

OHIO SECURITIES BULLETIN

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Governor

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Mark V. Holderman
Commissioner of Securities

Commodity Futures: An Introduction for Securities Professionals

by Richard M. Spector, Esq.

Investment professionals and most attorneys are familiar with federal and state regulation of securities, but even the most experienced securities professionals are likely to be unfamiliar with the rudiments of commodity futures.

Few attorneys will ever be involved in representing clients in the commodities business. Few brokers, financial planners or investment advisors have clients who specialize in commodities investments. However, whatever their area of specialization, they may have clients who trade commodities, invest in commodity pools, hedge their business needs in the futures market, or seek redress from a commodities professional who mistraded their accounts.

The Basics: While similar in many respects to the regulation of securities, commodity futures regulation has many distinct features not found in the securities laws.

Specifically, the trading of commodity futures contracts is the activity that is regulated, and that regulation is provided by the Commodity Futures Trading Commission (CFTC), a federal agency similar to The

Securities and Exchange Commission (SEC). The Commodity Exchange Act is the source of the CFTC's authority, and it establishes a regulatory context similar to that of the 1933 Securities Act and the 1934 Securities Exchange Act for the SEC. Similarly, the commodities futures industry has a self-regulatory organization comparable to the National Association of Securities Dealers, Inc. (NASD); the National Futures Association (NFA).

The terms "futures" and "commodities" are both loosely used interchangeably to mean "commodity futures." Initially, commodities were limited to corn, pork bellies, and other agricultural products, but since the 1970's, the meaning of the term has grown to include United States Treasury bonds, foreign currencies, gold, crude oil, fertilizer, and many other nonagricultural items. Over 60 commodities have been designated by the CFTC as eligible for trading, although less than 30 have active markets.

A futures contract is an agreement by which one party agrees to sell, and another party agrees to buy a specified amount of a commodity for a

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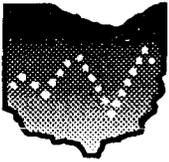
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specified price at a fixed future date. There are a half dozen or so major futures exchanges in the United States where futures contracts are traded. The most well-known are the Chicago Board of Trade, the Chicago Mercantile Exchange, the New York Mercantile Exchange, and the Commodity Exchange (New York).

The exact terms and conditions of each futures contract are set by the exchange on which it is traded, and must be approved by the CFTC. Typically, only certain minimum quantities and months of future delivery are traded. For example, Japanese yen futures are traded on the Chicago Mercantile Exchange in contracts for 12,500,000 yen for future delivery on a specified day in the following March, June, September, and December.

Although the terminology is different, the procedure for making a commodity futures trade is similar to that for a securities transaction. A person wishing to purchase a contract for the delivery of 12,500,000 Japanese yen for the following December enters an order through their commodity broker to buy "one December Japanese yen." A person wishing to sell one yen contract the following December places an order to sell "one December Japanese yen."

There is, however, a major difference between commodity trading and stock trading. Because the yen orders involve

only future commitments, the buyer or seller is only required to put up a margin amount, called "good faith money," to be able to enter the trade. Typically, the margin is only five percent or less of the value of

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the contract. Minimum margins are set by the exchanges (individual brokers may require larger margins) and are frequently changed, but, as a result, a yen contract for \$100,000 worth of yen can generally be traded for a margin payment of approximately \$2,000.

It is easy to see that a very small percentage move in the

price of a commodity can cause the value of a contract to vary by the entire margin amount or more. Hence, very large percentage gains or losses are possible in short time periods. It is precisely this volatility that draws traders to the futures market, and which necessitates close regulation. In addition to the regulation of the commodity exchanges and their on-floor traders, regulation of the industry falls into three broad areas: 1) brokers, 2) commodity trading advisors, and 3) commodity pools. These three are directly comparable to securities brokers, investment advisors, and mutual funds in the securities context.

Licensing by the CFTC: The only regulatory bodies governing commodities trading are the CFTC and the NFA. The CFTC was established by the Commodity Futures Trading Commission Act of 1974 which amended and completely overhauled the Commodity Exchange Act. The Commodity Exchange Act is the sole federal

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regulatory statute governing commodities futures, and its history can be traced back to its inception as the Grain Futures Act of 1922. Unlike the regulation of securities, where Blue Sky Laws provide a direct corollary in state law to federal statutes, there is no counterpart in Ohio law to the Commodity Exchange Act.

