

OHIO SECURITIES BULLETIN

A QUARTERLY PUBLICATION OF THE OHIO DIVISION OF SECURITIES

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Ohio Mandates Use of the IARD

As of January 1, 2002, all investment advisers operating in Ohio are mandated to submit either a notice filing or a license application to the Ohio Division of Securities (Division) through the Investment Adviser Registration Depository (IARD). Notice filers in Ohio—those investment advisers otherwise registered with the Securities and Exchange Commission (SEC)—are already required by the SEC to submit their registrations through the IARD, and on November 5, 2001, notice filers in Ohio were similarly required to use the IARD for their notice filings. As a consequence, the January 1st mandate pertains to investment adviser licensees in Ohio.

Investment advisers not registered with the SEC and operating in Ohio must now use the IARD for fu-

ture filings with the Division. Investment advisers submitting an initial application for licensure in Ohio must use the IARD at the time of application—i.e. immediately.

Investment advisers currently licensed in Ohio must set up accounts and receive “entitlement” from the National Association of Securities Dealers Regulation, Inc. (NASDR), the developer and operator of the IARD, transition onto the IARD, and, submit an electronic Form ADV by the deadline of June 30, 2002.

Again, it is important to understand that, although current investment adviser licensees have the benefit of a “phase-in” period for mandated IARD use—as opposed to ini-

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Securities and Real Estate Licensing Requirements

When Real Estate Transactions Involve the Sale of Securities

A real estate salesperson may have occasion to determine whether a security is being offered or sold to a prospective purchaser. While Revised Code section 1707.01(B) specifically excludes applicability of the Ohio Securities Act to the sale of real estate,¹ asset sales are sometimes accompanied by agreements and contracts which constitute the sale of securities. Licensed professionals in securities and real estate often have transactions with business ventures involving raising proceeds through the sale of securities to purchase, manage and sell real estate for profit. The business venture may be a legal entity, a sole proprietor, or not much more than bank accounts, agreements or contracts to perform certain services for an investor.

Accounts, agreements and arrangements related to real estate transactions often require a more thorough review of the applicability of securities laws and whether a security is being offered for sale. The focus often turns on the definition of a “security” which, among other things, includes an “investment contract.”² Different types of arrangements for real estate investments have long been held to constitute the sale of investment contracts and hence the sale of securities. Interestingly one of the leading cases interpreting an “investment contract” involved a land sales contract. In Securities and Exchange Commission v. W.J. Howey Co., 328 U.S. 293, 66 S.Ct. 1100, 90 L.Ed. 1244 (1946), investors purchased land sales contracts for acreage of orange groves with an exclusive land sales contract for cultivation, harvesting and marketing arrangements of the

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OHIO DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

<http://www.securities.state.oh.us>



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IARD Mandate

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tial applicants who must use the IARD immediately, the investment adviser licensee must not only receive entitlement from the NASDR and transition onto the system by the June 30th deadline, but also submit an electronic Form ADV, as well.

As investment advisers operating in Ohio know, the IARD presents an excellent opportunity and forum for filers, regulators and the public to pursue, maintain, and review application and historical information. States nationwide are working together to join this mandate, streamlining the filing process for all. Keep in mind, however, that the definitions of terms, analysis, and procedural and substantive requirements for obtaining licensure remain rooted in individual state statutes.

For example, in Ohio, the requirements and steps needed to submit a notice filing through the IARD can be found in Revised Code 1707.14.1 and Ohio Administrative Code 1301:6-3-14.1. Similarly, the minimum competency requirements, application components, and steps needed to submit a license application can be found in Revised Code 1707.15.1 and Ohio Administrative Code 1301:6-3-15.1. Those investment advisers previously submitting filings to the Division will note recent amendments to these various provisions further streamlining the process such as the elimination of Ohio-specific forms and requirements.

The Division urges investment advisers operating in Ohio to not only obtain familiarity with the IARD, but to gain entitlement, transition, and file the Form ADV on the IARD as soon as possible. Visiting the IARD web site located at http://www.iard.com/state_packet.asp will provide information and forms for these requirements and at http://www.iard.com/firm_users_man.asp, the NASDR has a user's manual.

Investment advisers may wish to review the Division's web site located at www.securities.state.oh.us to review the fourth edition of the Division's *General Information and Forms Regarding the Oversight of Investment Advisers and Investment Adviser Representatives Operating in Ohio*. This compilation contains a text discussion of the analysis, requirements and process in Ohio, flow charts, application forms, certain SEC information releases, NASDR entitlement information, as well as additional information.

In the event of unanticipated technical difficulties that prevent the submission of a filing to the IARD, an investment adviser licensed by the Division may request a one-time, automatic, temporary hardship exemption. It is important to note that only existing licensees may request this exemption as it is not available to investment advisers filing initial applications. In addition, a licensee may only request the temporary hardship exemption once as it cannot be used for the transition and then the Form ADV filing. Lastly, the temporary hardship exemption will only be available to investment advisers until June 30, 2002—in

other words, the exemption is only available during the "phase-in" period. Subsequent to that date, the hardship exemption will no longer be available.

In order to claim the hardship exemption, the investment adviser must submit a paper version of a completed Form ADV-H to the Division no later than June 30, 2002, and submit the filing that is the subject of the Form ADV-H in electronic format with the IARD by July 8, 2002.

Currently, the application process and information regarding investment adviser representatives, those individual agents of investment adviser firms, is not available on the IARD. However, it is anticipated that the IARD will also be available to these representatives in the near future.

Questions relating to entitlement, transitioning, filing and the general usage of the IARD should be directed to the NASDR. The North American Securities Administrators' Association that, in a joint venture with the SEC, "created" the IARD concept, also has information to assist IARD users at <http://nasaa.org>.

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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Ohio Division of Securities

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All listings are area code (614)

Receptionist	644-7381	Enforcement	466-6140
Broker-Dealer	466-3466	Registration	466-3440
Records	466-3001	Webmaster	644-8401

Licensing Requirements

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crop. Lower courts held the arrangements constituted nothing more than an ordinary real estate transaction with a management agreement.³ The Supreme Court found the term to mean a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise.⁴ Other courts have held that the occupancy of property can be a determinative factor in establishing whether a security is present. In *State v. Silberg*, 166 Ohio St. 101, 104; 139 NE2d 342, 344 (1956), the Ohio Supreme Court stated that:

In determining whether an interest is an investment contract or an interest in a real estate transaction, the principal test seems to be the individual control which the purchaser has over the property or business venture in which he has acquired the interest. . . . On the other hand, if the purchaser of real property is to occupy the premises and conduct the enterprise, the instrument evidencing his investment is not an investment contract or a security.⁵

