

OHIO SECURITIES BULLETIN

A QUARTERLY PUBLICATION OF THE OHIO DIVISION OF SECURITIES

Bob Taft
Governor of Ohio

Gary C. Suhadolnik
Director of Commerce

Deborah L. Dye Joyce
Commissioner of Securities

Farewell to Commissioner Geyer

It is with mixed emotions that the Division bids farewell to Commissioner Geyer, who has been recently appointed as Assistant Director of the Department of Commerce. During his four years as Commissioner, Tom oversaw significant changes and innovations in Ohio's securities industry including state oversight of investment advisers, the implementation of OASIS, Ohio's web-based electronic filing system for investment company notice filings, ERNIE, a searchable database on the Division's web site, and a significant leap into investor education and outreach including the Division's annual participation in Savings and Investing Educational seminars for the public.

Tom was a strong and valued participant in the North American

Securities Administrators' Association, and provided testimony and other presentations to the United States Congress, the Ohio General Assembly, and the Securities and Exchange Commission. He had written work appearing in more than twenty publications during his tenure, along with numerous editorials and news releases in Ohio publications.

His presence, experience, and knowledge will be sorely missed at the Division, but the Division's employees wish him well in his new position as Assistant Director of the Ohio Department of Commerce. Debbie Dye Joyce, previously Registration Supervisor for the Division, has been appointed to replace Commissioner Geyer.

Division Briefs

Ohio Division of Securities and Other Regulators Unite to Squelch Note Fraud

The Division announced on June 1, 2000 that it has joined other state securities regulators and the Securities and Exchange Commission in a major crackdown on fraudulent sales of promissory notes. This action cumulates state and federal securities regulators' efforts over the last few months in cracking down on note fraud. The Division has taken administrative and criminal action against persons and entities selling these notes (See the *Enforcement Section Reports* and *Criminal Update* sections in this issue of the Bulletin for information on specific actions).

Regulators in 28 states have taken actions against hundreds of individuals and entities involved in suspect note sales. The U.S. Securities and Exchange Commission has filed charges in 13 enforcement actions against 38 individuals and 22 entities involved in the fraudulent sale of promissory notes. Many of the

investors involved in these cases were elderly. The Division has also noted that many individuals selling these notes were insurance agents who know little about the companies promoting the notes beyond what the companies themselves have told the agents. Many agents don't realize they need to be licensed by the Division to sell the notes. Also many of the companies allegedly promoting the notes don't exist, or the insurance companies that bond them don't exist, making investing in these companies an exceedingly risky proposition.

Thomas E. Geyer, the former Commissioner of Securities, stated that senior citizens seeking refuge from low interest returns on their investments provide fertile breeding ground for promissory note predators. "Investors are attracted to this type of investment because it has an aura of safety with a higher-than-market rate of return. Investors must never forget the first rule of finance: the higher the reward, the higher the risk. In today's market

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OHIO DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

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Ohio Securities Bulletin

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Reason to Know: When Investors' Knowledge of Facts Giving Rise to Violation of the Ohio Securities Act Limit the Right to Recission.

By Desiree T. Shannon

Like most states, Ohio allows investors a private right of action to reclaim money invested in securities that are the subject matter of sales made in violation of the Ohio Securities Act. R.C. 1707.43 states that sales made in violation of Chapter 1707 are voidable at the election of the purchaser and that the seller, along with those participating in or aiding the seller, are jointly and severally liable to the purchaser in an action at law. However, the statute goes on to say that

(n)o action for the recovery of the purchase price as provided for in this section, and no other action for any recovery based upon or arising out of a sale or contract for sale made in violation of Chapter 1707 of the Revised Code, shall be brought more than two years after the plaintiff know, or had reason to know, of the facts by reason of which the actions of the person or director were unlawful, or more than four years from the date of such sale or contract for sale, whichever is the shorter period. (Emphasis added).

The time restrictions outlined above serve as a statute of limitations for bringing recission actions based on R.C. 1707.43. Investors seeking recission either have two or four years to file claims against the securities sellers who wronged them, depending upon the plaintiff-investor's knowledge of facts that should have alerted him or her to unlawful activity.

The two-year statutory time limit is most problematic, because its calculation is predicated upon the plaintiff-investor discovering the facts that gave rise to the unlawful sales. If the investor fails to bring a recission action against the seller within two years of obtaining knowledge of factual circumstances giving rise to unlawful acts, or, more significantly, had reason to know of them, he loses his right to invoke the remedy. Ohio's state courts, as well as federal courts attempting to interpret similar time limits found in analogous federal statutes, have generated case law

addressing this issue that outlines what types of factual situations might put a reasonable investor on notice when a seller has incurred a violation of securities laws.

Knowledge of Facts Indicating Unregistered or Unlicensed Sale of Securities

Individuals and entities who violate securities laws, both at the state or federal level, frequently incur these violations because they are either selling securities without benefit of licensure, or have not registered their securities in accordance with state or federal laws. Indeed, many sellers are emboldened enough to disclose the fact that the securities they sell are not registered in accordance with state or federal law. Would so blatant an admission of sales not conforming to requirements set down by the law be enough to alert the reasonable investor that unlawful activity is afoot? An Ohio appellate court ruled in J J Enterprises v. Hawk Energy Co., (January 28, 1987) Ninth Appellate District

Case No. CA-12589, that where a prospectus notes that the securities being sold are not registered, an investor is henceforth on notice of the existence of facts surrounding the transaction indicating the unlawful sales of securities. In this case, the plaintiff received a prospectus that noted on its cover page that the offered securities were not registered. The court noted that the two-year statute began to run when the investor received the prospectus shortly after the sale. Id., at pp.5,6. The case also applied the two-year limitation to the issue as to when the investor was charged with knowing the seller was unlicensed. The court treated this issue as a separate violation in which the investor might have qualified for the R.C. 1707.43 recission remedy (the court ultimately decided that the investor missed the two-year statute of limitation on both the registration and the unlicensed sales issue). Id.