Brokers solicit commodity trades from, or place trades for, customers. Brokers are of two types. Futures commission merchants (FCM's) are allowed to handle customer funds, may be clearing members of an exchange, must meet substantial net capital requirements, and are, in effect, self-contained. Introducing brokers (IB's) are prohibited from handling customer funds, must arrange to clear their trades through an FCM, and are required to maintain little or no net capital.

All FCM's and IB's are licensed by the CFTC and must be members of the NFA. Each director, officer, 10 percent stockholder, and every other natural person engaged in the broker's activities must be licensed by the CFTC and the NFA as an associated person (AP).¹

In the securities industry there are a variety of levels of registered representatives. In addition, a registered broker must have at least one person, and sometimes more, qualified as a principal. In the commodities industry, however, there is only one type of "associated person" and an IB or FCM need not have principals or employees who fulfill different levels of expertise. A single qualifying exam, the Series 3, is administered by the NASD for the

CFTC.

Persons who wish to qualify as commodity trading advisors (CTA's), analogous to securities investment advisors, must register as such with the CFTC and NFA unless one of a limited class of exemptions is available. CTA's are those who, for compensation, directly or indirectly, provide trading advice to, or manage trades for, customers or who promulgate analyses or reports containing such advice. Again, the same Series 3 exam suffices for the principals of an entity CTA, or the CTA itself if

A major difference between the regulation of securities and commodities investment advisors is that a CTA must give customers an extensive disclosure of his or her "track record" during the last three years.

he is a sole proprietor. A CTA may not trade for clients or advise clients unless an extensive disclosure document in the prescribed form is given to such clients.

A major difference between the regulation of securities and commodities investment advisors is that a CTA must give customers an extensive disclosure of his or her "track record" during the last three years. This is a lengthy and cumbersome disclosure and is often misleading. Because it is, in fact, difficult for a number of technical reasons to accurately summarize a performance

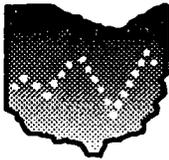
record of commodity trading statistically, this disclosure requirement has caused a great deal of difficulty in the commodities industry. Recently, the CFTC relaxed the disclosure rules to allow any of the three (rather than one) different methods to be used to summarize past performance records. However, this change may have served only to confuse matters further.

Commodity pools are, in effect, mutual funds for commodities investment. The commodity pool operator (CPO) must be registered with the CFTC and the NFA, but, unlike the specific requirements of the Investment Company Act of 1940 for mutual funds, there are no specific registration requirements for commodity pools. However, the CPO must file its pool offering document with the CFTC at least 21 days prior to use.

The pool offering document must present extensive disclosures, including a performance record disclosure for the CPO and any CTA who advises the pool. Typically, the pools are structured as limited partnerships with the CPO as a general partner. Therefore, the limited partnerships are also securities subject to state and federal securities laws. With input and cooperation from the commodities industry, the North American Securities Administrators Association (NASAA) has adopted extensive commodity pool guidelines for public pool offerings.²

Unlike the requirement in the Investment Company Act of 1940 that a mutual fund itself must be registered as an Invest-

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ment Company, commodity pools themselves are not registered with the NFA or the CFTC. The CPO is the entity that is registered whether or not it makes the trading decisions. It is the solicitation of investors that requires the CPO to be registered. There is no analogous securities registration for the operator of a mutual fund unless it operates as the investment advisor to the fund.

Customer Accounts: For retail customer accounts, concepts such as fraud, churning, and suitability exist in commodity futures law as well as in securities law. However, the definition and scope of those concepts can be quite different. There is also a CFTC reparations remedy available to commodity accounts customers which has no securities analogue.

Because of inherent differences, account activities that would clearly be churning in a securities account may be routine in a commodities account. Monthly commissions are much higher in commodity accounts as a percentage of the account balance. The typical duration of commodities trades is also much shorter than in securities trades—hours or days as opposed to weeks or months.