A common example of real estate transactions that involve investment contracts is the sale of condominiums or joint venture real estate projects which are accompanied by collateral agreements. The Division has a long history of reviewing these types of transactions as disclosed in the past issues of the *Ohio Securities Bulletin*.⁶ Condominium units may be sold with agreements whereby a promoter or third party undertakes to rent a condominium unit. The third party or promoter pools rental receipts from all units, pools all expenses, and makes pro rata distributions to the owner of the rental units. Such types of arrangements are promoted or offered emphasizing the economic benefits, profits and the managerial efforts of the third party.⁷

It is inappropriate to conclude that every condominium rental agreement will establish the sale of a security. Certain factors can present a strong case that a security is not being offered or sold regardless of the existence of a rental pool agreement. The court in *Hocking v. Dubois*, 885 F.2d 1449 (9th Cir. 1989), cert. Denied 494 U.S. 1078 (1990) held that “the simple purchase of real estate lacks any horizontal commonality, as no pooling interests or profits is involved.”⁸ Additionally, the court in *Hocking* held that the expectation of profits from the efforts of others may be lacking. Specifically, the court stated that if the purchaser is not required to enter into the agreement as a condition of the purchase, and the purchaser has termination rights, the purchaser has some control and may not have satisfied the investment contract analysis.⁹ Additional factors dispositive of the existence of an investment contract may include how the arrangement is promoted and whether the arrangement is to offset common area expenses and is not established as a primary income source for the owner.¹⁰ Of course, the facts and circumstances of each particular case may vary. Real estate professionals should exercise caution in selling condominium units with mandatory rental pool arrangements to provide profit opportunities to an investor.

Concerns for Licensed Professionals

Licensed professionals in both real estate and securities must be informed of the compliance requirements in other trades or professions and may wish to review the relevant provisions of both securities and real estate laws.¹¹ The promoters of these ventures often seek compensation for their efforts. The actual or expected receipt of compensation for the transaction, whether for real estate or securities, may trigger licensing requirements with either the Ohio Division of Securities or the Ohio Division of Real Estate.

A licensed real estate broker or salesperson must be mindful of the securities laws in raising funds for the purchase of real estate. Purchase funds in the control of another person whether in the form of common stock, a membership interest, a partnership interest, or an investment con-

tract will constitute the sale of a “security.”¹² The real estate broker and salesperson who sells securities and receives compensation for the sale of securities is a “dealer” under the Ohio Securities Act.¹³ The receipt of any compensation for a single transaction can require licensing under the Ohio Securities Act.¹⁴

Similarly, licensed securities professionals may not accept compensation for acting as a finder or stepping in to negotiate real estate transactions for their clients without the appropriate licensing. R.C. section 4735.02 requires an appropriate license for those persons acting or advertising as a real estate broker or salesperson.¹⁵ The definitional provisions provide licensing guidance. Generally, persons or entities that offer for sale or solicit the sale of real estate or the rental of real estate for compensation, salary or commission fall within the definition of a “real estate broker”¹⁶ or “real estate salesperson.”¹⁷ However, a significant exclusion may exist for persons or entities that have an interest in the real estate. R.C. section 4735.01(I) excludes from the definition of a real estate broker or real estate salesperson any person or persons performing services on behalf of certain legal entities for any interest owned in such real estate or investment by such person or entities.¹⁸

Securities and real estate licensees are required to pass separate tests that assess the person’s knowledge in the regulatory requirements of different types of transactions. It is important to note that the licensing differences are not merely technical. Different obligations and types of disclosure are required when securities are sold, as opposed to when real estate is sold. Generally, a securities transaction may involve more disclosure of intangible information not readily available to the investor. A real estate transaction may involve disclosure about property and information regarding its location. The obligations of disclosing material information may be somewhat different as well. Real estate licensees may not act in reckless disregard of the truth and may have a more relaxed standard of disclosure with regards to easily identifiable information from an inspection.¹⁹ A securities salesperson operates under a negligence standard and must ex-

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Licensing Requirements

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ercise reasonable diligence to secure information about the securities being sold and disclose that information to purchasers.²⁰

There are many licensees who hold both securities and real estate licenses. Such individuals may engage in transactions involving both the sale of the securities and from the real estate transaction. The compensation payable in such transactions can increase the risk to an investor desiring to profit in the business. The compensation should be clearly explained to the investor for each transaction.

This article is only intended to make licensees aware of the regulatory requirements administered by the Ohio Division of Securities and the Ohio Division of Real Estate. Different transactional situations may offer exclusions from licensing in either profession or require licensing in the same. A licensee may wish to review Chapters 1707 or 4735 of the Revised Code, consult with their attorney, or contact either the Ohio Division of Securities or the Ohio Division of Real Estate with any questions. The Internet web sites of the agencies may also offer additional assistance. See: Ohio Division of Securities at www.securities.state.oh.us or the Real Estate & Professional Licensing Division at: www.com.state.oh.us/ODOC/real/default.htm.

Endnotes

¹ Security¹ means any certificate or instrument that represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property, or credit of any person . . . but sections 1707.01 to 1707.45 of the Revised Code do not apply to the sale of real estate.” R.C. section 1707.01(B) in part.

² R.C. section 1707.01(B) states in part, “[Security] includes shares of stock, certificates for shares of stock, membership interests in limited liability companies, voting-trust certificates, warrants and options to purchase securities*any investment contract.*” [Emphasis added].

³ SEC v. W. J. Howey, at 298.

⁴ *Id* at 298,299.

⁵ *State v. Silberburg*, at 104.

⁶ *Condominium Projects as Securities*, Baden, Ohio Securities Bulletin, October, 1973; *Real Estate Joint Venture Interests as Securities*, Morgenstern, Ohio Securities Bulletin, Issue 1, 1982.

⁷ SEC Release 33-5347 (January 4, 1973) and Ohio Securities Bulletin, October 1973. See also: SEC v. C.M. Joiner Leasing Corp. 320 US 344, 353 (1943).

⁸ Hocking v. Dubois, 885 F.2d 1449 (9th Cir. 1989), cert. Denied 494 U.S. 1078 (1990). *Id* at. 1456 describing “common enterprise.” The failure to pool receipts would result in the loss of the “common enterprise” element. See SEC v. Howey at 300., “A common enterprise managed by respondents or third parties with adequate personnel and equipment is therefore essential if the investors are to achieve their paramount aim of a return on their investments.” Also: Revak v. SEC Realty Corp., 18 F.3d 81 (2d Cir. 1994) and SEC Release 33-5347

⁹ See: Hocking “As defendants acknowledge, where the investor maintains legal control over his investment (or the ability to regain control), in order to claim the investment is a security he must show practical dependence, an inability to exercise meaningful powers of control or to find others to manage his investment.”

¹⁰ See SEC Release No. 33-5347.

¹¹ See Chapter 1707 of the Ohio Revised Code for securities and Chapter 4735 of the Ohio Revised Code for real estate.

