OHIO SECURITIES BULLETIN

A QUARTERLY PUBLICATION OF THE OHIO DIVISION OF SECURITIES

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Sales of Securities over the Internet

by Mark R. Heuerman, Esq.

A great deal of interest has arisen over the last few years in selling securities on the Internet. The Ohio Securities Act has substantial flexibility to protect investors through various means of communication. Courts have stated that securities laws are designed to regulate investments, in whatever form they are made and by whatever name they are called.[1]

A problem of public offerings over the Internet has been compliance with jurisdictional securities laws. The definition of "sale" under the Ohio Securities Act is very broad and extends to offers.[2] Thus, an Internet based offering requires compliance with the Ohio Securities Act. Section 1707.44(C)(1) of the Revised Code requires that the securities, or transactions, be registered or exempt from registration.[3] This may create some difficulty for the issuer that places the offering over the Internet without a licensed dealer. Even though the issuer may not contemplate or refuses to consummate sales in Ohio, an issuer may technically have violated the Ohio Securities Act registration requirements.

The Ohio Securities Act provides some exclusions from the registration requirements when a licensed dealer is involved with the offering. Section 1707.01(C)(4) R.C. states, "The offering of securities by any person in conjunction with a licensed dealer by use of an advertisement, circular or pamphlet is not a sale if that person does not otherwise attempt to sell securities in this state".[4]

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Amendments to the Rule 144 Holding Periods

by Caryn Francis, Esq.

On April 15, 1972, Rule 144 of the Securities Act of 1933 became effective. As stated in the Release announcing Rule 144's adoption, the Rule was designed to "make more certain the conditions under which restricted securities may be resold publicly without prior registration under the Securities Act."[1] For twenty-five years Rule 144 remained virtually unchanged. However, on February 20, 1997, the Securities and Exchange Commission (the "SEC" or "Commission"), adopted amendments to Rule 144 which will become effective on April 29, 1997.[2] These amendments will substantially reduce the required holding periods for "restricted securities". This article will briefly examine the historical development of Rule 144, the Rule as it was adopted in 1972, the changes to the Rule adopted on February 20, 1997, and the additional proposed amendments currently under consideration by the SEC.

The original proposal for a safe harbor for the resale of securities was released in 1969 by the SEC as Rule 160. The SEC felt that there was a need for a rule due to the number of "no action" requests that were made asking for a determination of whether a person would be deemed an underwriter under section 4(1) of the Securities Act of 1933 (the "'33 Act").[3] Section 4(1) provides an exemption from registration for sales other than by an issuer, underwriter or dealer. "Underwriter" is defined broadly to mean among other things, any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security.[4] The Commission felt that there had been uncertainty in the application of the registration provisions of the '33 Act, because satisfactory objective standards had not been developed to determine when a person would be deemed

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OHIO
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SECURITIES

Ohio Securities Bulletin

Issue 97:1

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Many issuers are utilizing the Internet to broadly disseminate the offering without a licensed dealer or intend to complete sales to Ohio residents. Such issuer offerings are subject to registration under the Ohio Securities Act. Issuers or their counsel may contact the Division for assistance in complying with the registration requirements of the Ohio Securities Act.

Issuers relying on private offering exemptions may have difficulty complying with federal and state securities laws if they place the offering on the Internet. The broad dissemination of an offering on the Internet may be viewed as "general advertising" or "general solicitation" within the prohibition of Rule 502(c) of Regulation D.[5] However, a recent no-action letter by the Securities and Exchange Commission discussed "general advertising" or "general solicitation" concerning private placements over the Internet. IPONET[6] established a home page and other linked pages on the World Wide Web. IPONET is a sole proprietorship, wholly owned by Leo J. Feldman. Feldman is employed by W.J. Gallagher & Company, Inc.[7] which is a licensed dealer in Ohio and numerous other states. The site contains a section entitled "Accredited Investor" which permits a previously registered member of IPONET to complete an on-line questionnaire which is designed to allow W.J. Gallagher & Company, Inc. to determine whether the member is an "accredited investor" within the meaning of Rule 501(a) or a sophisticated investor under Rule 506 of Regulation D.[8] If the member is qualified as an accredited or sophisticated investor, the member will receive a password permitting access to a protected page that has further information on private offerings.[9] The accredited or sophisticated investor may only invest or have access to private offerings posted subsequent in time to the qualification of the investor as sophisticated or accredited.[10] The names of qualified members will be kept confidential unless the qualified member consents to such release to the issuer.[11] Private issuers may post their private offerings on the password protected page.[12] W.J. Gallagher may charge a listing fee when not acting as a broker-dealer.[13] The listing fee will cover design and graphics work, technical consulting regarding the listing, and historical popularity of the site (analogous to the circulation of newspapers).[14] Each issuer covenants to issue securities in a private offering in strict accordance with Regulation D. The burden of compliance will rest upon the issuer.[15]

The Securities and Exchange Commission stated that the activities contemplated by IPONET would not involve "general solicitation" or "general advertising" within the meaning of Rule 502(c).[16] The SEC made a few specific notations to the no-action position:

> (1) the questionnaire will be generic in nature and will not reference specific transactions posted or to be posted on the password-protected page of IPONET;
>
> (2) the password protected page of IPONET will be available to a particular investor only after W.J. Gallagher has made the determination that the potential investor is accredited or sophisticated; and
>
> (3) the purchase occurs only after the investor's qualification with IPONET.[17]

The Division of Securities suggests that private placements on the Internet follow the facts stated within the IPONET no-action letter and request. The Division receives a number of Form 3-Q's from issuers relying upon section 1707.03(Q) R.C.[18] and Rule 506 of Regulation D.[19] Presumably, a section 4(2) offering may not fit within the parameters of the no-action letter that was written for a Rule 506 offering. A problem for a 4(2) offering may lie in the number of offerees as a determinative factor rather than the number of purchasers. See Doran v. Petroleum Management Corp. 545 F.2d 893, 900 (5th Cir. 1977).[20] The number of "hits" to the site of the 4(2) private placement may be relevant regardless of whether a purchase was consummated by the investor.

The no-action letter in IPONET may not be available to a Rule 505 offering.[21] Many issuers rely on both Rules 505 and Rule 506.[22] Rule 505 does not require that the non-accredited investor be sophisticated. As such, any non-accredited investor would qualify for the password to the password protected page containing the private offerings. It is uncertain whether the SEC would grant the same response if the request was for both rules 505 and 506. However, Rule 502(c), which addresses

Ohio Securities Bulletin

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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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general advertising and general solicitation, has the same applicability to both Rules 505 and 506.

An important fact that should not be overlooked is the role of the intermediaries. The invitation to complete the questionnaire to determine the sophistication of the investors and to identify accredited investors was to be generic and not reference specific transactions. Only the password protected page was to have the private offerings. Thus, an issuer who has its own web site that references the private offering on the Internet may not be entitled to rely on the no-action letter. In fact, such an offering may be more appropriately labeled a "public offering to accredited or sophisticated investors." In addition to the unavailability of Rule 506, no specific exemption exists under the Ohio Securities Act for individual purchasers that are accredited or sophisticated investors. It appears that the intermediary is necessary to conduct a private placement over the Internet.

The role of the licensed dealer may also have some significance. The facts of the request indicate that W.J. Gallagher will maintain a system to supervise the activities of Feldman including those activities pursued through IPONET. W.J. Gallagher is to determine whether the investor is sophisticated pursuant to Rule 506 or accredited pursuant to Rule 501(a). It can be argued that an additional level of compliance is added when a registered dealer determines the accreditation or sophistication of the registered IPONET member to assure compliance with Rule 506 and Rule 501(a). However, the no-action request still places the burden of compliance upon the issuer.[23] The issue remains, "Is a registered dealer a necessary intermediary to determine sophistication or accreditation for purposes of this no-action letter?"[24]

The Division of Securities, as a means of assuring compliance with section 1707.03(Q)(1) of the Revised Code, may request additional information from issuers that have information available on the Internet. If an offering differs substantially from the IPONET no-action letter, the Division may request the issuer to obtain and submit to the Division their own SEC no-action letter.[25] The Division may also request the intermediary to demonstrate that their questionnaire adequately determines the accreditation or sophistication of the applicant.

The Division would also like to offer suggestions to issuers and intermediaries who intend on participating in the "Network" described in Angel Capital Electronic Network, 1996 SEC No-Act. Lexis 812. The facts of the no-action letter indicate an effort to assist small business capital formation by certain non-profit entities and universities called "Network Operators." The Network Operators will run an Internet World Wide Web site that will list small corporate offerings exempt from federal registration under Regulation A or Regulation D, Rule 504. Accredited investors within the meaning of Rule 501 of Regulation D and registered with the Network Operators, will have access to a tombstone advertisement and offering circular. Solicitation of interest ("test the waters") documents may be listed on the Network. Network Operators may have separate independent sites for matching services as well. Each small business issuer will be responsible for full compliance with the appropriate filing and registration requirements of federal and state securities laws. There will be flat fees charged to participating small companies and accredited investors to cover administrative expenses of the Network.

Regulation A and Rule 504 offerings must register to offer the securities in Ohio. In addition to statutory and rule compliance, these offerings are required to comply with relevant merit standards. The Ohio Securities Act is not conducive to solicitation of interest or "test the waters" documents. Issuers must complete the relevant registration to offer the securities or solicit indications of interest. Network Operators will not require licensing as dealers. Section 1707.01(E)(1)(d) R.C. excludes from the definition of dealer, "[a]ny person that brings an issuer together with a potential investor and whose compensation is not directly or indirectly based on the sale of any securities by the issuer to the investors."