Despite recent reports of cases where commodities customers have had hearing findings overturned by the CFTC, there is a straight-forward process in

the CFTC for an aggrieved customer of an FCM or IB to file a complaint for reparations. The complaint may be filed informally by letter. A judgment officer or an administrative law judge hears the complaint depending on whether the amount involved exceeds \$10,000 and whether one party wants a summary proceeding. The complainant may appear or be represented by counsel. The

Account activities that would clearly be churning in a securities transaction may be routine in a commodities account.

hearing officer may make a monetary award or dismiss the matter. Appeal may be taken to the CFTC and, ultimately, to the courts.

Complaints may also be filed with the NFA but they can only trigger internal action by the NFA and do not result in awards to the customer. The NFA may impose a fine, suspension, or other disciplinary sanction in response to a public complaint.

Interestingly, the NFA makes it much easier for the public to find out the disciplinary history, if any, of its registered entities or representatives than does the NASD. A simple phone call to 1-800-621-3570

will elicit an immediate NFA and CFTC history of any disciplinary or reparations problems, including those in process. Finding the equivalent history from the NASD for a securities broker is not as easy and requires a cumbersome written inquiry.

This article will obviously not turn anyone into a commodities law expert. It should, however, provide a sufficient overview of the relevant regulatory aspects to enable the practitioner to know where to begin when a client with a commodities problem walks into the office.

Footnotes

1. The National Futures Association reports that Ohio has 124 Futures Commission Merchants, 59 Introducing Brokers, 50 Commodity Trading Advisors, 22 Commodity Pool Operators, and 201 NFA Members.
2. Ohio participated in the development of the NASAA Commodity Pool Guidelines and generally applies them to Commodity Pool Offerings. 

Richard M. Spector graduated from Harvard College in 1959 with a B.A. in Physics and received a D.Phil. degree (the British equivalent of a Ph.D.) in theoretical Physics from Oxford College in 1962. In 1978 he received his J.D. from Wayne State University, and he is admitted to the Bar in Michigan (1978) and Florida (1984).

Mr. Spector practices law in Miami, Florida where his practice focuses on corporate and securities law. Mr. Spector is of counsel to the firm of Adorno & Zeder, P.A., Suite 1600, 2601 S. Bayshore Drive, Miami, FL 33133.

New Forms Adopted by the Division

The Division of Securities has adopted new forms for the licensing of Securities Dealers and Salesmen, for Consent to Service of Process on the Secretary of State for license applicants located outside Ohio, and for Control Bid filings under Revised Code section 1707.041.

All four forms have been designed to make them easier to understand, complete, and record.

Form 15, "Securities Dealer License Application," has been revised to conform with new standards established in the amendments to Division Rule 1301:6-3-15, effective on January 17, 1992. Revised Code section 1707.15 is the statutory basis for the rule and the form. The new Form 15

clearly sets out the license examination standards which an applicant must meet before the Division will issue a license as an Ohio Securities Dealer.

Form 16, "Securities Salesman License Application," has also been revised to conform to amendments to the Division's Rules effective in January. In keeping with Revised Code section 1707.16 and Division Rule 1302:6-3-16, the new Form 16 specifies the license examinations which will qualify an applicant for licensing in Ohio as a Securities Salesman.

Form 11 retains the same general elements as previous Consents to Service of Process for out-of-state license applicants required by Revised Code section 1707.11, but the format

has been changed to allow a single, separate form to be used for both Dealer and Salesman license applications.

Revised Form 041 substantially amends the form for filing information pertaining to a Control Bid as required by Revised Code section 1707.041. The new form incorporates the Division's experience with previous control bid applications, and is cross-referenced to the Ohio Securities Act's control bid provisions.

Copies of the forms are available by writing the Ohio Division of Securities at 77 South High Street, 22nd Floor, Columbus, Ohio 43266-0548 or by calling (614) 644-7381.