Again, it should be noted that J.J. Enterprises v. Hawk Energy Co. treated unlicensed sales and unregistered sales as separate grounds for applying the two-year statute of limitations. An investor's

OHIO SECURITIES BULLETIN

Desiree T. Shannon, Esq., Editor

The *Ohio Securities Bulletin* is a quarterly publication of the Ohio Department of Commerce, Division of Securities. The primary purpose of the *Bulletin* is to (i) provide commentary on timely or timeless issues pertaining to securities law and regulation in Ohio, (ii) provide legislative updates, (iii) report the activities of the enforcement section, (iv) set forth registration and licensing statistics and (v) provide public notice of various proceedings.

The Division encourages members of the securities community to submit for publication articles on timely or timeless issues pertaining to securities law and regulation in Ohio. If you are interested in submitting an article, contact the Editor for editorial guidelines and publication deadlines. The Division reserves the right to edit articles submitted for publication.

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knowledge of facts surrounding the sale of securities that might alert him or her to the seller's unlawful activity relating to either of these issues could trigger the running of the two-year time limit. But an investor's knowledge of facts regarding unlawful activity surrounding one violation will not give rise to the assumption that he or she has knowledge of another violation. In Crater v. International Resources, Inc., 92 Ohio App. 3rd 18 (1993), the court noted that, where a rescission action involved two distinct causes of action—unregistered sales and unlicensed sales in violation of R.C. 1707.44 (A) and R.C. 1707.44 (C)(1)—their limitations periods run separately. Therefore, information in a prospectus alerting the investor that she was purchasing unregistered securities would not necessarily have alerted her to the fact that the seller was not licensed to sell securities, thus allowing her to meet the statutory deadline for filing a claim on that issue, regardless of whether a claim for unregistered sales would have met the deadline. *Id.* at p. 24. The separate cause of action/separate statute of limitations rule could also apply in cases where there are individual claims of unregistered securities and fraud. In

Seuffert v. Mobile Health Scan, Inc., 1989 Ohio App. Lexis 3586, Ohio's Eighth Appellate District noted that "knowledge of possible fraud with regard to the security in question does not provide the plaintiff with reason to know that the security is unregistered..."

Courts have addressed other factual situations dealing with the issue of unregistered securities (and the unlicensed sales thereof) pursuant to the Ohio Securities Act that impact the application of the statute of limitations for purposes of rescission. Official action by the Division declaring a seller's activities as unlawful can give an investor reason to know of facts that would indicate unlawful acts. This occurs in situations where the Ohio Division of Securities has issued a Cease and Desist Order and requires an issuer who has violated the Ohio Securities Act to send a letter offering investors rescission. The letter operates as notice of unlawful acts and will impute knowledge of such to an investor seeking rescission, thus commencing the two-year run of the statute of limitations. St. Clair v. Structured Shelters, 1985 Ohio App. Lexis 9469. Ohio's Tenth Appellate District has ruled

that a shareholder who also serves as an officer of an issuing corporation will not automatically be assumed to possess knowledge of facts that would alert him or her to unlawful acts regarding the sale of securities. Eastman v. Benchmark Materials, Inc., 34 Ohio App. 259 (1986).

Knowledge of Facts Involving Fraud

Cases involving fraud, misrepresentation and omission are much dicier to analyze in respect to the types of fact patterns that would charge an investor with enough knowledge that would commence the running of the statute of limitations. Investors in Ohio's Eighth Appellate District had best beware when they buy securities which are accompanied by investment literature warning of the securities' high risks. The court in Kondrat v. Morris, (January 16, 1997) 8th Appellate Dist. Case No. CV-282903, held that the plaintiff-investors' rescission claim based partially on misrepresentation in the sale of securities was time-barred under R.C. 1707.43 The court noted that the plaintiffs

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Division Briefs

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there's no such thing as a "guaranteed" 10 or 15 percent return"

Editor's note: for more in-depth articles regarding promissory notes, please see Ohio Securities Bulletin Issue 00-1.

Division Obtains Preliminary Injunction Against D. Gerald Lach and Companies

A Clermont County Common Pleas Court judge issued a preliminary injunction on June 7, 2000 that prohibits D. Gerald Lach and several companies he operates from illegally selling securities. Judge Jerry McBride issued the preliminary injunction with the defendants' consent. Companies affiliated to Lach and who are subject to the injunction include Community Concerned Citizens, Inc., Storehouse: Malachi 3:10, Inc., Cincinnati Regional Initiative,

Western Regional Authority, Midwest Regional Authority, Inc. and Golden Age Development Corporation. The Division had alleged that Lach sold securities that were not properly registered or exempt from registration under Ohio law, and that he misrepresented the value, expected returns and risks associated with the securities.

Judge McBride had issued a temporary restraining order against the defendants in May. About 300 people had invested in the defendant companies. Lach was recorded at an investment meeting this past January soliciting people to pay money to Storehouse: Malachi 3:10 in exchange for stock in Midwest Regional Authority. The Division also had evidence that Lach misrepresented to investors that stock in some of his companies would be listed within a few weeks on the NASDAQ Stock Market, when in fact he had not made application for the stocks to be listed. When the preliminary injunction was granted, Acting Securities Commissioner Deborah L. Dye Joyce commented that she was

"very pleased that Judge McBride issued the preliminary injunction in order to protect the hundreds of individuals who have invested approximately two million dollars in these companies."