Another SEC no-action letter is worthy of note. Real Goods Trading Corporation had previously sold its common stock in a Rule 504 offering and a subsequent Regulation A offering both of which were fully subscribed.[26] The company sought to add some liquidity to its shares by permitting an "off the grid" trading system or passive electronic bulletin board. According to the company's no-action request, prospective buyers and sellers would provide their names, addresses (including e-mail) and telephone numbers, together with the number of shares they wish to buy or sell and the date of such transmission to the company. The company would integrate such information onto the World Wide Web site and would provide the information to its shareholders in separate mailings. The company would receive no compensation for maintaining the system, give no advice on the merits or shortcomings of any trade and would not be involved in any transaction. The company would not hold funds nor securities.

In the no-action response for Real Goods Trading Corporation, the staff of various branches of the SEC did not recommend registration of the system as an exchange, did not recommend the company as a broker-dealer or investment adviser, and will not require registration of offers and sales under the Securities Act of 1933. However, the company must continue to be a registrant under section 12 of the Exchange Act. The company will be required to maintain quotes and must make publicly available information required by section 13(a) of the Exchange Act.

Presumably, the exemption from registration under the Securities Act of 1933 is based upon counsel's argument that an exemption exists provided by sections 4(1), 4(3) or 4(4) as appropriate.[27] Securities in transactions under section 4(1), 4(3) and 4(4) may constitute "covered securities" under the National Securities Market Improvement Act of 1996.[28] Dealer licensing of Real Goods Trading Company may not be required in Ohio as the company has no "reasonable expectation of receiving a commission, fee, or other remuneration as a result of engaging in the purchase or sale of securities."[29] Real Goods Trading Corporation may also assert that they have not engaged in the sale of securities, directly or indirectly, and thus dealer licensing is unnecessary.[30]

The Division of Securities recognizes many benefits for capital formation from the sale of securities over the Internet, such as reduced transactional costs, accessibility to public investors, and other online information. However, the Division

recognizes that investor protection must not be sacrificed for a new medium of communication. The anti-fraud provisions of the Ohio Securities Act, including sections 1707.44(B)(4) and (G) of the Revised Code, apply regardless of whether a seller of securities has a valid exemption or registration.[31]

As described in Bulletin Issue 96:3, the enforcement section of the Division has implemented an Internet monitoring program. Procedurally, the Division searches the Internet for offerings available to Ohio residents. The Division checks the offering with the records for registration or exemption filings. If no filing has been made with the Division, a letter is sent requesting clarification on compliance with the Ohio Securities Act. If the offeror responds that they intend to comply, they will be directed to the registration section of the Division for referral and assistance as to applicable statutes, rules, guidelines and forms. If an offeror responds that no sales are intended for Ohio residents, the Division will require that a legend be placed on the offering materials indicating that the offering is not available to Ohio residents.

Because of the broad definition of "sale" under the Ohio Securities Act, the Division has adopted a new rule, Section 1301:6-3-03(D)(9) of the Ohio Administrative Code, that provides for an exemption for certain Internet offers. The new rule, effective April 21, 1997, states:

> The offer of securities by an issuer on the Internet or similar electronic medium, is exempt pursuant to Division (V) of section 1707.03 of the Revised Code provided that:
>
> (a) The offer of securities indicates, directly or indirectly, that securities are not being offered to any person in this state and the issuer does not otherwise attempt to sell securities in this state;
>
> (b) The offer of securities is not specifically directed to any person in this state by, or on behalf of, the issuer; and
>
> (c) No sales of securities are made in this state as a result of the offer of securities until the securities have been registered by description, qualification or coordination, or are the subject matter of a transaction that has been registered by description, or are otherwise exempt or are the subject matter of an exempt transaction, and a final prospectus, offering circular or Form U-7, if required under the Ohio Securities Act or Division regulations, has been delivered to persons in this state prior to such sale.

This provision would exempt those Internet offerings that do not intend on selling the securities in Ohio and contain a legend indicating that it is not offered in Ohio. The North American Securities Administrators Association has proposed a similar resolution to exempt Internet offers.[32] An issuer may, subsequent to posting the offer on the Internet, decide to file an application to register the securities. However, no sales may have been completed and the issuer may not have directed the offering to any particular person in this state. These requirements prevent an issuer from submitting a "post-sale" registration application. An issuer may not attempt to solicit investors and then file a registration application. The rule permits an issuer to file an application where an issuer may need to make an offering available in Ohio and has subsequently decided to do so after posting the offering on the Internet. An issuer may also file an application if the Ohio investor has initiated the communication of an interest to purchase securities in the offering.[33] Issuers may be required to make certain changes to an offering as a condition of registration by the Division. In those situations, the Division will require the issuer to demonstrate that the investor has received the revised offering materials.

The Internet poses complex jurisdictional and legal challenges in securities regulation. The Division will try to assist practitioners with many of the reoccurring and new problems for Internet offerings. Some guidance is available to practitioners from the no-action letters and new rule. The new rule will assist some offerings with their jurisdictional issues in Ohio. The Division will continue to take necessary action to protect investors.