PUBLIC NOTICE

At 10:00 a.m. on October 30, 1992 the Ohio Division of Securities will hold a hearing regarding proposed changes to O.A.C. Rules 1301:6-3-03, Rule 1301:6-3-09 and 1301:6-3-391 in the Ohio Division of Securities Conference Room, 22nd Floor, 77 South High Street, Columbus, Ohio 43215. The Division of Securities has proposed the following amendments to its rules:

Rule 1301:6-3-03 will be amended in accordance with R.C. 1707.03(V) to establish an exemption for pooled income funds which qualify as recipients of tax deductible contributions under section 642(c)(5) of the Internal Revenue Code of 1986.

Rule 1301:6-3-09 will be amended to incorporate the following changes: Printing errors in the final printed copy of the rule, effective on January 17, 1992, will be corrected; language removed in error from the final copy of the last line of Division (D)(12) regarding the suitability of certain investments by Investment Companies as defined in the Investment Company Act of 1940 will be replaced; Division (D)(12) will be amended to allow an increase from ten to fifteen percent of the investments by Investment Companies in restricted securities or the securities of issuers with less than three years of continuous operation; and Division (I) will be amended to enable the Division of Securities to accept form U-7 of the North American Securities Administrators Association, Inc. in conjunction with a form 9 filing made in reliance on rule 504 of Regulation D of the Securities and Exchange Commission.

Rule 1301:6-3-391 will be amended to incorporate the following changes: Printing errors in the final printed copy of the rule, effective on January 17, 1992, will be corrected; Division (A)(3) will be amended to clarify the definition of "date of sale" in for funds held in escrow; and Division (B)(2) will be amended to clarify the definition of "excusable neglect" as that term applies to filings under R.C. 1707.03(O).

Copies of the proposed rules may be obtained by contacting the Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43266-0548



Enforcement Section Reports

CRIMINAL CASE REPORTS

WESLEY ALLEN DOUGLAS CAMPBELL

On April 6, 1992, Wesley Allen Douglas Campbell of Upper Arlington, Ohio, pleaded guilty to 21 felony counts in Franklin County Common Pleas Court. The charges included one count of theft, 10 counts of forgery, and 10 counts of making false statements concerning the valuation of securities. One count of engaging in a pattern of corrupt activity was dropped. He was placed under electronic house arrest.

On June 26, 1990, Franklin County Common Pleas Judge Michael L. Close sentenced Campbell to the maximum time, five to fifteen years on the theft charge, and concurrent one-and-one-half year sentences on the other 20 counts.

The charges against Campbell, an investment advisor, arose out of complaints by investors who alleged that monies were not invested as promised by Campbell. Over \$3.5 million was taken from one Franklin County resident. Campbell relinquished his securities license to the Division.

The Office of Franklin County Prosecutor Michael Miller was assisted by Robert Holodnak, former Enforcement Section Staff Attorney, in the preparation of the case.

BRUCE SAMS

On May 5, 1992, Bruce Sams, whose last known address was Dublin, Ohio, was arraigned in Franklin County Common Pleas Court before Judge Michael L. Close. He entered a not guilty plea to six counts of selling unregistered securities and four counts of theft by deception.

A warrant was issued for Sams' arrest after he was indicted on December 9, 1991. He was picked up in Denver and he waived extradition to Franklin County. The trial is scheduled to begin on July 14, 1992.

The charges against Sams stemmed from the issuance of promissory notes to four investors by B&B Core Buyers, a company of which Sams falsely claimed to be President. He allegedly received \$150,000 from the investors after misrepresenting the company ownership to them.

This case was referred to the Office of Franklin County Prosecutor Michael Miller by Erwin J. Dugasz, Jr., Enforcement Section Staff Attorney.

ENFORCEMENT DIVISION ORDERS

ALFRED BOYCE CRAIG, JR. FORD CENTER, LTD. LANDMARKE PROPERTIES LIMITED II

On March 13, 1992, the Division issued Division Order 92-021, ordering Alfred Boyce Craig, Jr., Ford Center, Ltd., and Landmarke Properties Limited II, all of Cincinnati, Ohio, to cease and desist from future violations of the Ohio Securities Act. In the Notice of Opportunity for Hearing, Order No. 91-158, the Division provided Craig, Ford Center, and Landmarke with an opportunity for a hearing to contest the Division's allegation that they had violated the Securities Act by offering interests in the Ford Center during 1988 and 1989.