Infinity Group Principals Indicted

A federal grand jury in Cleveland indicted Geoffrey Benson, Susan Benson, Geoffrey O'Connor and Jennifer Bordelon, the former principals of The Infinity Group Company, on several federal felony charges. The defendants were indicted on 21 felony counts, including federal tax violations, wire fraud and mail fraud. The Division had executed a search warrant against the company in April 1998 in response to the sale of trust units in a "prime bank" program. The Securities and Exchange Commission eventually obtained an injunction against the company.

Reason to Know

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were basing their misrepresentation claim mostly on the fact that they had been told they would receive a 2-to-1 ratio of return on their investment. *Id.* at p.9. The court noted that, despite these representations, the plaintiff was given written materials that clearly outlined the risky nature of the investment at the time of purchase, and that this notice was enough to commence the statute's two-year run. *Id.* (Since the court determined that the plaintiffs had purchased the securities more than four years before filing their claim, they could not have recovered anyway). *Id.* at p. 12.

A review of federal court cases, which involve statutes that impose time limits similar to the one found in R.C. 1707.43, show courts' difficulty in deciding what kinds of factual situations constitute reasonable notice to investors that fraud was present when they purchased their securities. Many federal actions relating to fraud are brought under the SEC's Rule 10b-5, which has a corresponding statute of limitations of one year, with a three-year statute of repose. A review of these cases is useful even in instances where courts have used federal statute of limitations instead of borrowing state statutes such as R.C. 1707.43. Generally, in cases where plaintiffs bring a cause of action that is implied under a federal statute which has its own statute of limitations, the federal time limit should be used. Otherwise, it is allowable for federal courts to invoke the well-established practice of "borrowing" the analogous local state statute in applying a statute of limitations for such claims. *Lampf, Pleva, Lipkind, Purpis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991). Whether a federal court is using a state statute of limitations such as the one found in Ohio's Chapter 1707, or a similar federal statute, it is useful to consider guidelines set down by federal courts regarding what may be deemed notice of unlawful activity. Since the federal statutes of limitation are so similar to that of Ohio's, and federal courts may need to "borrow" Ohio's statute because an analogous federal statute is unavailable, outcomes in federal courts could be highly indicative of future interpretations of Ohio statute of limitations found in R.C. 1707.43.

Despite the difficulty of defining when an investor has reason to know of unlawful violations, federal courts have managed to set down some general rules. In analyzing a federal statute that places a one-year time limit on filing claims from the time fraud is discovered, Ohio's Southern District, in considering a motion for summary judgment for plaintiff-investors, has held that "(g)enerally the question of when a party discovered fraudulent conduct or when he should have discovered it by exercising diligence is a factual inquiry." *Roger v. Lehman Brothers Kuhn Loeb, Inc.*, 604 F. Supp. 222 (S.D. Ohio 1984).

Despite this, other federal courts have not been reticent to pass on the facts surrounding investors' claims. The U.S. Court of Appeals, Second Circuit did so in the case of *In re Ames Department Stores, Inc. Note Litigation*, 991 F. 2d 968 (2nd Cir. 1993). The court held that the one-year federal statute of limitations under consideration in the case would begin running when the investor received constructive notice of possible fraud: "where the circumstances are such to suggest to a person of ordinary intelligence the probability that he has been defrauded." (Here the court was quoting another federal case, *Armstrong v. McAlpin*, 699 F.2d 79 (2nd Cir. 1983)). The suit was based on misleading financial projections that were included in investors' prospectuses. The court decided that the plaintiff-investors would not have known the information they received was misleading until it was announced that the company had sustained significant losses for the previous year (the defendant allegedly had internal data that would have shown it was losing money at the time the plaintiff-investors purchased notes issued by the company). The court noted mere "storm warnings" that the company was in trouble, such as media speculation about the company's position or negative assessments by analysts of the acquisition underpinning the offering, were not enough to alert investors to possible fraud. The Seventh Circuit also weighed in with an opinion regarding the significance of "storm warnings" found in prospectuses. In utilizing California's statute of limitations in deciding the case of *Eckstein v. Balcor Film Investors*, 8 F.3rd 112 (7th

Cir. 1993) the court noted that such warnings only put investors on notice that "things may not go as hoped in the future; they do not put investors on notice that statements made in the prospectus are untrue at the time, or that important facts have been left out." *Id.* at 1127.

The Second Circuit in another case considered inherent investment knowledge possessed by "sophisticated" or accredited investors. The court held that such investors were on constructive notice that the limited partnerships they purchased were high risk and designed more as tax shelters rather than investments for profit. The court noted that the prospectuses provided to the investors, along with their knowledge and sophistication, would have disclosed as much. *Block v. First Blood Associates*, 988 F. 2d 344 (2nd Cir. 1993).

A line of Seventh Circuit cases has adopted the concept of "inquiry notice" in evaluating federal statutes of limitations applicable to securities claims which assume notice of a violation on the part of investors. This doctrine holds that the federal statute of limitations applicable to Rule 10b-5 actions "begins to run not when the fraud occurs, and not when the fraud is discovered, but when....the plaintiff learns, or should have learned through the exercise of ordinary diligence in the protection of one's legal rights, enough facts to enable him by such further investigation as the facts would induce in a reasonable person to sue within a year." *Law v. Medco Research, Inc.*, 113 F. 3rd 781,785 (7th Cir. 1997). Thus in the case of *Whirlpool Financial Corporation v. GN Holdings, Inc.*, 67 F. 3rd 605 (7th Cir. 1995), the court determined that the plaintiff-investor's fraud claim was time-barred because it failed to act earlier in investigating significant discrepancies between financial reports and the private placement memorandum initially provided by the issuer. The court noted that a "reasonable investor would have believed fraud was a possible explanation" for the discrepancies. *Id.* at p. 610.