Endnotes

[1] State v. Taubman, 78 Ohio App. 3d 834 at 844 (Montgomery County, 1992) citing Reves v. Ernst & Young, 494 U.S. 56, at 60-61, 110 S. Ct. 945 at 949, 108 L. Ed. 2d 47, at 56-57. The court also cited, SEC v. W. J. Howey Co. 328 U.S. 293, 299 [66 S. Ct. 1100, 1103, 90 L. Ed. 1244, 1249-1250] (1946). "In defining the scope of the market that it wished to regulate, Congress painted with a broad brush. It recognized the virtually limitless scope of human ingenuity, especially in the creation of 'countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." The court stated, "Ohio securities laws are very similar to the Federal legislation." at 845.

[2] The definition of "sale" is contained at section 1707.01(C)(1) of the Revised Code. "Sale" has the full meaning of 'sale' as applied by or accepted in courts of law or equity, and includes every disposition, or attempt to dispose, of a security or of an interest in a security. 'Sale" also includes a contract to sell, an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a solicitation of an offer to buy, a subscription, or an offer to sell, directly or indirectly, by agent, circular, pamphlet, advertisement, or otherwise.

[3] Section 1707.44(C)(1) of the Revised Code states:

(C) No person shall knowingly and intentionally sell, cause to be sold, offer for sale, or cause to be offered for sale, any security which comes under any of the following descriptions:

(1) It is not exempt under section 1707.02 of the Revised Code, nor the subject matter of one of the transactions exempted in sections 1707.03, 1707.04, and 1707.34 of the Revised Code, has not been registered by description, coordination, or qualification, and is not the subject matter of a transaction that has been registered by description;

[4] The use of sale in the last phrase may best be explained by a completed transaction. Also, section 1707.01(C)(3) of the Revised Code states:

The use of advertisements, circulars, or pamphlets in connection with the sale of securities in this state exclusively to the purchasers specified in division (D) of section 1707.03 of the Revised Code is not a sale when the advertisements, circulars, and pamphlets describing and offering those securities bear a readily legible legend in substance as follows: "This offer is made on behalf of dealers licensed under sections 1707.01 to 1707.45 of the Revised Code, and is confined in this state exclusively to institutional investors and licensed dealers."

[5] 17 C.F.R. §230.502(c). Rule 502 states in part:

Except as provided in Rule 504(b)(1), neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

[6] 1996 SEC No-Act Lexis 642.

[7] *Id.* 17 C.F.R. §230.501(a) and 17 C.F.R. §230.506

[8] *Id.*

[9] *Id.*

[10] *Id.* A sufficient time period will pass from the listing and time of investment. The request for no-action does not indicate what constitutes a sufficient time period.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Section 1707.03(Q) states in part,

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

(1) The provisions of section 5 of the Securities Act of 1933 do not apply to the sale by reason of an exemption under either section 4(2) of that act or any rule of the securities and exchange commission made to carry out section 4(2) of that act in effect at the time of the sale.

. . .

(4) The issuer or dealer files with the division of securities, not later than sixty days after the sale, a report . . . .

[19] 17 C.F.R. 230.506

[20] Also: SEC v. Ralston Purina Co., 346 U.S. 119 (1953); Mark v. FSC Securities Corp., 870 F. 2d 331 (6th Cir. 1989).

[21] 17 C.F.R. §230.505

[22] Rule 505 has some differences from Rule 506 including a $5 million offering limitation and disqualification provisions. Rule 505 is an exemption pursuant to section 3(b) of the Securities Act of 1933 ("1933 Act"); whereas, Rule 506 is an exemption pursuant to section 4(2) of the 1933 Act.

[23] *Id.*

[24] The SEC response also stated, "In this regard, we take no position as to whether the information obtained by Gallagher is sufficient to form a reasonable basis for believing an investor to be accredited or sophisticated."

[25] Issuers may also wish to review H.B. Shaine & Co., Inc., No-Action Letter dated May 1, 1987. Referred to by counsel submitting IPONET request for the No-Action Letter.

[26] Real Goods Trading Corporation 1996 WL 354035 (S.E.C.)

[27] *Id.*

[28] See section 18(a)(1)(a) and 18(b)(4) of the National Securities Market Improvement Act. The issuer of the security is required to file reports under section 13 or 15(d) of the Securities Exchange Act of 1934 for "covered security" status under 4(1) or 4(3).

[29] Definition of "Dealer" pursuant to section 1707.01(E)(1) of the Revised Code.

[30] *Id.*

[31] Section 1707.44(B)(4) of the Revised Code states:

(B) No person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the following purposes:

. . .

(4) Selling any securities in this state.

Section 1707.44(G) of the Revised Code states:

(G) No person in selling securities shall knowingly engage in any practice which is, in this chapter, declared illegal, defined as fraudulent, or prohibited.