The Ford Center interests were not registered or qualified for exemption under the Securities Act, and the individual making the solicitations, Craig, was not licensed by the Division. Craig was the general partner of Landmarke, which, in turn was the general partner of Ford Center.

Neither Craig, Ford Center, nor Landmarke requested a hearing to contest the Division's charges.

The case was prepared by Gregory J. Betchkal, Enforcement Section Staff Attorney.

LYLE EUGENE CLARNO

The Division revoked the securities salesman license of Lyle Eugene Clarno of Columbus, Ohio on April 1, 1992 (Division Order number 92-033). On February 3, 1992, the Division had suspended Clarno's license, charging him with having violated a series of provisions of the Ohio Securities Act and the Administrative Rules of the Division, and provided him with notice of his rights to a hearing to contest those charges (Division Order number 92-008). Clarno did not request a hearing, and, accordingly, his license was revoked based on the undisputed charges of the Division. At the time of the revocation of his license, Clarno was licensed as a securities salesman with Worthington Investments, Inc..

The charges reported in the Revocation and Suspension Orders were based on Clarno's dealings with a Findlay, Ohio resident while Clarno was licensed with First Ohio Equities, Inc. during 1990 and 1991. The Division Orders charged that Clarno had induced excessive trading in his client's account, that he had recommended unsuitable investments to the client, and that he had continued to sell securities to that investor while knowing that the client had not received certificates from previous securities transactions within a reasonable period of time.

The case was prepared by D. Michael Quinn, Enforcement Section Staff Attorney.

HENRY G. COLLINS

On April 1, 1992, the Division issued a final Cease and Desist order against Henry G. Collins of Columbus, Ohio (Division Order number 92-032). Collins was ordered to cease and desist from the actions described in Division Order number 92-032 and an earlier Cease and Desist Order and Notice of Opportunity for Hearing issued by the Division on January 22, 1992 (Division Order number 92-006). Collins did not request a hearing to contest the division's allegations.

The uncontested Division Orders charged that Collins made a series of misrepresentations in attempting to sell Worthington Investment Trust securities while he was licensed as a securities salesman with Worthington Investments, Inc. during the period from September 21, 1990 to September 30, 1991. The Division found that Collins had made substantial false representations: That the Worthington Investment Trust securities were not speculative; that seventeen percent of the trust consisted of "blue-chip stock;" that he and his "kids" held units of the securities; and that the trust had acquired property north of Columbus in conjunction with The Ohio Company and the Columbus Dispatch which would result in millions of dollars of profits over a four year period.

Collins surrendered his securities salesman license to the Division on

The case was prepared by Gregory J. Betchkal, Enforcement Section Staff Attorney.

PHILLIP STEED

On April 7, 1992 the Division issued Division Order 92-034 ordering Phillip E. Steed of Lima, Ohio to cease and desist from future violations of the Ohio Securities Act. Steed failed to request a hearing within the thirty days provided by the Notice of Opportunity for Hearing, Order No. 92-007, to contest the allegations by the Division that Steed had violated the Securities Act by selling unregistered securities to a Waynesfield, Ohio resident. The business venture being promoted by Steed involved a plan whereby various chemicals and other materials would be reclaimed from discarded electric batteries.

The case was prepared by Erwin J. Dugasz, Jr., Enforcement Section Staff Attorney.

INTERMOUNTAIN ENERGY AND EXPLORATION, INC. TIM BRADLEY

On April 13, 1992, the Division issued Division Order 92-037, ordering Intermountain Energy and Exploration, Inc. and Tim Bradley of Salt Lake City Utah, to cease and desist from future violations of the Ohio Securities Act. The Notice of Opportunity for Hearing, Order No. 90-060, also provided Intermountain and Bradley with notice of the Division's allegation that they had violated the Securities Act by offering interests in oil leases located outside Ohio in a telephone solicitation to a Division Staff Attorney.