A fine-tuning of the doctrine of "inquiry notice" necessitates that courts take into consideration the timing of investors' notice that they might be victims of fraud. In the case of *Fujisawa*

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PUBLIC NOTICE

At 10:00 a.m. on Wednesday, October 18, 2000, the Ohio Division of Securities will hold a public hearing regarding the Division's intent to amend Ohio Administrative Rules 1301:6-3-01, 1301:6-3-06, 1301:6-3-09, 1301:6-3-093, 1301:6-3-14, 1301:6-3-15, 1301:6-3-151, 1301:6-3-16, 1301:6-3-161, and 1301:6-3-48. The hearing will be held in the offices of the Division located at 77 South High Street, 22nd Floor, Columbus, Ohio 43215.

Copies of the proposed amendments may be obtained by contacting the Ohio Division of Securities at the above address or by calling the Division at (614) 644-7381. Copies of the proposed amendments may also be obtained from the Division's Internet homepage located at www.securities.state.oh.us. Each of the proposed amendments and new rules is summarized in the following:

OAC 1301:6-3-01 The proposed amendment adds a cross-reference in paragraph (A) to OAC 1301:6-3-15(E).

The purpose of the proposed rule is to correct the oversight of the missing reference.

OAC 1301:6-3-06 The proposed amendment deletes both the provisions of paragraph (D)(12) and the reference in paragraph (A) to the Form OG.

The purpose of the proposed amendment is to eliminate a reference to an obsolete form and duplicative review requirements.

OAC 1301:6-3-09 The proposed amendment deletes substantive restrictions on investment companies. References to specific NASAA guidelines used by the Division are being deleted so that the resulting language indicates that the Division will use any NASAA guidelines for review.

The purpose of the proposed amendment is to delete investment company guidelines that were preempted by federal legislation in 1996, and to streamline language regarding the Division's use of NASAA guidelines for review.

OAC 1301:6-3-093 The proposed amendment would delete the CCD+ format noted in paragraph (E) and replace it with CCD format.

The purpose of the proposed amendment is to correct the nature of the formatted information required on an ACH credit transfer received for payment of fees on electronic filings.

OAC 1301:6-3-14 The proposed amendment adds bank holding company to the type of securities bought and sold by the dealer with regard to the availability of the exemption in this section.

The purpose of the proposed amendment is to clarify when a dealer may have the exemption in this rule available.

OAC 1301:6-3-15 Paragraph (A) changes are for clarity; paragraph (C) changes reorder certain provisions and update other provisions; changes to paragraphs (D), (E), and (G) are for the purposes of updating; the proposed change to paragraph (J) deletes reference to Form 16B that will be no longer used, and changes a 30 day period to a 60 day time period; deletion of paragraph (K) is due to its obsolescence; paragraphs (L) and (M) are renamed; and, new paragraph (M) was originally paragraph (D)(5).

The purpose of the proposed amendments is to update the rule and to make certain provisions more readily understandable.

OAC 1301:6-3-151 Paragraph (B) is being amended to add more specificity to the CFP and PFS designation requirements; paragraph (K) changes extend the length of time from 30 to 60 days.

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PUBLIC NOTICE (Continued)

The purpose of the proposed amendment to paragraph (B) is for clarity. The purpose of the proposed amendment to paragraph (K) is to allow the Division more time to cancel an investment adviser representative's license during pending enforcement actions.

OAC 1301:6-3-16 The proposed amendments to paragraph (A) reorder the NASD examinations by series number; paragraphs (B) and (C) changes delete the use of the Form 16.

The purpose of the proposed amendments is to clarify the requirements for licensure and to bring better order to the rule.

OAC 1301:6-3-161 The proposed amendment to paragraph (B) pertains to the CFP and PFS designations.

The purpose of the proposed amendments is to clarify certain designations available to establish minimum competency for licensure.

OAC 1301:6-3-48 The proposed amendment to this rule is to add a new paragraph (C) to allow enforcement records to be retained for five years form the date the enforcement file is closed.

The purpose of the proposed rule is to lengthen the period of time for which enforcement records must be retained.

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Pharmaceutical Company, Ltd. v. Kapoor, 115 F. 3rd 1332 (7th Cir. 1997), the court noted that a fraud victim's status in regard to possessing inquiry notice "may depend on the victim's access to the information that he will need in order to be able to plead a reasonably well substantiated and adequately particularized case of securities fraud...the better his access, the less time he needs." Id. at p. 1335. Thus the court deemed the plaintiff, which argued that it had no notice of fraud until the FDA began to investigate the defendant regarding matters relating to the fraud, was on inquiry notice even before the FDA's inquiry. The

court reasoned that the plaintiff had "better access to the relevant documents than the FDA and a greater incentive...to find in them evidence that (defendant) had concealed information..." Id.

Conclusion

In conclusion, an investor considering bringing an action under R.C. 1707.43 for rescission must take care that their claim is not doomed because of they did not file their claim within the two-year statute of limitations, assuming the investor is in a situation where it is triggered in the first place (as opposed to the longer four-

year period of repose). Of course, investors should carefully review offering materials for red flags before they purchase securities. If an investor has knowledge of any facts that would indicate unlawful activity, he or she should immediately investigate and evaluate them as evidence that might support a rescission claim. Otherwise, a court could impose the time-honored "you snooze, you lose" doctrine on the unfortunate investor.