¹² R.C. section 1707.01(B) states in part:

(B) “Security” means any certificate or instrument that represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property, or credit of any person or of any

public or governmental body, subdivision, or agency. It includes shares of stock, certificates for shares of stock, membership interests in limited liability companies, voting-trust certificates, warrants and options to purchase securities, subscription rights, interim receipts, interim certificates, promissory notes, all forms of commercial paper, evidences of indebtedness, bonds, debentures, land trust certificates, fee certificates, leasehold certificates, syndicate certificates, endowment certificates, certificates or written instruments in or under profit-sharing or participation agreements or in or under oil, gas, mining leases or certificates or written instruments of any interest in or under the same, receipts evidencing preorganization or reorganization subscriptions, preorganization certificates, certificates evidencing an interest in any trust or pretended trust, any investment contract, any instrument evidencing a promise or an agreement to pay money, warehouse receipts for intoxicating liquor, and the currency of any government other than those of the United States and Canada, but sections 1707.01 to 1707.45 of the Revised Code do not apply to the sale of real estate.

¹³ R.C. section 1707.01(E) states, “Dealer,” except as otherwise provided in this chapter, means every person, other than a salesperson, who engages or professes to engage, in this state, for either all or part of the person’s time, directly or indirectly, either in the business of the sale of securities for the person’s own account, or in the business of the purchase or sale of securities for the account of others in the reasonable expectation of receiving a commission, fee, or other remuneration as a result of engaging in the purchase and sale of securities.

¹⁴ *Carrousel North v. Chelsea Moore Co.*, 9 OApp3d 344, 460 NE2d 316 (1983).

¹⁵ R.C. section 4735.02 states in part:

No person, partnership, association, limited liability company, limited liability partnership, or a corporation shall act as a real estate broker or real estate salesperson, or advertise or assume to act as such, without first being licensed as provided in this chapter.

¹⁶ R.C. section 4735.01(A) states as follows

(A) "Real estate broker" includes any person, partnership, association, limited liability company, limited liability partnership, or corporation, foreign or domestic, who for another, whether pursuant to a power of attorney or otherwise, and who for a fee, commission, or other valuable consideration, or with the intention, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration does any of the following:

(1) Sells, exchanges, purchases, rents, or leases, or negotiates the sale, exchange, purchase, rental, or leasing of any real estate;

(2) Offers, attempts, or agrees to negotiate the sale, exchange, purchase, rental, or leasing of any real estate;

(3) Lists, or offers, attempts, or agrees to list, or auctions, or offers, attempts, or agrees to auction, any real estate;

(4) Buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate;

(5) Operates, manages, or rents, or offers or attempts to operate, manage, or rent, other than as custodian, caretaker, or janitor, any building or portions of buildings to the public as tenants;

(6) Advertises or holds self out as engaged in the business of selling, exchanging, purchasing, renting, or leasing real estate;

(7) Directs or assists in the procuring of prospects or the negotiation of any transaction, other than mortgage financing, which does or is calculated to result in the sale,

exchange, leasing, or renting of any real estate;

(8) Is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the broker undertakes primarily to promote the sale, exchange, purchase, rental, or leasing of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both, except that this division does not apply to a publisher of listings or compilations of sales of real estate by their owners;

(9) Collects rental information for purposes of referring prospective tenants to rental units or locations of such units and charges the prospective tenants a fee.

¹⁷ R.C. section 4735.01(C) states,"(C) "Real Estate Salesperson" means any person associated with a licensed real estate broker to do or to deal in any acts or transactions set out or comprehended by the definition of a real estate broker, for compensation or otherwise."

¹⁸ R.C. section 4735.01(I) states in part,

(I) The terms "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson" do not include a person, partnership, association, limited liability company, limited liability partnership, or corporation, or the regular employees thereof, who perform any of the acts or transactions specified or comprehended in division (A) of this section, whether or not for, or with the intention, in expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

(1) With reference to real estate situated in this state or any interest in it owned by such person, partnership, association, limited liability company, limited liability part-

nership, or corporation, or acquired on its own account in the regular course of, or as an incident to the management of the property and the investment in it . . .

¹⁹ R.C. section 4735.67 states,

(A) A licensee shall disclose to any purchaser all material facts of which the licensee has actual knowledge pertaining to the physical condition of the property that the purchaser would not discover by a reasonably diligent inspection, including material defects in the property, environmental contamination, and information that any statute or rule requires be disclosed. For purposes of this division, actual knowledge of such material facts shall be inferred to the licensee if the licensee acts with reckless disregard for the truth.

(B) A licensee is not required to discover latent defects in the property or to advise on matters outside of the scope of the knowledge required for real estate licensure, or to verify the accuracy or completeness of statements made by the seller, unless the licensee is aware of information that should reasonably cause the licensee to question the accuracy or completeness of such statements.

²⁰ R.C. section 1707.29 states,

In any prosecution brought under sections 1707.01 to 1707.45 of the Revised Code . . .the accused shall be deemed to have had knowledge of any matter of fact where in the exercise of reasonable diligence, he should, prior to the alleged commission of the offense in question, have secured such knowledge.

Also: *State v. Walsh*, 66 OApp2d 85, 420 NE2d 1013 (1979), "RC §1707.29 has the general effect of defining "knowingly" more in terms of "negligently" as defined by RC §2901.22(D). . . ."

Minutes of the Registration and Exemption Advisory Committee

The registration and exemption advisory committee held its open meeting on November 2, 2001 after the 2001 Ohio Securities Conference. The Division announced two proposed exemptions have recently been adopted as exemptions by rule. Specifically, the companion exemptions are now available for Securities Act Rules 801 and 802 as promulgated by rule 1301:6-3-03(E)(10) of the Ohio Administrative Code. This exemption has been the subject of a few inquiries to the Division by out-of-state practitioners. These practitioners are attempting to coordinate blue sky compliance by a foreign-based issuer with fewer than ten percent of their security holders in the United States and who are conducting a rights offering. Rule 1301:6-3-03(E)(11) of the Ohio Administrative Code provides a limited exemption for Canadian dealers offering securities to Canadian residents who are temporarily in Ohio. Neither exemption requires that a filing or fee be submitted to the Division.

The Division took the opportunity to inform the attendees about the review of private offerings by the registration section. The review of Form D filings has been the subject of debate among out-of-state filers. The Division stressed that there is no merit review of Rule 506 offerings in Ohio. As such, the Division adheres to the meaning of the National Securities Market Improvement Act which permits the notice filing of the Rule 506 offering. However, the Division does review the Form D filing to ascertain whether the offering is a valid Rule 506 offering. An Internet search is part of this process. The Division will send letters to filers where there is some indication that the offering is not a valid Rule 506 offering. These indications may be factors such as an excessive number of non-accredited investors, advertising or general solicitation, and private placement memorandums that do not comply

with 502(b) and omit significant sections. The Division noted that it does not provide a detailed review towards individual disclosure items. The Division may comment upon Rule 506 compliance when a private placement memorandum to non-accredited investors omits an entire section such as "risk factors."