Also: Section 18(c)(1) of the National Securities Market Improvement Act states:

(1) Fraud Authority - consistent with this section, the securities commission (or any agency or office performing like functions of any state) shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions with respect to fraud or deceit, ... "

[32] CCH NASAA Reports at paragraph 7, 040 states in part,

Now therefore, to be resolved that:

1. NASAA encourages States to take appropriate steps to exempt Internet offers from the registration provisions of their securities laws where the following conditions apply:

A. The Internet Offer indicates, directly or indirectly, that the securities are not being offered to the residents of a particular state; and

B. An offer is not otherwise specifically directed to any person in a state by or on behalf of the issuer of securities.

2. NASAA encourages states to take appropriate steps that would allow sales of securities that were the subject of an Internet Offer where the following conditions apply:

A. No sales of the securities shall be made in any state until the offering has been registered and declared effective and the final prospectus or Form U-7 has been delivered to the investor prior to such sale; or

B. The sales are exempt from registration.

[33] An issuer may always file an application to register securities. The author's point is that these factors alone will not be the basis for a denial of the application.

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to have acquired the securities with a view to distribution, rather than investment.[5]

To help resolve these uncertainties, Rule 160 would have permitted the sale of a limited amount of securities held for one year provided that the issuer was qualified. A "qualified" issuer was one which filed reports with the Commission pursuant to the Securities Exchange Act of 1934 (the "'34 Act"). The 160 rules would have also required that the issuer whose stock had been purchased have substantial annual gross revenues for the five years preceding the proposed sale of securities by the holder.[6]

The SEC determined that there were several problems with the 160 series rules as follows:

1. the holding period was too short and would result in the sale of large amounts of unregistered securities to the public;

2. the SEC did not have the resources to maintain an adequate, current record of all issuers which were "qualified" under the '34 Act; and

3. the SEC felt that the requirement of five years of substantial annual gross revenues would adversely affect the ability of small companies to raise capital, and was unduly restrictive.[7]

For the above reasons, the SEC scrapped the proposed 160 series rules and released the first Rule 144 proposal on September 22, 1970 (the "1970 Proposal").[8] The 1970 Proposal by the SEC contained some substantial differences from the Rule that was ultimately adopted by the SEC on January 11, 1972. The 1970 Proposal contained provisions relating to a holding period, issuer information, broker's obligations of due diligence, and quantity limitations on stock sales.

Under the 1970 Proposal, the owner of the securities must hold them for eighteen months prior to resale. Holding securities for eighteen months after their acquisition was only presumptive evidence that the securities were acquired for the purpose of investment and not with a view to distribution. The 1970 Proposal also required that there be current, publicly available financial and other information concerning the issuer. If the issuer was required to and did file reports under sections 13 or 15(d) of the '34 Act, the Commission would presume that the required information was available. The SEC imposed an additional duty upon the seller of the securities and brokers involved with any resale to determine whether there was current information about the issuer publicly available. The Commission's philosophy behind this requirement was to protect investors by providing full and fair disclosure, regardless of whether the source of the stock was the issuer or an underwriter.[9] Finally, the SEC imposed an additional requirement that only a limited number of securities could be sold in any twelve month period, and only through broker's transactions. Brokers had an affirmative duty to determine whether a proposed transaction would be in compliance with Rule 144.[10]

The 1970 Proposal was "widely criticized" for adding "subjectivity" back into the process. Instead of creating a clear safe harbor, the 1970 Proposal merely provided a presumption of avoiding underwriter status.[11] As a result, the Commission published a revised version of Rule 144 in September, 1971, and announced on January 11, 1972, the adoption of the final version of Rule 144, which became effective on April 15, 1972.[12]

Rule 144 as adopted in 1972 (the "1972 Rule" or "Rule 144"), made several changes to the 1970 Proposal. In general, the 1972 Rule provides a non-exclusive safe harbor for resale of securities by either holders of restricted securities, or holders of securities of a company of which they are affiliates.[13] If all the provisions of Rule 144 are complied with, the holders of securities may resell such securities without registration.[14]

The Release accompanying the 1972 Rule set forth the three key factors supporting its promulgation. The Commission stated that the fundamental underlying policy of the '33 Act is investor protection, which can only be accomplished if there is adequate current public information about the issuer available to investors.[15] The Commission further found that there must be a holding period prior to resale "... to assure that those persons who buy under a claim of a Section 4(2) exemption have assumed the economic risks of investment, and therefore, are not acting as conduits for the sale to the public of unregistered securities, directly or indirectly, on behalf of an issuer."[16] Finally, the Commission was concerned about the potential impact on the trading markets. The Commission found that routine trading transactions are not likely to disrupt the trading markets. As a result, the Commission placed limitations not only on the quantity of securities that could be sold, but prohibited solicitations of buy orders and the payment of extra compensation, to ensure that only routine trades were made.[17]

In accordance with the foregoing factors, the Commission set forth the following requirements for compliance with Rule 144:

1. Adequate current public information is deemed to be available if the issuer is subject to the reporting requirements of Section 13 or 15(d) of the '34 Act, for at least 90 days immediately preceding the sale, and has filed all required reports.[18]

2. For restricted securities[19] to be sold, the securities must have been fully paid for and held for a period of at least two years prior to resale. Sales by non-affiliates, who have owned the restricted securities for at least three years, may make resales without limitation.[20]