**ENFORCEMENT
DIVISION ORDERS**
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ENFORCEMENT DIVISION ORDERS

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The interests were not registered or qualified for exemption under the Ohio Securities Act, and the salesman making the telephone solicitation, Bradley, was not licensed by the Division.

At the hearing, counsel for Intermountain and Bradley contested the Division's contention that the interests being solicited for sale were securities under the definition of "security" in the Ohio Securities Act. The report of the Hearing Examiner, finding the interests to be securities and recommending that Intermountain and Bradley be ordered to Cease and Desist from future unregistered and unlicensed sales of the interests in Ohio, was accepted in full by Commissioner of Securities Mark V. Holderman.

The case was prepared by William D. Henry, Enforcement Section Staff Attorney.

PAUL DIETER

The Division ordered that Paul Dieter of Shaker Heights, Ohio, cease and desist from the sale of securities in violation of the Ohio Securities Act. The Order issued by the Division on April 13, 1992, charged that Paul Dieter sold securities in a Mexican peso investment-exchange program to Cleve-

land-area investors. The peso investment-exchange scheme was represented as an investment program whereby investors' money was to be pooled to purchase Mexican pesos at a discount which were then to be exchanged for U.S. dollars. Investors were promised a 25% on their investment after the peso exchange. The exchange was never made and the investors lost their money. Dieter was not a licensed securities salesman and the securities sold were not registered or exempt from registration. In Division Order 92-036, the Division also charged that Dieter made false representations concerning material and relevant facts in the sale of the securities of the peso investment-exchange program, and engaged in acts which are illegal, fraudulent or prohibited under the Ohio Securities Act. Dieter did not request a hearing.

The case was prepared by Mary Spahia-Carducci, Enforcement Section Staff Attorney.

JOHN L. COCHRAN

On April 13, 1992, the Division issued Division Order No. 92-035, ordering that a securities salesman license be issued to John L. Cochran of Dublin, Ohio. This final order followed a hearing on the question of whether or not a license should be issued to Cochran.

The case was prepared by Carol L. Barnum, Enforcement Section Staff Attorney.

PROGRAMMING AND SYSTEMS MANAGEMENT, INC.

On April 16, 1992, Programming and Systems Management, Inc. (PSM) of Dayton, Ohio entered into a Consent Agreement with the Division whereby PSM was ordered to cease and desist from further violations of the Ohio Securities Act. The Division found that PSM had made certain errors in one of its filings with the Division, failed to report sales and exchanges of shares of stock within the sixty days required for Form 3-Q filings, failed to report or register 165,893.73 shares of common stock exchanged for partnership interests between September 28, 1988 and December 30, 1988, and failed to report or register 425,041.265 shares of common stock sold on December 30, 1988 and April 28, 1989. The Division also established that PSM was not licensed as a securities dealer or salesman at the time of the securities sales. (Division Orders 92-002 and 92-041)

The case was prepared by William D. Henry, Enforcement Section Staff Attorney.



New Federal Regulations Under The 1990 Penny Stock Reform Act

On April 10, 1992, the Securities and Exchange Commission (SEC) promulgated rules directed at abuses that have plagued investors in the nationwide sale of penny stocks and blank check offerings.

The new regulations implement the Penny Stock Reform Act of 1990, effective October 15, 1991. In the Act's findings, the 101st Congress found that honest, healthy primary and secondary securities markets were essential to long-term capital formation, and that protecting those who invest in new securities was a "critical component" in maintaining those markets. Congress found that unscrupulous market practices and participants have led to "an overwhelming amount of fraud and abuse" despite the efforts of the SEC, the states, and the self-regulatory agencies. Congress also mandated that the Comptroller General and the SEC study the impact of the new legislation and propose additional steps to confront abusive practices.

Penny Stock Definitions

The Penny Stock Reform Act excludes five categories of securities from the definition of "penny stock":

1. Securities traded on national exchanges which meet SEC criteria;
2. Securities authorized on an automated quotation system in operation before January 1, 1990 and sponsored by a registered securities association, which meets SEC criteria;
3. Securities issued by a registered Investment Company;
4. Securities which meet minimum price, net tangible asset,

and "other relevant criteria" established by SEC rules; and

5. Securities "exempted, in whole or in part, conditionally or unconditionally, from the definition of such term by rule, regulation, or order" of the SEC.