The Division expressed further concern that issuers, without the assistance of securities counsel, inaccurately believe that the only required compliance is to file a Form D with the Division and pay the \$100 fee. The Division stressed that dealer and salesperson licensing is required as well as adherence to Rule 506. Other factors on the Form D may raise concerns of the Division, such as a past disciplinary history of the promoters. Unsophisticated filers raise different compliance concerns on a very frequent basis that include inconsistent answers and omissions of significant portions of the Form D. The Division notes that the number of compliance letters is a small fraction of the total number of Form D filings. Those letters are usually the result of significant concerns identifiable from the Form D filing. The Division believes that its review provides assistance to investors and issuers.

The Division further announced its attempt to create some form of confidentiality for private offering memorandums submitted with the filings. Practitioners have raised concerns that disclosure of certain information in the private offering memorandum could be detrimental to the business of the issuer or the claim of the exemption for the offering. A proposal of this nature is currently contained in pending legislation, S.B. 138.

A limited amount of discussion focused upon the current economy. Practitioners asked if filings have dropped off due to the limited number of IPO's. The Division explained that the number of filings are not market

sensitive. In particular, the Division will always receive certain tax advantaged direct participation placements, small startups, or asset diversification-type offerings. Some offerings have decreased, though the work load for the examiners often depends more upon the quality of the filings. As more non-securities lawyers file applications, the quality of the filing decreases and the comment letters and work obligations on the Division increase. The Division is concerned that many of these applicants may substitute poor online legal advice for competent securities counsel.

Continuing with the discussion on the economy, the Division has reviewed some seasoned issuers that have experienced recent losses. These seasoned issuers have typically been filing to "renew" debt offerings for over ten years. Many of these issuers have long track records of profitable operations. A debt offering must be able to meet its debt obligations in order to offer and sell the debt securities. The renewal is not automatic regardless of how long the issuer has been in existence. Issuers have been required to demonstrate that they will be able to satisfy their debt obligations. The Division has requested issuers to disclose plans to reverse operating losses, decrease the amount of debt, spread maturities, establish guarantees, increase risk disclosure, etc. to meet their debt obligations, depending on the specific circumstance. Often, the issuer is able to demonstrate that the loss is a one-time occurrence due to an unforeseen contingency and can demonstrate a plan to reverse such occurrences. The Division will often permit such an issuer to proceed forward with its debt offering.

No additional matters were discussed. The Division concluded by noting that its staff is available to practitioners to discuss any securities law issues. Similarly, many attendees stated that they are available to offer their perspective to the Division.

Minutes of Enforcement/Licensing Advisory Committee Meeting

NOTE: The Enforcement and Licensing Advisory Committees were combined for the first time in 2001.

Matt Fornshell began the meeting with an update of recent enforcement trends and developments. It was noted that in October 2001, the Ohio Department of Insurance began licensing providers and sellers of viatical settlements. In addition, the definition of "security" under §1707.01(B) of the Ohio Securities Act was amended to include the term "life settlement interest." In 2001, the Enforcement Section experienced an increase in the number of cases involving non-traditional securities products such as promissory notes and viatical settlements. One particular issue the Licensing Section is currently reviewing is whether or not investment advisers with on-line advisory or analysis services need to be registered with Division. The Division is currently reviewing SEC rules for guidance on this question.

A committee member indicated that Notices of Intent to Deny securities salesperson applications sent to an individual's branch office doesn't allow enough time for response and should be sent to the BD's compliance office instead. It was further stated that once an application is denied in Ohio, it causes a domino effect with the other states. The Division countered that the order is sent to an individual's home and branch office and thirty days is ample time for an applicant to withdraw their application or request a hearing.

The committee discussed a recent NASD proposal involving the transfer of customer accounts when a salesperson obtains new employment. Many BDs believe that customers should be prevented from moving their account to a salesperson's new firm. However, the issue has been raised that preventing a customer from transferring his or her account to another

dealer may constitute lack of "good business repute" and may be a violation of the NASD Rules of Fair Practice.

Dale Jewell indicated that temporary agent transfers (TATs) have been eliminated from the CRD system. TATs occurred when the CRD system was created and were used for license transfers for individuals with a disciplinary history. With the advent of Web CRD, it was discovered that TAT was not Y2K compatible when the system renewed a salesperson's license every thirty days if a response to a disciplinary question was not received. Until TAT was eliminated, a salesperson could be registered "temporarily" indefinitely.

There was a short discussion concerning last year's proposal to give the Division the ability to levy fines against licensees. There has been no resolution of this issue to date.

Takeover Advisory Committee Minutes

The Takeover Advisory Committee of the Division held its annual meeting by conference call on November 2, 2001 following the Ohio Securities Conference. The Division reported that R.C. 1707.041(A)(2)(g) was amended in Senate Bill 32 to allow the Division to promulgate an administrative rule on the materiality of an offeror's financial statements during a control bid and to permit offerors to submit less than three years of financial statements in certain instances. The Securities and Exchange Commission ("SEC") adopted materiality standards for financial statements of offerors in Regulation M-A. The SEC also allows incorporation by reference of financial statements for offerors who report companies that file electronically on the EDGAR system. However, R.C. 1707.041(A)(2)(g) re-

quired the Division to request complete financial statements from an offeror for the past three fiscal years.

Following the effectiveness of Senate Bill 32 on October 8, 2001, the Division proposed a rule amendment on the materiality of an offeror's financial statements. The Division's proposal was drafted to be consistent with the SEC's materiality standard in Regulation M-A. Under the administrative rule, financial statements of an offeror are not material and not required to be filed with the Division if:

- 1) only cash consideration is offered; and
- 2) the offer is not subject to any financing condition; and
- 3) the bid is for all of the subject company's securities, or the

offeror is a public reporting company that files financial statements electronically on the SEC's EDGAR system.

The rule also permits offerors who are reporting companies that file electronically on the SEC's EDGAR system to submit summary financial information for the current period and the last two fiscal years and to incorporate the complete financial statements by reference.

Following a public hearing, Ohio Administrative Code 1301:6-3-041(C) was adopted effective November 5, 2001. The Division is currently amending the Form 041 to include the amendments under the rule.

Michael Stentz

On December 6, 2001, Michael Stentz entered into a Consent Agreement with the Division and consented to the issuance of a Cease and Desist Order, Division Order No. 01-320.

The Division found that Michael Stentz violated the provisions of Ohio Revised Code Section 1707.44(C)(1) by selling Caffe Diva promissory notes that had not been registered as securities. Stentz waived his right to the issuance of a Notice of Opportunity for Hearing and his right to an administrative hearing pursuant to Chapter 119 of the Revised Code in the Consent Order. The Final Order to Cease and Desist was issued on December 6, 2001.