3. Rule 144 limits the amount of securities that may be resold in any six month period to the following:

(a) Securities which are traded on a registered national exchange are limited to the sale of the lesser of (i) one percent of the amount of the class outstanding as shown in the most recent report or statement published by the issuer, or (ii) the average weekly reported volume of trading on all such exchanges over the four week period to the date of the required notice of sale; or

(b) The amount of securities which may be sold may not exceed one percent of the amount of the class outstanding as shown in the most

recent report or statement published by the issuer.[21]

4. The sale of restricted securities may only be made through unsolicited brokers' transactions, and the seller may not solicit or arrange for the solicitation of buy orders, or make any payment in connection with the sale other than to the broker who executes the sell order. In addition, the broker has an affirmative duty to make reasonable inquiries as to whether the seller is engaged in a distribution of securities.[22]

5. Sellers of restricted securities must file a notice form with the Commission, informing the SEC of sales made in reliance upon Rule 144. Filing is only required where the number of securities to be sold exceeds 500 and the aggregate selling price will be greater than $10,000.[23]

The holding periods set forth in paragraph two above, are the target of the amendments adopted on February 20, 1997 (the "February 20 Release"), which will become effective on April 29, 1997. The Commission has found that issuers in private placements must typically offer restricted shares at a discount of approximately 20% to 50%, as compared to the price an issuer's shares are traded in the public markets.[24] The Commission in its February 20 Release indicated that this "liquidity premium" compensates "... purchasers of the restricted shares for their inability to resell the securities before completion of the requisite holding period."[25]

In an effort to reduce the cost of raising capital, particularly for small companies which often sell securities through private placements, the Commission has adopted amendments to Rule 144 to shorten the required holding periods. Under these amendments, limited amounts of restricted securities may now be sold after a one year, rather than a two year holding period. Restricted securities that are sold after being held for at least one year, but less than two years, must still comply with all the provisions of Rule 144, including (i) filing the requisite notice, (ii) selling the securities through a brokerage transaction, and (iii) having available current public information about the issuer.[26] Finally, after a two year holding period, nonaffiliates may make unlimited resales of restricted securities without compliance with any of the Rule's provisions.[27]

The Commission believes that there is not a danger that the shorter holding periods will reduce investor protection, because they are still "... sufficiently long to ensure that resales under Rule 144 will not facilitate indirect public distributions of unregistered securities by issuers or affiliates."[28] The Commission has further determined that shortening the holding periods is appropriate based on the favorable comments received from the public, and the extensive amount of time the Commission has had to witness the operation of Rule 144.[29]

In addition to adopting the amendments in the February 20 Release, on February 20, 1997, the Commission issued a companion release (the "Companion Release")[30], in which the Commission requested comments on additional proposed amendments to Rule 144. Specifically, the Commission is proposing the following changes which the SEC hopes will simplify and streamline Rule 144:

1. Rewrite the Preliminary Note and the text of Rule 144 to make them more straight forward.[31]

2. Provide a bright-line exclusion from the definition of "affiliate" under the Rule by limiting the application of affiliate to those who are subject to Section 16 of the '34 Act.[32]

3. Eliminate Rule 144(f) which requires that securities be sold in brokers' transactions, and which contains prohibitions on solicitations and compensation. The SEC believes that these requirements impose unnecessary obstacles to transactions which are not distributive in nature. Furthermore, the SEC has determined that the manner in which a transaction is effected does not appear to be determinative of whether a distribution is involved, so long as all the other requirements of Rule 144 are met.[33]

4. Increase the threshold requirements for filing Form 144 from the 500 shares or $10,000 sale price test, to a 1,000 shares or $40,000 sale price test. The Commission noted that the $10,000 limit which was established in 1972, is equivalent to $36,000 today when adjusted for inflation. For this reason, the Commission recommended the increased threshold amount.[34]

5. Codify the SEC staff position that securities acquired from the issuer pursuant to the exemption under Section 4(6) of the '33 Act should be considered "restricted securities."[35]

6. Clarify the holding period determination for securities acquired in certain exchanges with the issuer and in holding company formations.[36]

In addition to the foregoing proposed amendments, the SEC requested comments on several proposed changes set forth in the Companion Release. Specifically, the SEC revisited the now reduced holding periods, proposing the possibility of reducing the new one year holding period to six months, and the new two year holding period to a shorter time frame, possibly one year or eighteen months. The SEC also solicited comments on whether the two tests based on trading volume in Rule 144(e), ought to be eliminated. Finally, the SEC requested comment on several possible regulatory approaches with respect to the application of the '33 Act to certain hedging activities.[37]

The amendments in the February 20 Release and the proposed changes to Rule 144 set forth in the Companion Release, reflect the Commission's continuing effort to eliminate unnecessary compliance burdens. At the same time, the Commission has retained investor protection as its top priority. The SEC believes that the changes to Rule 144 will benefit both investors and issuers, will result in direct cost savings for companies and will make Rule 144 more readable and easily understood.

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INVESTOR EDUCATION: Investor Education Video Distributed

The Division of Securities recently obtained an additional supply of 200 Securities investor education videos entitled "What Every Investor Needs to Know." (See *Ohio Securities Bulletin* 96:1) The 24-minute video and an accompanying color brochure explain how individual investors can recognize fraudulent practices. The videos and brochures were supplied by the Investor Protection Trust, a non-profit organization.