New rules 3a51-1 and 15g-1 (effective April 28, 1992) expand on the exclusions from the Act:

- Rule 3a51-1 excludes reported equity securities, put and call options issued by the Options Clearing Corporation, and securities priced at five dollars or more. The rule also refers to the exclusions for securities registered on a national securities exchange or quoted on an automated quotation system.
- Rule 15g-1 adds the following exemptions: Transactions by broker-dealers doing less than five percent of their securities business in penny stocks; transactions in securities of issuers with net tangible assets in excess of \$2 million or \$5 million (depending on operating history); transactions with institutional accredited investors; transactions not recommended by the broker-dealer; transactions where the customer is the issuer or a director, officer, general partner, or beneficial owner of more than five percent of any class of equity security of the issuer; other transactions which the SEC exempts by order.

Disclosure Provisions

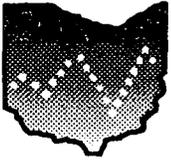
Rule 15g-2 (effective July 15, 1992) and rules 15g-3 through 15g-6 (effective January 1, 1993) clarify the disclosure provisions of the Act. The Act and the SEC rules make it unlawful for a broker-dealer to carry out transactions in penny stocks without first providing the customer with a standardized disclosure document, prepared in accordance with the new rules. The new standards also impose continuing disclosure responsibilities on broker-dealers who effect penny stock transactions:

- Rule 15g-2 requires broker-dealers to provide a disclosure document that explains the risks associated with investing in penny stocks, such as the meaning of "bid" and "ask" prices, and the significance of the spread between them. The disclosure document must also list the broker-dealer's duties to the customer, a toll-free telephone number for customer inquiries about the broker-dealer's disciplinary history, and the customer's rights and remedies in cases of penny stock fraud or abuse;
- Rule 15g-3 makes it unlawful to effect a penny stock transaction without first disclosing, and later confirming, current quotation prices or similar market information;

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Licensing Section Statistics

LICENSE TYPE	SECOND QUARTER 1991	SECOND QUARTER 1992	YEAR END 1991
SALESMAN	56,057	57,052	51,590
DEALER	1,589	1,590	1,549



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- Rule 15g-4 prohibits the completion of a penny stock transaction unless the broker-dealer first discloses the amount of any compensation received in connection with the transaction;
- Rule 15g-5 requires disclosure of information on salesperson compensation in transactions not exempted under Rule 15g-1;
- Rule 15g-6 requires broker-dealers selling penny stocks to provide customers with a monthly statement containing relevant market value information.

Blank Check Offerings

"Blank checks" are offerings made by development-stage companies that have indicated no business plan or purpose for the use of funds raised from investors; in essence, investors are giving the promoters a "blank check." The new SEC standards require that proceeds received and securities issued in blank check offerings be held in escrow for the benefit of the investor, who has the right to withdraw the funds until the issuer has actually made an acquisition and delivered an amended prospectus based on a post-effective amendment to their registration statement [34 Act rule 15g-8, and 33 Act rules 174 and 419, effective April 28, 1992].

SEC Responses to Comments

The SEC reported that complaints from state regulators and consumer organizations criticized the rules as unduly weak. However, the securities

industry and small issuers expressed concern with the scope of the rules, compliance burdens, and the possible impact on capital raising efforts of small issuers. The SEC responded that the new standards are intended for situations where investors are vulnerable and need protection, and that the new standards are

intended to facilitate compliance by broker-dealers. The SEC believes that, despite the length of the rules, they will provide a viable safe harbor by clearly establishing what is required of penny stock broker-dealers.