Randal Phillip Miller

Randal Phillip Miller entered into a Consent Agreement with the Division and consented to the issuance of a Cease and Desist Order, Division Order No. 01-321.

The Division found that Miller violated the provisions of Ohio Revised Code Section 1707.44(C)(1) by selling Caffe Diva promissory notes that had not been registered as securities. Miller waived his right to the issuance of a Notice of Opportunity for Hearing and his right to an administrative hearing pursuant to Chapter 119 of the Revised Code in the Consent Order. The Final Order to Cease and Desist was issued on December 6, 2001.

Ronald S. Richards

On October 30, 2001, the Division issued Division Order No. 01-286, a Cease and Desist Order, against Ronald S. Richards. Respondent is an Ohio resident.

On September 26, 2001, the Division issued a Notice of Opportunity for Hearing, Division Order No. 01-267, to Ronald S. Richards. The Division alleged that the Respondent had violated the provisions of Ohio Revised

Code Section 1707.44(G) by failing to disclose to investors that the principal and interest in brokered certificates of deposits and FHLMC bonds that they purchased were only guaranteed if those investments were held long-term to maturity. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code and the Respondent did not request a hearing. Therefore, the Division issued its Cease and Desist Order No. 01-286.

William L. Johnston

On November 15, 2001, the Division issued Division Order No. 01-299, a Cease and Desist Order, against William L. Johnston. Respondent is an Ohio resident.

On June 12, 2001, the Division issued a Notice of Opportunity for Hearing, Division Order No. 01-145, to William L. Johnston. After an administrative hearing held on June 25, 2001, the Division found that the Respondent had violated the provisions of Ohio Revised Code Section 1707.44(B)(4) by telling investors that FNMA and FHLMC bonds were short term investments when they were not. The Division also found that the Respondent had violated the provisions of Ohio Administrative Code Section 1301:6-3-19(A)(5) by recommending those bonds to investors for whom they were not suitable.

Walter W. Jenkins

On November 30, 2001, the Division issued Division Order No. 01-317, a Cease and Desist Order with Consent Agreement against Walter W. Jenkins. Jenkins conducted business from Columbus, Ohio.

The Division found that the Respondent had violated the provisions of Revised Code section 1707.44(C)(1) and Ohio Administrative Code 1301:6-3-19(A)(19), respectively, by selling unregistered securities and by "selling

away". The Division's allegations stem from Respondent's sale in October 1998 of World Vision Entertainment, South Mountain Resort and Spa and Sun Broadcasting Systems promissory notes to an Ohio investor. At the time of these sales, Respondent was a licensed salesperson with FSC Securities Corporation. The Division notified Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code, which Respondent waived by entering into the Consent Agreement. Therefore, the Division issued Cease and Desist Order No. 01-317.

Accelerated Benefits Corp.

On November 29, 2001, the Division issued Order No. 01-316, a Cease and Desist Order, against Accelerated Benefits Corporation.

From approximately November of 1998 through September of 2001, at least seventy Ohio residents invested over \$1,000,000 to acquire, through Accelerated Benefits Corporation, fractionalized interests in viatical settlements. These interests are securities under the Ohio Securities Act but were not registered with the Division. Therefore, on October 29, 2001, the Division issued Order No. 01-285, a Notice of Opportunity for Hearing against Accelerated Benefits Corporation for allegedly violating Revised Code section 1707.44(C)(1), i.e., the unregistered sale of securities. The Respondent did not request a hearing pursuant to Chapter 119 of the Ohio Revised Code, thereby allowing the Division to issue its Cease and Desist Order No. 01-316, which incorporated the allegations set forth in the Notice of Opportunity for Hearing.

Gregory Oliver

On December 19, 2001, the Division issued Order No. 01-331, a Cease and Desist Order, against Gregory Oliver. From at least November of 1998 through May of 2000, Oliver sold

to Ohio residents, on behalf of Accelerated Benefits Corporation, fractionalized interests in viatical settlements. These interests in viatical settlements are securities under the Ohio Securities Act but were not registered with the Division. Furthermore, Respondent's conduct with respect to selling the fractionalized interests in viatical settlements constituted his acting as a dealer, as defined by Revised Code Section 1707.01(E)(1), even though he was not licensed as such. Therefore, on November 14, 2001, the Division issued Order No. 01-297, a Notice of Opportunity for Hearing against Gregory Oliver for allegedly violating Revised Code section 1707.44(C)(1), i.e., the unregistered sale of securities, along with Revised Code section 1707.44(A)(1), i.e., selling securities to Ohio residents without being licensed as a dealer. The Respondent did not request a hearing pursuant to Chapter 119 of the Ohio Revised Code, thereby allowing the Division to issue its Cease and Desist Order No. 01-331 which incorporated the allegations set forth in the Notice of Opportunity for Hearing.

Howard Bruce Dedominicis

On December 31, 2001, the Division issued Order No. 01-342, a Cease and Desist Order, against Howard Bruce Dedominicis. From approximately April of 2000 through June of 2000, Mr. Dedominicis advised at least four Ohio residents to invest funds with Olympic Investment Bank, Ltd., an entity located in Grenada. Mr. Dedominicis was compensated by the Ohio residents for providing this advice. Mr. Dedominicis' conduct in this regard constituted his acting as an investment adviser as defined by Revised Code Section 1707.01(X), even though he was not licensed as such. Therefore, on November 28, 2001, the Division issued Order No. 01-315, a Notice of Opportunity for Hearing, against Howard Bruce Dedominicis for allegedly violating Revised Code Section 1707.44(A)(2), i.e., acting as an investment advisor without being licensed by the Division to so act. The Respondent

did not request a hearing pursuant to Chapter 119 of the Ohio Revised Code, thereby allowing the Division to issue its Cease and Desist Order No. 01-342, which incorporated the allegations set forth in the Notice of Opportunity for Hearing.

National Communication Marketing, Inc.; Communications Marketing Associates, Inc.; Thomas E. Murray, President

On November 13, 2001, the Division issued Division Order No. 01-296, a Cease and Desist Order, to National Communications Marketing, Inc., Communications Marketing Associates, Inc. and their president, Thomas E. Murray of Boca Raton, Florida.

The Division found that the Respondents violated the provisions of Ohio Revised Code sections 1707.44(A)(1) and 1707.44(C)(1) by selling unregistered securities in the form of pay telephone and related service agreements while they were unlicensed as securities dealers. ETS Payphones, Inc. was the exclusive supplier of the customer-owned coin operated telephones. ETS is now in bankruptcy, and the Securities and Exchange Commission obtained a preliminary injunction against ETS. On October 10, 2001, the Division issued a Notice of Opportunity for Hearing, Division Order 01-280, to the Respondents.