The Division provided copies of this educational video to the Ohio Department of Education, the Ohio Department of Aging, the Ohio Farm Bureau, libraries throughout the state, cable television systems and government cable stations. The Ohio Department of Education plans on using the video in conjunction with their educational programs with school treasurers. The Ohio Department of Aging will utilize the video to reach independent living and assisted living elderly populations, through regional agencies.

Each Ohio government cable station was contacted and the Division had the video duplicated in the proper video format needed for each interested station. A total of 20 government cable stations throughout the state expressed interest. The Division also sent color posters to the libraries to be posted to announce the availability of the video.

Participation at Fair

The Division participated at the Ohio State Fair last summer by distributing two brochures, "How to Select and Work with a Securities Salesperson" and "Avoiding Fraud in Your Securities Investments." The Division of Securities' Investor Protection Hotline number 1-800-788-1194, was added to the front of both brochures. This hotline permits investors and prospective investors to check the licensing status and disciplinary history of securities salespersons and securities dealers, inquire about the registration status of a particular securities offering, obtain a complaint form and inquire about the status of a complaint already filed.

Rule 144

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Endnotes

[1] Adoption of Rule 144, Securities Act Release No. 5223, [1971-1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶78,487 (Jan. 11, 1972) [hereinafter Release 5223].

[2] Revision of Holding Period Requirements in Rules 144 and 145, Securities Act Release No. 33-7390 (http://www.sec.gov.) (Feb. 20, 1997) [hereinafter Release 33-7390].

[3] Notice of Proposed Rule 144, Securities Act Release No. 5087 [1970-1971 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶77,909 (Sept. 11, 1970) [hereinafter Release 5087].

[4] Securities Act of 1933, §2(11) 15 U.S.C. §77b(11) (1954).

[5] Release 5087, *supra* note 3, at 80,026.

[6] *Id*. at 80,027.

[7] *Id*.

[8] *Id.*

[9] *Id.* at 80,026, 80,027.

[10] *Id*. at 80,027.

[11] 3A H. Bloomenthal & S. Wolff, Securities and Federal Corporate Law, §4.11 at 4-63 (1996).

[12] Release 5223, *supra* note 1.

[13] *SEC Acts to Ease Capital Raising By Shortening Rule 144 Holding Period*, 29 Sec. Reg. & L. Rep. (BNA) No. 8, at 217 (Feb. 21, 1997).

[14] Release 5223, *supra* note 12, at 81,050.

[15] *Id.* at 81,053.

[16] *Id.* at 81,054.

[17] *Id*.

[18] *Id.* at 81,055.

[19] The term "restricted security" is defined to mean securities acquired directly or indirectly from an issuer, or from a person in a control relationship with such an issuer (an "affiliate"), in a transaction not involving any public offering.

[20] Release 5223, *supra* note 18, at 81,506.

[21] *Id.* at 81,058.

[22] *Id.* at 81,059.

[23] *Id.* at 81,060.

[24] Release 33-7390, *supra* note 2.

[25] *Id.* at 7.

[26] *Id.* at 5.

[27] *Id.*

[28] *Id.* at 9.

[29] *Id.* at 3.

[30] Revision of Rule 144, Rule 145 and Form 144, Securities Act Release No. 33-7391 (http://www.sec.gov.) (Feb. 20, 1997).

[31] *Id.* at 4.

[32] *Id.*

[33] *Id.* at 13, 14.

[34] *Id.* at 16.

[35] *Id.* at 19.

[36] *Id.* at 1.

[37] *Id.* at 26-33.

Caryn Francis, Esq. is the Attorney Inspector for the Division's Enforcement Section.

Control Bid Summary

by William E. Leber, Esq.

The past winter established record low snowfall totals for central Ohio, and the two Control Bid filings submitted to the Ohio Division of Securities during the first quarter of 1997 each invoked the image of vast expanses of green grass. The two filings on Form 041 represented a slight decrease from the volume of control bids during the latter part of 1996, but still exceeds the rate of control bid filings for the years 1991 to 1995.

ServiceMaster / Barefoot

On Thursday, January 16, 1997, **ServiceMaster, L.P.,** a Delaware limited partnership ("ServiceMaster") headquartered in Downers Grove, Illinois, filed a Form 041 in conjunction with a control bid for **Barefoot, Inc.**, a Delaware corporation ("Barefoot") with its principal executive offices in Worthington, Ohio. Barefoot had been the nation's second-largest lawn care company, with revenues of $125 million, and the TruGreen-ChemLawn unit of ServiceMaster had been the nation's largest, with revenues of more than $630 million. ServiceMaster reports annual revenues of more than $4.5 billion.

Barefoot and ServiceMaster had entered into a merger agreement that was announced on December 5, 1996 with the unanimous approval of the Barefoot Board of Directors of both the bid and the merger, along with a determination that the terms of the bid and merger were fair and in the best interests of Barefoot and its shareholders.