William E. Leber



Registration Section Statistics

FORM TYPE	SECOND QUARTER 1991	SECOND QUARTER 1992	YEAR END 1991
02B	294	449	1,214
03O	2,780	2,793	10,895
03Q	299	308	1,211
03W	30	29	125
04	0	0	1
041	0	1	3
05A	0	0	1
06A1	45	64	189
06A2	9	17	60
06A3	5	9	32
06A3OG	2	0	2
06A4	16	22	65
09	432*	146*	1,404
09OG	0	0	1
091	264*	592*	1,475
39	38	22	125
391/09	2	2	7
391/091	0	3	1
391/30	197	205	774
391/3Q	31	35	161
391/3W	0	1	5
391/6A1	0	1	2
391/6A2	0	0	1
391/6A3	0	0	0
391/6A4	0	0	1
TOTALS	4,444	4,699	17,755

* Variations in Form 09 and form 091 quarterly totals result, in part, from changes in the Division's classification of filings made under R. C. 1707.09.

1992 Ohio Securities Conference

Ohio Securities Conference:

The 1992 Ohio Securities Conference will be held on November 16 at the Columbus Marriott North. The seminar program will feature pertinent topics of interest to the Ohio Securities community. As in previous years, Ohio Securities Conference, Inc. is completing the documentation necessary to offer Continuing Legal Education (CLE) credit for members of the Ohio Bar and Continuing Professional Education (CPE) credit for Ohio-licensed Certified Public Accountants.

Division of Securities Advisory Committees:

Meetings of the Ohio Division of Securities Advisory Committees will be held on Tuesday morning, November 17, 1992, also at the Columbus Marriott North. If you are not currently a Committee member and you are interested in participating on an Advisory Committees, please contact Paul Tague, Deputy Commissioner of Securities.



1992 Ohio Securities Conference Schedule

November 16, 1992

Registration and Welcome
8:00 a.m. to 9:00 a.m.

Panel: Difficult Disclosure Issues in the Registration Process
9:00 a.m. to 10:30 a.m.

M. Patricia Donnelly, Esq.,
Moderator
Kelley, McCann & Livingstone,
Cleveland, Ohio
Donald B. Gardiner, Esq.,
Banc One Capital Corporation,
Columbus, Ohio
Charles F. Hertlein, Jr., Esq.,
Dinsmore & Shohl, Cincinnati, Ohio
Harold I. Zeidman, CPA,
KPMG Peat Marwick,
Columbus, Ohio

Panel: Small Business Initiatives: SEC Proposals
10:45 a.m. to 12:15 p.m.

Michael A. Ellis, Esq.
Moderator and Panelist
Kahn, Kleinman, Yanowitz &
Arnson, Cleveland
Beatrice E. Wolper, Esq.
Emens, Kegler, Brown, Hill &
Ritter, Columbus, Ohio
Prof. Norman George, Esq.
University of Dayton School of
Law, Dayton, Ohio

Luncheon
12:15 p.m. to 1:45 p.m.

Panel: Perspectives on Ohio Securities Law Enforcement Practice
1:45 p.m. to 3:45 p.m.

Donald E. Meyer, Esq.
Ohio Division of Securities
Columbus, Ohio
Daniel Malkoff, Esq.
Assistant Attorney General
Columbus, Ohio
Robert Skinner, Esq.
Assistant Montgomery County
Prosecutor, Dayton, Ohio
Earle R. Frost, Jr., Esq.
Frost & Danchak
Columbus, Ohio

Recent Developments and Activities at the Division
4:00 p.m. to 5:00 p.m.

Mark V. Holderman, Esq.
Commissioner of Securities
Michael P. Miglets, Esq.
Supervisor of Registration
Donald E. Meyer, Esq.
Attorney Inspector
Dale M. Jewell
Supervisor of Broker-Dealer
Licensing

Reception
5:00 p.m. to 6:00 p.m.

ENROLLMENT FORM: Please enroll the following in the 1992 OHIO SECURITIES CONFERENCE:

Name:

Firm:

Address:

City:

State:

Zip:

Telephone:

Amount Enclosed:

Please send information regarding the Advisory Committee Meetings on November 17, 1992.

Enrollment Fee (\$125.00 per person) includes all activities. Make checks payable to: Ohio Securities Conference Committee, Inc. Send enrollment form and payment to: Paul Tague, Deputy Commissioner, Ohio Division of Securities, 77 S. High St. 22nd Floor, Columbus, Ohio 43266-0548.

Clip or Copy this Enrollment Form





OHIO SECURITIES BULLETIN

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