The Division notified the Respondents of their right to an adjudicative hearing pursuant to Chapter 119 of the Revised Code. A hearing was not requested and the Cease and Desist Order was issued on November 13, 2001.

Shirley A. Devitt

On December 18, 2001, the Division issued a Cease and Desist Order, Division Order No. 01-328, to Shirley A. Devitt of Kensington, Ohio.

The Division entered into a Consent Agreement with Devitt in conjunction with the Cease and Desist Order. The Division found that Shirley

Devitt violated the provisions of Ohio Revised Code sections 1707.44(A)(1) and 1707.44(C)(1) by selling unregistered viatical settlements while unlicensed as a securities dealer. The Division's investigation stemmed from Devitt's sale of viatical settlements of Imtek Funding Corporation and Beneficial Assistance of Maryland. The Division found that she earned commissions of 7% to 9% for selling the viatical settlements. On November 27, 2001, the Division issued a Notice of Opportunity for Hearing, Division Order 01-314, to Devitt.

Devitt waived her right to an adjudicative hearing pursuant to Chapter 119 of the Revised Code, and the final Cease and Desist Order with Consent Agreement was issued on December 18, 2001.

Merle M. Devitt

On December 18, 2001, the Division issued a Cease and Desist Order, Division Order No. 01-329, to Merle M. Devitt of Kensington, Ohio.

The Division entered into a Consent Agreement with Devitt in conjunction with the Cease and Desist Order. The Division found that Merle Devitt violated the provisions of Ohio Revised Code sections 1707.44(A)(1) and 1707.44(C)(1) by selling unregistered viatical settlements while unlicensed as a securities dealer. The Division's investigation stemmed from Devitt's sale of viatical settlements of Imtek Funding Corporation and Beneficial Assistance of Maryland. The Division found that he earned commissions of 7% to 9% for selling the viatical settlements. On November 27, 2001, the Division issued a Notice of Opportunity for Hearing, Division Order 01-305, to Devitt.

Devitt waived his right to an adjudicative hearing pursuant to Chapter 119 of the Revised Code, and the final Cease and Desist Order with Consent Agreement was issued on December 18, 2001.

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Enforcement Reports

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Jerald M. Goldstrom

On December 18, 2001, the Division issued a Cease and Desist Order, Division Order No. 01-330, to Jerald M. Goldstrom of South Euclid, Ohio.

The Division entered into a Consent Agreement with Mr. Goldstrom in conjunction with the Cease and Desist Order. The Division found that Jerald M. Goldstrom violated the provisions of Ohio Revised Code sections 1707.44(A)(1) and 1707.44(C)(1) by selling unregistered viatical settlements while unlicensed as a securities dealer. The Division's investigation stemmed from Goldstrom's sale of viatical settlements of Imtek Funding Corporation and Beneficial Assistance of Maryland. The Division found that he earned commissions for selling the viatical settlements. On November 20, 2001, the Division issued a Notice of Opportunity for Hearing, Division Order 01-303, to Goldstrom.

Goldstrom waived his right to an adjudicative hearing pursuant to Chapter 119 of the Revised Code, and the final Cease and Desist Order with Consent Agreement was issued on December 18, 2001.

Bryan Stallings

On December 20, 2001, the Division issued a Cease and Desist Order, Division Order No. 01-337, to Bryan Stallings of Columbus, Ohio.

The Division found that Stallings violated the provisions of Ohio Revised Code sections 1707.44(A)(1) and 1707.44(C)(1) by selling unregistered viatical settlements while unlicensed as a securities dealer. The Division's investigation stemmed from Stallings' sale of viatical settlements of Imtek Funding Corporation and Beneficial Assistance of Maryland. The Division found that he earned commissions of 4% to 9% for selling the viatical settlements. On November 16, 2001, the Division issued a Notice of Opportunity for

Hearing, Division Order 01-300, to Stallings.

The Division notified Bryan Stallings of his right to an adjudicative hearing pursuant to Chapter 119 of the Revised Code. A hearing was not requested and the Cease and Desist Order was issued on December 20, 2001.

Connect One Telcom Corporation

On November 14, 2001, the Division issued a cease and desist order against Connect One Telcom Corporation. Connect One, a corporation based in Delray Beach, Florida, claimed to have the capability to "bundle" telecommunication services by using "Digital Subscriber Line Technology" or "DSL," a method of combining a telephone line, internet line, fax line, and video conferencing line into one telecommunications line that operates "one hundred times faster". Respondent, by and through its employees, sold an Ohio investor 5000 shares of common stock and 5000 shares of preferred stock. The order also found that Don Klaehn, an employee of Respondent, informed the investor that he should purchase Connect One stock since "now the risk is eliminated" due to a newly formed financial relationship between Respondent and a company named "AMISA." However, AMISA did not exist at the time of this representation, nor did it exist before or after Klaehn made this representation to the investor. Klaehn, acting on behalf of Respondent, knew or should have known that AMISA did not exist and also that the risk was not eliminated from the purchase of Connect One stock. Therefore, the Division found in its uncontested order that Connect One had violated R.C. 1707.44(C)(1) and R.C. 1707.44(B)(4), respectively, selling unregistered securities and making a material misrepresentation in the sale of securities.

Alpha Telcom, Inc.

On July 26, 2001, the Division issued a final Cease and Desist Order against Alpha Telcom, Inc., an Oregon company. The Division had previously issued a Notice of Opportunity for Hearing against the company on November 28, 2000 (Division Order No. 00-452) alleging that the company had sold unregistered securities in violation of R.C. 1707.44(C)(1). Alpha Telcom, Inc. was in the business of marketing pay telephones, which were usually accompanied by servicing agreements. The Division maintained the phones and accompanying service agreements constituted an investment contract, and, therefore, sales should have been registered with the Division pursuant to the Ohio Securities Act. Alpha Telcom, Inc. requested and was granted a hearing pursuant to Chapter 119 of the Revised Code. The hearing officer issued a report and recommendation finding in the Division's favor. The report was accepted by the Division, and a final order to Cease and Desist, Division Order No. 01-215, was issued against Alpha Telcom, Inc.; the order incorporated the allegations that had been set forth in the Notice of Opportunity for Hearing. The company appealed the issuance of the Cease and Desist Order to the Franklin County Court of Common Pleas, but its case was dismissed in January 2002 because of Alpha Telcom Inc.'s failure to prosecute.

Dennis Wayne Russell

On September 28, 2001, the Division issued a Cease and Desist Order against Dennis Wayne Russell of Washington Court House, Ohio. On July 2, 2001 the Division had issued a Notice of Opportunity for Hearing, Order No. 01-199, which alleged Russell had violated R.C. 1707.44(C)(1) by selling unregistered securities. The order alleged the violation occurred when Russell sold a promissory note issued by South Mountain Resort and Spa, Inc. a North Carolina company (the notes were not

registered with the Division). Russell did not exercise his right to request an adjudicatory hearing pursuant to Chapter 119 as noted in the order. Therefore, the Division issued its final Cease and Desist Order, Division Order 01-268, incorporating the allegations set forth in the Notice of Opportunity for Hearing.

