years. A comparison of 1978 and 1979 is presented below. Overall, filings increased in 1979 with the largest gains occurring in forms 3-O, 3-Q, 39 and investment company form 9's. Significant decreases occurred in the use of form 6, registrations by description.

FILING	1979	1978
2-B	649	552
3-O	9,175	7,481
3-Q	990	130
5-A	4	13
6(A)(1) & (2)	1,414	2,450
6(A)(3)	231	403
6(A)(4)	75	83
9's	1,370	1,261
33's	6	34
39's	230	157
<b>TOTALS</b>	<b>14,144</b>	<b>12,564</b>
<b>BREAKDOWN OF 9's</b>	<b>1979</b>	<b>1978</b>
Investment Companies	526	407

Oil and Gas	315	304
Real Estate	81	150
Stock Option/Purchase Plans	71	46
Interstate Corporate	319	301
Intrastate Corporate	23	30
REIT	6	1
Cattle	4	6
Other Non-Corporate	25	16
<b>TOTALS</b>	<b>1,370</b>	<b>1,261</b>

#### REGISTRATION SECTION MEMBERS

For the convenience of practitioners, the names of the members of the Registration Section are presented below, together with their review responsibilities. Questions concerning the preparation of a filing should be directed to the examiner responsible for its review. All examiners may be reached via (614) 466-3440.

There are nine examiners assigned to the Registration Section, four of whom are attorneys.

1. Bob Bibler, Financial Institutions Examiner and Supervisor of the Registration Section. Forms 2-B and 5-A.
2. Kathy Veach, Financial Institutions Examiner. Forms 3-O and 6(A)(1), (2), and (4).
3. Bill Henry, Attorney Examiner. Limited Partnerships, Non-profit organizations, and Form 6(A)(3).
4. Sid Silvian, Attorney Examiner. Corporate Form 9.
5. Greg Neuman, Financial Institutions Examiner. Form 3-Q and Oil and Gas.
6. Jim Warneka, Financial Institutions Examiner. Oil and Gas.
7. Gordon Stott, Financial Institutions Examiner. Form 39.
8. Bob Lindwall, Attorney Examiner. Foreign Real Estate.
9. Andy Federico, Attorney Examiner. Investment Companies.

#### INQUIRIES

The Division of Securities receives a number of inquiries relating to Chapter 1707, O.R.C. In this section of the Bulletin, the Division will print its response to some of the most frequently asked questions.

- Q. In a civil action involving the sale of unregistered securities, is it necessary to subpoena the Division of Securities to establish the unregistered character of the securities?
  - A. No, section 1707.30, O.R.C. authorizes the admission of a certificate reciting the non-existence of a registration statement or effective claim of exemption.

Q. May an issuer offer to purchase its outstanding securities without first obtaining a dealer's license?

A. Generally, yes. The answer depends upon the application of 1707.14(B), O.R.C. which reads in part as follows:

"(b) No person shall sell securities within this state or engage in the business of buying, selling, or dealing in securities otherwise than in transactions through or with a licensed dealer, unless such person is licensed as a dealer . . ."

Key questions are whether the activity of buying securities from present holders occurs frequently, and the securities are purchased for resale at a profit to the issuer.

Q. May an individual publicly offer to purchase the shares of a particular corporation without obtaining a dealers license if the offer does not constitute a tender offer under section 1707.041, O.R.C.?

A. Generally, yes. The answer depends upon the application of 1707.14(B), O.R.C. which reads in part as follows:

"(b) No person shall sell securities within this state or engage in the business of buying, selling, or dealing in securities otherwise than in transactions through or with a licensed dealer, unless such person is licensed as a dealer . . ."

If the individual is buying for his own account and not with a view toward resale to the public, this activity of purchasing will not be viewed by the Division as en-

gaging in the business of buying and selling securities in this state.

Q. Is it mandatory that a corporation owning real estate which is the subject of an application pursuant to section 1707.33 of the Ohio Revised Code be qualified to transact business in Ohio?

A. Yes, section 1707.33(B)(3) of the Ohio Revised Code mandates that the applicant submit proof that it is qualified to do business in this state.

Q. Are the securities of a bank organized under the laws of another state exempt from registration?

A. Yes. Section 1707.02(C) of the Revised Code specifically exempts banks from registration. It should be noted, however, that the bank is not similarly exempt from dealer licensure under section 1707.14, O.R.C. Only subsections (G) and (I) in 1707.02 pertaining to commercial paper not publicly offered and equity securities of non-profit organizations respectively will qualify an issuer from exemption from the dealer licensing requirement.

#### ENFORCEMENT SECTION (December through February)

12/21/79 Cease and Desist Order to Holiday Towers, Inc. for the sale of unregistered condominium units to Ohio residents through unlicensed personnel.

2/26/80 Termination of suspension of the license of N. E. Issacson of Michigan, Inc. as a dealer in foreign real estate. Said dealer did not review its license for 1980.

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### APPENDIX

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