Ms. Shannon is an Enforcement Staff Attorney with the Ohio Division of Securities and Editor of the Ohio Securities Bulletin. This article was reprinted from Ohio Securities Bulletin 98:1.

**PUTNAM, LOVELL,
DEGUARDIOLA &
THORNTON INC.**

On February 4, 2000, the Division issued Division Order No. 00-019, a Cease and Desist with Consent Agreement, against Putnam, Lovell, Deguardiola & Thornton Inc. The Respondent's business address is in California.

On August 14, 1998, the Division issued its Notice of Opportunity for Hearing, Division Order No. 98-330, pursuant to Ohio Revised Code Chapter 119. The Division alleged that the Respondent violated Revised Code Section 1707.44(A)(1) which prohibits the unlicensed sale of securities. The Order also notified the respondent of the Division's intent to issue a Cease and Desist Order against it. Upon issuance of the Order, the Division and the Respondent entered into a Consent Agreement which was accompanied by the issuance of a Cease and Desist Order, Order No. 00-019. The agreement requires the Respondent to consent, stipulate and agree to terms set forth in the Notice of Opportunity for Hearing and to issuance of a Cease and Desist Order. The agreement requires the Respondent to offer rescission to purchasers in all sales that were not in compliance with the Ohio Securities Act from August 20, 1997 to March 20, 1998, and through and including the date of the issuance of the license. Also the agreement requires the Respondent to waive appeal rights in this matter.

**RICK AUSTIN; LION'S SHARE
ENTERTAINMENT, INC.;
HELIUM 3; THE THINGUMAJIGS;
GHOST STORY; WHAT YOU
DON'T KNOW CAN KILL YOU;
TYCOONS; BUSINESS SENSE;
CUPIDS CAMERA; HOME
SHOWCASE**

On February 9, 2000, the Division issued Division Order No. 00-025, a Final Order to Cease and Desist Order, against

Rick Austin; Lion's Share Entertainment; Inc., Helium 3; The Thingumajigs; Ghost Story; What You Don't Know Can Kill You; Tycoons; Business Sense; Cupids Camera and Home Showcase. Respondents' business address is in Florida.

On November 10, 1998, the Division issued its Notice of Opportunity for Hearing, Orders No. 98-476 against Rich Austin; Order No. 98-477 against Lion's Share Entertainment, Inc.; and Order No. 98-478 against Helium 3, the Thingumajigs, Ghost Story, What You Don't Know Can Kill You, Tycoons, Business Sense, Cupids Camera and Homes Showcase. The Division alleged the Respondents violated Ohio Revised Code Sections 1707.44(B)(4), 1707.44(C)(1) and 1707.44(G). These sections prohibit, respectively, making false representations in the sale of securities; selling securities without proper registration or claim of exemption from registration and selling securities while knowingly engaging in any act or practice which is declared illegal, defined as fraudulent or prohibited under the provisions of Chapter 1707 of the Revised Code. The Order also notified the Respondents of the Division's intent to issue a Final Order to Cease and Desist. Upon receiving service of the Order, the Respondents requested an administrative hearing pursuant to Revised Code Chapter 119 on the matters set forth in the Notice of Opportunity for Hearing. A Hearing was granted and the Hearing Officer found in the Division's favor. Further service was unsuccessful. Therefore, the Division issued a Final Order to Cease and Desist, Order No. 00-025, which incorporated the allegations stated in Orders No. 98-476, 98-477 and 98-478.

**SMITH, BROWN &
GROOVERS, INC.**

On March 17, 2000, the Division issued Division Order No. 00-068, a Cease and Desist Order with Consent Agreement, against Smith, Brown & Groover, Inc. The Respondent's business address is in Georgia.

On March 1, 2000, the Division issued Division Order No. 00-054, a Notice of Opportunity for Hearing, to the Respondent. The Order alleged that the Respondent had violated Revised Code Sections 1707.14 and 1707.44(A)(1) which prohibits the unlicensed sale of securities pursuant to Revised Code Chapter 119. The Order also notified the Respondent of its right to an adjudicative hearing. Upon issuance of the Order, the Division and the Respondent entered into a Consent Agreement which was accompanied by the issuance of a Cease and Desist Order, Order No. 00-068. The agreement requires the Respondent to consent, stipulate and agree to terms set forth in the Notice of Opportunity for Hearing and to the issuance of a Cease and Desist Order. The agreement requires the Respondent to offer rescission to purchasers in all sales that were not in compliance with the Ohio Securities Act from June 2, 1997 to June 3, 1999, and through and including the date of the issuance of the license. Also, the agreement requires the Respondent to waive appeal rights in this matter.

**LANIER WIRELESS
PARTNERS; FELYCE B.
PARKER**

On March 23, 2000, the Division issued Division Order No. 00-074, a Cease and Desist Order, against Lanier Wireless Partners and Felyce B. Parker. The Respondents' business address is in Georgia.

On September 17, 1999, the Division issued to the Respondents a Notice of Opportunity for Hearing, Order No. 99-379. The Division alleged that Respondents violated 1707.44(C)(1) by selling unregistered securities. The allegations stem from the sale of viatical settlements to an Ohio resident. The Division also notified the Respondents of their right to an adjudicatory hearing pursuant to Chapter 119 of the Revised Code. The Respondents did not timely request an adjudicative hearing. Therefore, the Division issued its Cease and Desist Order, Order No. 00-074.

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Enforcement Reports

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ROBERT LEE SCOTT

On March 28, 2000, the Division issued Division Order No. 00-079, a Cease and Desist Order, against Robert Lee Scott. The Respondent is an Ohio resident.