Robert E. Seaquist

On December 5, 2001 the Division issued a Consented Cease and Desist Order against Robert E. Seaquist of Powell, Ohio. On August 24, 2001 the Division had issued a Notice of Opportunity for Hearing, Order No. 01-243, which alleged Seaquist had violated R.C. 1707.44(C)(1) by selling unregistered securities. The order alleged the violation occurred when Seaquist sold a promissory note issued by South Mountain Resort and Spa, Inc. a North Carolina company (the notes were not registered with the Division). Seaquist requested an adjudicatory hearing pursuant to Chapter 119 of the Revised Code in order to challenge the Division's intention to issue a final Cease and Desist Order. The Division and Seaquist, through counsel, entered into a Consent Agreement in which Seaquist consented to the issuance of the Cease and Desist Order and waived his rights to the adjudicatory hearing and to further appeals regarding this matter. The Division then issued its final Cease and Desist Order, Division Order No. 01-318 against Seaquist.

Criminal Updates

On December 19, 2001, The Cuyahoga County Common Pleas Court indicted **Joseph Anthony Vargo** on four counts of securities violations, including two counts of selling unregistered promissory notes of Serengeti Diamonds USA and Lomas de la Barra Development to Ohio residents, and two counts of selling promissory notes without a securities license. The Division previously issued a Cease and Desist Order against Vargo on October 23, 2000, for unlicensed sales and unregistered sales.

Kenneth E. Bailey, Jr. was indicted on October 12, 2001, by a Fairfield County Grand Jury on 58 felony counts associated with his running of Trendsetter Investments, Ltd. The indictment included the following violations: selling unregistered securities, making false representations in the sale of securities, securities fraud, issuing false statements as to the value of securities, aggravated and grand theft, passing bad checks, and theft from an elderly person. Bailey was the general partner and organizer of Trendsetter. He allegedly sold limited partnership interests to approximately 90 investors for a total of \$2.5 million from July 1998 through early 2001. He allegedly made numerous misrepresentations to investors which induced them to invest and failed to disclose to later investors that the limited partnership was losing large amounts of money every month while reflecting large returns on limited partner monthly statements. Financial records also reflect the misappropriation of investor money.

Jackson Melvin Johnson was sentenced in Montgomery County on October 17, 2001, to 10 weekends in jail and community service. A Bill of Information had been issued on October 8, 1998, against Johnson for selling unregistered promissory notes to investors to finance Canyon Investments, a company that purchased and rehabilitated rental property in Dayton, Ohio. Johnson also must pay \$967 per month in restitution to the investors.

As part of a plea agreement, on November 1, 2001, **Anthony Thomas Newman** entered a plea of no contest to two counts of attempted unlicensed sales of securities in Lake County Common Pleas Court. Judge Martin Parks found Newman guilty on the two counts and ordered Newman to pay \$40,000.00 in restitution to investors, which was paid on November 1, 2001. Newman, an insurance agent, sold high-risk promissory notes of First Lenders Indemnity Corporation to elderly people while he was unlicensed to sell securities.

On October 18, 2001, **Marsha Pawlowski Koerber** and **Monica J. Reiter** were charged with helping **Andrew Paul Bodnar** defraud hundreds of investors out of as much as \$41 million. Koerber, Bodnar's former office manager, was charged with conspiracy, securities fraud, mail fraud, and tax evasion. Reiter, Koerber's sister and former administrative assistant in Bodnar's office, was charged with conspiracy, securities fraud, and mail fraud.

On November 5, 2001, **Gregory James Best** was indicted in U.S. District Court in Cleveland on charges of conspiracy, securities fraud, and mail fraud. Best was a former business associate of **Andrew Paul Bodnar**. The Division had barred Best and his company Laurex Ltd. from selling securities in Ohio in 1998.



Saving and Investing Education Month

As in years past, the Division of Securities will once again focus on investor education during the month of April—*Saving and Investing Education Month* in the State of Ohio. Throughout the month, the Division demonstrates its commitment to improving financial literacy in the Buckeye State with the goal of providing education and promoting awareness in Ohio about the importance of saving, investing, and making wise personal financial decisions. As a consequence, during April, the Division will engage in a number of educational outreach efforts throughout the State.

In support of this initiative, Division personnel will venture throughout the State, making dozens of presentations to students in grade school, middle school, and high school, as well as to community, civic, and other interested groups. In conjunction with these presentations, the Division provides educational material to the students and groups reiterating and expanding upon the information provided in the oral presentations.

The Division maintains a large inventory of investor education material that is available, free of charge, through the Division's Internet home page located at www.securities.state.oh.us, or by telephoning the Division at 1-800-788-1194 to obtain paper copies of the material. The Division's investor education material includes information targeted to varying audiences, including a coloring book for grade school age children, teaching guides, online investing for those persons interested in using the Internet, that all important information for high school students getting ready to venture out in the world, investing by retirement age investors, and so much more!

If you would like the Division to schedule a presentation for a civic or community group or classroom environment, please contact the Division at 614-995-2092.

And, remember, investor protection begins with education....

Past Year Sees Investor Education Outreach by the Division

by Karen Terhune

The Ohio Division of Securities is committed to investor education efforts year-round. Educational publications are available to the public through the Division's internet home page at www.securities.state.oh.us. The Division also reached a large audience at the Ohio State Fair in August through dissemination of its educational publications. Some of the Division's other recent investor education initiatives are summarized here.

New Investor Education Publication Available

The Division recently issued a new educational publication for investors on "callable" or "brokered" certificate of deposits (CDs). Unlike traditional CDs, only the issuer, and not the investor, can redeem a callable CD without a substantial penalty. These CDs can have maturity dates of up to 15 or 20 years. They also can have variable interest rates that are tied to an index, such as the stock market, that can go down.

The new publication includes a glossary that describes terms of the callable CD investment. It also includes a worksheet that allows investors to take notes when speaking with a salesperson on callable CDs. This prompts the investor to ask particular questions, including the following: the Central Registration Depository (CRD) number of the salesperson so the investor can verify the licensure and background of the salesperson; the maturity date; call features; any custodian fees; the salesperson's commission; the name of the holder of the CD; how the CD meets the investor's objectives; and the reasons for the recommendation by the salesperson.

This new publication was added to the Division's inventory of other publications it distributes to the public on an ongoing basis. The publications are available free of charge through the Division's toll-free number, 1-800-788-1194, or in Columbus at 466-6140, or can be downloaded from the internet at the above-referenced web site address.