On February 25, 2000, the Division issued to the Respondent a Notice of Opportunity for Hearing, Order No. 00-050. The Division alleged that the Respondent violated Revised Code sections 1707.44(A), 1707.44(C)(1), and 1707.44(G). These sections, respectively, prohibit the unlicensed sale of securities, unregistered sale of securities and knowingly engaging in fraudulent practices in conjunction with the sale of securities, specifically, by failing to disclose material facts in conjunction with the sale of securities. The allegations stem from the sell of promissory notes that were in default to at least thirty Ohio residents. The Order also notified the Respondent of his right to an administrative hearing pursuant to Revised Code Chapter 119. The Respondent did not timely request a hearing. Therefore, the Division issued its Cease and Desist Order, No. 00-079.

BERNARD J. VITANGELI

On March 30, 2000, the Division issued Division Order No. 00-081, a Cease and Desist Order, against Bernard J. Vitangeli, an Ohio resident.

On February 28, 2000, the Division issued to the Respondent a Notice of Opportunity for Hearing, Order No. 00-052. The Division alleged that Respondent violated Revised Code 1707.44(A) and 1707.44(C)(1). These sections prohibit, respectively, the unlicensed sale of securities and the unregistered sale of securities. The allegations stem from the sell of promissory notes that were in default to at least twenty Ohio residents. The Order also notified the Respondent of his right to an administrative hearing pursuant to Revised Code Chapter 119. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued its Cease and Desist Order, Order No. 00-081.

E-ENTERTAINMENT.COM, INC.; JEFFERY A. PEARSON AND JAMES L. BALDI

On March 31, 2000, the Division issued Division Order No. 00-087, a Cease and Desist Order, against E-Entertainment.Com, Inc.; Jeffery A. Pearson and James L. Baldi. The Respondents' business addresses are located in Florida.

On February 24, 2000, the Division issued and subsequently served the Respondents a Notice of Opportunity for Hearing, Order No. 00-046. The Division alleged that the Respondents violated Revised Code section 1707.44(C)(1), which prohibits the unregistered sale of securities. The Division's allegations stem from the Respondents' solicitation and offers of sale of unregistered securities on a web site. These offers were made to Ohio residents. The Order also notified the Respondents of their right to an administrative hearing pursuant to Revised Code Chapter 119. The Respondents failed to timely request an adjudicative hearing. Therefore, the Division issued its Cease and Desist Order No. 00-087.

FOREIGN CURRENCY INTERNATIONAL; JAYSON KLINE AND JOHN REECE

On April 6, 2000, the Division issued Division Order No. 00-092, a Cease and Desist Order, against Foreign Currency International; Jayson Kline and John Reece. The Respondents' business address is in Georgia.

On November 16, 1999, the Division issued to the Respondents a Notice of Opportunity for Hearing, Order No. 99-467. The Division alleged that the Respondents violated Revised Code sections 1707.44(A)(1), 1707.44(C)(1) and 1707.44(B)(4). These provisions prohibit, respectively, the unlicensed sale of securities, unregistered sale of securities and selling securities while knowingly making false representations regarding material and relevant facts. The Division's allegations stem from the sell of foreign currency options to Ohio residents. The Order also notified the Respondents of their right to an adjudicative hearing pursuant to Revised

Code Chapter 119. The Respondents timely requested an adjudicative hearing as permitted by Division Order No. 99-467 and voluntarily withdrew their request. Therefore, the Division issued its Cease and Desist Order, No. 00-092.

JAMES CHMIELOWICZ

On April 26, 2000, the Division issued Division Order No. 00-103, a Cease and Desist Order, against James Chmielowicz, an Ohio resident.

On March 24, 2000, the Division issued to the Respondent a Notice of Opportunity for Hearing, Order No. 00-076, in accordance with Revised Code Chapter 119. The Division alleged that the Respondent had violated Revised Code section 1707.44(C)(1) by selling unregistered securities. The Division's allegations stem from the Respondent's sale of unregistered promissory notes to Ohio residents. The Division also notified the Respondent of his right to an administrative hearing pursuant to Revised Code Chapter 119. The Respondent did not timely request an administrative hearing. Therefore, the Division issued its Cease and Desist Order, No. 00-103.

SIERRA WEST UNIT INVESTMENT TRUST; DON RYAN; GREG HURT

On May 2, 2000, the Division issued Division Order No. 00-104, a Cease and Desist Order, against Sierra West Unit Investment Trust, Don Ryan and Greg Hurt. Respondents' business address is in California.

On January 7, 2000, the Division issued to the Respondent a Notice of Opportunity for Hearing, Order No. 00-005, pursuant to Revised Code Chapter 119. The Division alleged that the Respondents had violated Revised Code section 1707.44(C)(1) by selling securities that had not been registered with the Division. The Division's allegations stem from the sale of trust units in oil and gas wells to Ohio residents. The Respondents did not timely request an administrative hearing as permitted by Chapter 119 of the Ohio Revised Code. Therefore, the

Division issued its Cease and Desist Order, No. 00-104.

**1:30, INC. DBA PARMA
PIEROGIES; MARY
POLDRUHI**

On May 12, 2000, the Division issued Division Order No. 00-111, a Final Order to Cease and Desist, against 1:30, Inc. DBA Parma Pierogies and Mary Poldruhi. The Respondents reside in Ohio.

On December 4, 1998, the Division issued to the Respondents a Notice of Opportunity for Hearing, Order No. 98-519. The Notice Order alleged that the Respondents violated Ohio Revised Code sections 1707.44(C)(1) and 1707.44(G), respectively, by selling unregistered securities and failing to disclose material facts in conjunction with the sale of securities, thereby engaging in acts which are declared fraudulent by Chapter 1707. The Order also notified Respondents of their right to an administrative hearing pursuant to Revised Code Chapter 119. The allegations stem from the sale of common stock to Ohio residents. The stocks were not registered or claimed from exemption with the Division of Securities. Upon receipt of the Order, the Respondents timely requested an administrative hearing. A hearing was granted and the Hearing Officer found in the Division's favor. The Hearing Officer's Report and Recommendation was confirmed and approved. Therefore, the Division issued a Final Order to Cease and Desist, Order No. 00-111.

**WOLVERINE ENERGY, L.L.C.
and WOLVERINE ENERGY
1998-1999
DEVELOPMENT PROGRAM**

On June 8, 2000, the Division issued Division Order No. 00-138, a Cease and Desist Order, against Wolverine Energy L.L.C., and Wolverine Energy 1998-1999 Development Program. The Respondents' business address is in Michigan.

On February 9, 2000, the Division issued to the Respondents a Notice of

Opportunity for Hearing, Order No. 00-030 in accordance with Revised Code Chapter 119. The Order alleged that the Respondent violated Ohio Revised Code Section 1707.44(C)(1) by selling securities that were not registered with the Division. The allegations stem from the sale of subscription agreement interests to Ohio residents. The Order also informed the Respondents of their right to an adjudicative hearing. Upon issuance of the Order, the Respondents and the Division entered into a Consent Agreement which was accompanied by the issuance a Cease and Desist Order, Order No. 00-038. The Agreement requires the Respondents consent, stipulate and agree to the findings, conclusions, and orders set forth in the agreement. The agreement requires that the Respondents agree to the Cease and Desist Order. The agreement also requires the Respondents to waive appeal rights in this matter.

DON FEDERICO MERSIEL

On June 12, 2000, the Division issued Division Order No. 00-144, a Cease and Desist Order, against Don Federico Mersiel. The Respondent is a resident of Ohio.

On January 18, 2000, the Division issued to the Respondent a Notice of Opportunity for Hearing, Order No. 00-011, in accordance with Revised Code Chapter 119. The Order alleged that the Respondent had violated Revised Code 1707.44(A)(1), which prohibits the unlicensed sale of securities. The Order also alleged that the Respondent had violated Ohio Revised Code sections 1707.44(B)(4), 1707.44(C)(1) and 1707.44(G). These sections prohibit, respectively, making false representations in the sale of securities; selling securities without proper registration or claim of exemption from registration and selling securities while knowingly engaging in any act or practice which is declared illegal, defined as fraudulent or prohibited under the provisions of Chapter 1707 of the Revised Code. These allegations stem from the unlicensed sale of promissory notes to Ohio residents. The Order also notified the Respondent of his rights to an administrative hearing. The Respondent

failed to timely request an administrative hearing. Therefore, the Division issued its Cease and Desist Order No. 00-144.

DONALD ERWIN JONES

On June 12, 2000, the Division issued Division Order No. 00-145, a Cease and Desist Order, against Donald Erwin Jones. The Respondent is an Ohio resident.

On January 7, 2000, the Division issued to the Respondent a Notice of Opportunity for Hearing, Order No. 00-003, in accordance with Revised Code Chapter 119. The Order alleged that the Respondent violated Revised Code 1707.44(C)(1), as well as Ohio Administrative Code Rule 1301:6-3-19(A)(19), respectively, by selling securities that were not registered with the Division, nor exempt from registration and by effecting a securities transaction not recorded on the regular books and records of the dealer that the salesman represents. The Division's allegations stem from the sale of promissory notes to Ohio investors. The Order also stated that the Respondent had the right to request an adjudicative hearing on the matter pursuant to Chapter 119 of the Revised Code. The Respondent did not request an adjudicative hearing. Therefore, the Division issued its Cease and Desist Order, Order No. 00-145.

Criminal Actions and Updates

A Lake County grand jury indicted **Anthony Thomas Newman**, a Mentor, Ohio insurance agent, on January 28, 2000. Newman was indicted on three counts of the sale of unregistered securities and three counts of selling securities while unlicensed to do so. Newman was charged with selling unregistered promissory notes to three investors totaling \$230,000 in First Lenders Indemnity Corporation (FLIC), a company that subsequently went into bankruptcy. Two of the promissory notes sold by Newman totaled \$100,000 each, and two of the investors were elderly. The Division had issued a Cease and Desist Order against FLIC on May 10, 1999 for selling unregistered promissory notes and failing to disclose material facts to Ohio investors.

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Final Order Summaries

The following is a summary of recent final orders issued by the Division in response to salesman and investment advisor representative license applications.

PARTY	DECISION	ORDER SENT/NO.	ALLEGATIONS H.O. RECOMM.
Gardner, Christopher	Denied	3/14/2000 00-064	OAC 1301:6-3-19(D)(6) and (9) 1707.19(A)(1) No hearing requested
Williams, John D., Jr.	Granted	4/19/2000 00-098	ORC 1707.16 and 1707.19 OAC 1301:6-3-19(D)(7) and (9) Findings approved
Smith, Ronald Louis	Denied	4/28/2000 00-102	ORC 1707.161 and 1707.19 OAC 1301:6-3-19(D)(7) and (9) 1707.19(A)(5) and 1707.44(B)(3) Findings disapproved
Anello, Steven A.	Denied	5/9/2000 00-109	1301:6-3-19(D)(6) and (9) 1707.19(A)(1) No hearing requested
Park, Michael Jin Yong	Denied	5/10/2000 110-110	1301:6-3-19(D)(3),(7)(8) and (9) 1707.19(A)(1) No hearing requested
Bellak, Mitchell, Jr.	Denied	5/12/2000 00-114	ORC 1707.16 and 1707.19 OAC 1301:6-3-19(D)(9) Findings approved

Licensing Statistics

License Type	YTD 2000	YTD 1999
Dealer	2,505	2,287
Salesmen	107,059	92,226
Investment Adviser	1,185	
Investment Adviser Representative	6,107	

Registration Statistics

The following table sets forth the number of registration, exemption, and notice filings received by the Division during the second quarter of 2000, compared to the number of filings received during the second quarter of 1999. Likewise, the table compares the year-to-date filings for 2000 and 1999.