Financial Literacy 2010

The Division has continued to be involved this year in the Financial Literacy 2001 (FL2001) program, a financial education program for high school students. The program has recently been renamed the Financial Literacy 2010 (FL2010) program to reflect the ongoing commitment to offer the financial education program to teachers for their high school students. The personal finance curriculum program includes the *Basics of Savings and Investing* teaching guide, an interactive web site for teachers, and teacher newsletters. The teaching guide was developed by the Investor Protection Trust, the North American Securities Administrators Association (NASAA) - of which the Division is a member - and the National Association of Securities Dealers (NASD), in conjunction with Eastern Michigan University.

The teaching guide highlights the following information: how to design a personal financial plan; how financial markets work; how to select among various savings and investment options; how to find and use investment information; and how to recognize and protect yourself against investment fraud. The teaching guide includes units of instruction that contain learning objectives, background information, suggested activities, overhead transparency masters, student handouts, worksheets, additional resources and a unit test. An appendix includes sources of additional information and a glossary of terms.

Staff of the Division continued to give presentations, upon request, on the FL2010 program to teachers this year to familiarize them with the program. The Division's staff conducted two sessions for teachers at the Ohio Association of Career & Technical Education Teachers at the SeaGate Convention Center in Toledo, Ohio on July 31, 2001. Division staff also conducted a training session for teachers at the National Council of Teachers of Mathematics, Central Regional Conference, at the Greater Columbus Convention Center on September 21, 2001. The teacher training presentations include an overview of the program, including the teaching guide, *Basics of Savings and Investing*, an overview of the Division and its securities regulatory

functions, as well as a discussion of the types of investment scams and securities fraud prevention tips. The attendees all received a teaching guide to use with their students in the classroom, along with copies of the Division's investor education publications.

The FL2010 program was updated for the year 2002 to include principles of economics. The Ohio Department of Commerce worked together with the Ohio Department of Education on a letter to be sent to Ohio economics teachers from the Superintendent of Public Instruction, Ohio Department of Education, to accompany the new teaching guides. The letter of support from the Superintendent includes a brief overview of the program and encourages teachers to use the educational program in their classrooms. Approximately 375 copies of *Basics of Savings and Investing*, that discuss economics principles, were sent to Ohio economics teachers in December 2001 to their classroom locations with the Superintendent's letter of support.

Division Educational Display at NASAA Fall Conference

In September 2001 the Division participated in an educational display at the Investor Education Section Forum at the Fall Conference of NASAA. The Division was invited to display some of its investor education initiatives, along with approximately 15 other NASAA jurisdictions, to other regulators and industry attendees. Through the Forum, securities regulators were able to gain educational ideas for future projects from the displays. Industry attendees were able to view projects and initiatives underway by NASAA members to educate the public on securities issues.

The Division displayed information from its Securities Law Seminar for Ohio Prosecutors (See *Ohio Securities Bulletin* Issue 2000:3) that was planned through the Quality Service through Partnership (QStP) program. The seminar was planned to enhance Ohio prosecutors' knowledge of the Ohio Securities Act and its criminal sanctions, and to strengthen working relationships with Ohio county prosecutors'

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Education Outreach

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offices to fulfill part of the Division's mission of investor protection. The Division also displayed its telephone sticker that reminds people to "investigate before investing" and lists fraud prevention tips along with the Division's toll-free investor protection hotline. The Division's coloring book, "Billy and the Basketball," for young children about saving money was also displayed.

Educational Presentations by Division Staff

Throughout the year, staff of the Division gave educational presentations and participated on panels at seminars and conferences. These presentations help educate the attendees on securities laws and issues. These outreach efforts also help familiarize attendees with Division staff. During the month of April, the Division's staff gave 96

presentations to approximately 2200 students and teachers as part of Saving and Investing Education Month in the State of Ohio. Other presentations by staff during the last year included the following at these conferences or seminars:

1. *2001 Cleveland Securities Institute*, in February 2001. Topics included: Ohio Securities Litigation; Internet Presentations of Advertising and other Forward Looking Statements; and the Investment Adviser Workshop;
2. *Securities Law Overview* in March 2001;
3. *Annual Seminar for Non-Profits: It's a Whole New Ballgame* in May 2001. Topics included: Securities Considerations in Raising Funds for Non-Profit Organizations;
4. Columbus Bar Association Securities Law Committee in September

2001 where updates from the Division were presented;

5. The Cleveland Bar Association's *Introduction to Securities Transactions: Nuts and Bolts* in October 2001. and

6. The Ohio Division of Securities' *2001 Ohio Securities Conference*, in November 2001. Division Staff Panels included: Liabilities and Remedies for Securities Violations under the Ohio Securities Act, and Recent Developments at the Ohio Division of Securities.

Karen Terhune is the Assistant Manager of the Enforcement Section

Licensing Statistics

License Type	YTD 2001
Dealer	2,310
Salesmen	126,987
Investment Adviser	1,400
Investment Adviser Representative	8,468

Final Order Summaries

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

PARTY	DECISION	ORDER SENT/NO.	ALLEGATIONS/H.O. RECOMMENDATION
MITCHELL HARRIS SLOANE	DENIED	11/27/01 01-312	OAC 1301:6-3-19(D)(9) RC 1707.19(A)(1) NO HEARING REQUESTED

Registration Statistics

The following table sets forth the number of registration, exemption, and notice filings received by the Division during the fourth quarter of 2001, compared to the number of filings received during the fourth quarter of 2000. Likewise, the table compares the year-to-date filings for 2001 and 2000.

Filing Type	4th Qtr '01	YTD '01	4th Qtr '00	YTD '00
1707.03(Q)	33	141	46	199
1707.03(W)	3	19	10	29
1707.03(X)	272	1092	385	1575
1707.03(Y)	1	16	7	15
1707.04/041	1	3	1	1
1707.06	16	82	22	102
1707.09/091	46	169	38	170
1707.092(A)*	1060	4674	1128	4766
1707.092(C)**	0	0	0	1
1707.39/.391	14	75	19	125
Total	1446	6271	1656	6984

* 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	Fourth Qtr 2001	YTD 2001
Exemptions		
Form 3(Q)	115,930,605	314,643,207
Form 3(W)	8,982,352	39,035,692
Form 3(X)	41,232,623,022	132,935,917,606
Form 3(Y)	3,462,930	21,823,054
Registrations		
Form .06	380,928,300	1,791,774,648
Form .09/091	5,962,628,296	30,618,399,689
Form .092(C)	0	0
Investment Companies		
Definite	38,390,742,500	38,814,829,500
Indefinite**	575,000,000	2,622,000,000
TOTAL	\$86,670,298,005	\$207,158,423,396

OHIO SECURITIES BULLETIN

Ohio Department of Commerce
Division of Securities
77 South High Street
22nd Floor
Columbus, Ohio 43215

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