Filing Type	2nd Qtr '00	YTD 2000	2nd Qtr '99	YTD 1999
1707.03(Q)*	43	116	075	433
1707.03(W)	05	014	004	019
1707.03(X)	420	848	293	350
1707.03(Y)	01	002	004	005
1707.04	000	000	000	000
1707.041	000	000	002	002
1707.06	32	056	025	073
1707.09	21	033	017	031
1707.091	31	060	033	084
1707.092(A)*	1197	2520	1165	2258
1707.092(C)**	00	000	000	000
1707.39	00	006	003	004
1707.391	30	064	030	060
Total	1783	3719	1651	3276

*Statistics for the number of 3(Q) filings submitted prior to March 18, 1999 contain those pursuant to both Rule 506 and Section 4(2) of the Securities Act of 1933, whereas filings after March 18, 1999 will be represented by two different sections: RC 1707.03(Q) for Section 4(2) filings, and RC 1707.03(X) for Rule 506 offerings.

** Investment company notice filings.

*** Offerings of covered securities not otherwise covered by another statutory provision in the Ohio Securities Act.

Capital Formation Statistics*

Because the Division's mission includes enhancing capital formation, the Division tabulates the aggregate dollar amount of securities to be sold in Ohio pursuant to filings made with the Division. As indicated in the notes to the table, the aggregate dollar amount includes a value of \$1,000,000 for each "indefinite" investment company filing. However, the table does not reflect the value of securities sold pursuant to "self-executing exemptions" like the "exchange listed" exemption in R.C. 1707.02(E) and the "limited offering" exemption in R.C. 1707.03(O). Nonetheless, the Division believes that the statistics set out in the table are representative of the amount of capital formation taking place in Ohio.

*Categories reflect amount of securities registered, offered, or eligible to be sold in Ohio by issuers.

**Investment companies may seek to sell an indefinite amount of securities by submitting maximum fees. Based on the maximum filing fee of \$1100, an indefinite filing represents the sale of a minimum of \$1,000,000 worth of securities, with no maximum. For purposes of calculating an aggregate capital formation amount, each indefinite filing has been assigned a value of \$1,000,000.

Filing Type	Second Qtr 2000	YTD 2000
Exemptions		
Form 3(Q)	\$68,238,039	\$221,178,366
Form 3(W)	12,600,000	29,539,000
Form 3(X)	41,484,254,297	80,334,400,361
Form 3(Y)	1,000,000	2,088,000
Registrations		
Form .06	289,033,900	718,117,588
Form .09	35,600,000	88,950,024
Form .091	872,656,744	4,842,284,248
Form .092(C)	00	00
Investment Companies		
Definite	96,867,500	212,297,500
Indefinite**	720,000,000	1,510,000,000
TOTAL	\$43,580,250,480	\$87,958,855,087

Enforcement Reports

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On February 1, 2000, **Kevin Roser** pled guilty to six felony violations of the Ohio Securities Act. The violations resulted from Roser's activities in connection with Ohio Business Consultants and University Businesses Incorporated. Roser had been indicted on 15 counts in April 1996. He was arraigned shortly thereafter, but then fled. Last year he was arrested in Summit County on different charges, and currently is incarcerated at the Pickaway Correctional Institution.

Hamilton County Common Pleas Court Judge Ruehlman accepted a plea agreement from **James Powell**, on January 10, 2000, wherein Powell pled guilty to three counts of the sale of unregistered securities. Powell was sentenced to one and a half years on one felony count of selling unregistered securities, and one year on each on the other counts of selling unregistered securities. The sentence was then suspended and Powell was placed on probation for five years. Powell was also

ordered to pay restitution of \$315,000 to the victims. Powell's sentence will be reinstated if he does not make restitution.

On March 2, 2000, **Don F. Mersiel** pled guilty to a Bill of Information in Scioto County that charged him with six counts of the attempted selling of unregistered securities. A pre-sentence investigation will be conducted in the near future. The Division issued a Cease and Desist Order to Mersiel on June 12, 2000, for selling promissory notes issued by Tee to Green Golf Parks and Ameritech Petroleum.

Stephen F. Hickey was indicted in Franklin County in October 1999 on theft and securities fraud counts in connection with the sale of two promissory notes totaling \$35,000. Following the indictment, a warrant was issued for his arrest. Hickey was picked up in July, 2000 on that outstanding warrant. The securities sales subject to the indictment involved a company Hickey owned called Monticello Ventures.

OHIO SECURITIES CONFERENCE

2000

NOVEMBER 9, 2000

**Executive Conference and
Training Center
Vern Riffe Center
77 South High Street
Columbus, Ohio**

The Ohio Securities Conference is returning to an all-securities law format.

The meetings of the Ohio Division of Securities Advisory Committees will be held in conjunction with this Conference. In September, a Conference Brochure with detailed information and registration instructions will be sent to all Ohio Subscribers to the *Ohio Securities Bulletin*.

OHIO SECURITIES BULLETIN

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77 South High Street
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Columbus, Ohio 43215*

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