The control bid was made for $16.00 in cash, ServiceMaster partnership shares, or a combination of shares and cash, for an aggregate transaction value of approximately $239,000,000. The offer represented a 25% premium over Barefoot's closing price of $12.75 on December 4.

ServiceMaster announced that the tender offer expired at midnight on February 21, and that now that it holds approximately 99 percent of the Barefoot shares outstanding, ServiceMaster will proceed with a short-form merger in which the remaining Barefoot shares will be converted to cash.

ServiceMaster is a network of service companies with four components: Consumer Services, Management Services, Health Services and International. The largest element, Consumer Services, includes the well-known brand names TruGreen-ChemLawn, Terminix, and Merry Maids.

Barefoot operated primarily in the central and eastern United States and ServiceMaster had just one lawn care service in Ohio prior to the control bid. ServiceMaster reported that it intends to consolidate locations and reduce overhead in overlapping facilities and personnel.

Valleaire Golf Club / VGC Acquisition Corporation

Valleaire Golf Club, an 18 hole golf course in Hinckley, Ohio was the target of a control bid filed on Tuesday, February 11, 1997 by **VGC Acquisition Corporation**, a newly formed Ohio corporation ("VGC"). VGC made an initial cash tender offer of $170 per share to the 253 shareholders of Valleaire Golf Club, Inc., an Ohio corporation ("Valleaire") that operates the golf course. The shares are not publicly traded. Valleaire has approximately 30 seasonal employees at its single location.

VGC reported a total transaction price of $1,978,300, including cash and extended golfing privileges. The offeror obtained an initial commitment of $1,700,000 in financing from Security Federal Savings and Loan Association.

Because of deficiencies in the Form 041 filing by VGC, the Division suspended the offer on February 14 subject to a hearing to be held under the authority of R.C. 1707.041 (Division Order 97-057). That hearing, before Commissioner Thomas E. Geyer, was held on February 24 in the offices of the Division, and resulted in the continuing suspension of the offer. On February 25, 1997, the Division issued an Order for the maintenance of the suspension of the control bid (Division Order 97-065). In that Order, the Division noted that some of the deficiencies noted in the suspension order had been corrected, and listed the continuing deficiencies, and informed VGC that the control bid could be re-instituted if VGC would correct the deficiencies. As of the deadline for this issue of the Bulletin, the offer of VGC Acquisition Corporation for the shares of Valleaire Golf Club, Inc. was still under suspension.

The management of VGC had been involved in a successful control bid in June 1996 for Briarwood Golf Course, Inc., another northeast Ohio golf club. There, in Division Order 96-084, the Division suspended the control bid of BGC Acquisition Corporation. However, that suspension was terminated upon the submission of additional information to the Division (Division Order 96-087).

Ohio Securities Bulletin Index

The Division has prepared an index for the *Ohio Securities Bulletin* from 1990 through 1996. An index was previously prepared for the *Bulletin* that covered the time period of 1973 through 1989. The new index contains a "Table of Laws and Rules," as well as a table of contents to this section, and a "General Index" which encompasses all relevant topics contained within the *Bulletin* issues from 1990 to 1996.

The Division will soon be sending a copy of the new index to all subscribers on the *Bulletin* mailing list.

Division Proposes Rule Amendments: Exemption for Issuers Providing Profession Services; and Amendments of Mutual Fund Rules

The Division has proposed a new exemption under R.C. § 1707.03(V) to exempt the sale of securities by issuers formed primarily to provide professional services. The proposed exemption covers the sale of securities, and includes securities issued in mergers, reorganizations, combinations, or conversions. The definition of "professional services" under the proposed rule incorporates R.C. § 1785.01(A), which includes services provided by certified public accountants, licensed public accountants, architects, attorneys, chiropractors, dentists, pharmacists, optometrists, physicians and surgeons, practitioners of limited branches of medicine or surgery, psychologists, professional engineers, veterinarians, occupational therapists, physical therapists and registered nurses.

The proposed exemption would extend to corporations and all other types of issuers. The conditions of the exemption include that no commissions or other remuneration be paid in connection with the sale of securities and that ownership of the issuer's securities be limited to management, employees, retirees and their heirs. No filing with the Division would be required to perfect the exemption.

The Division believes that this self-executing exemption is necessary due to Section 448 of the Internal Revenue Code and the definition of tax shelter under that provision. An issuer may be deemed to be a tax shelter if interests in the enterprise must be registered with any state or federal agency having the authority to regulate the offering of securities for sale. The definition of "requirement of registration" includes the failure to file a notice of exemption from registration which would result in a violation of the applicable state or federal law, regardless if the notice is actually filed. If an issuer is defined as a tax shelter, the issuer can no longer use the cash receipts and disbursements method, or cash method, of accounting. As the exemption under R.C. § 1707.03(O) only includes corporations and limited liability companies with a ten purchaser limit per year, the Division has proposed this self-executing exemption to allow all types of issuers providing professional services to use the cash method of accounting regardless of the number of persons purchasing securities.

Practitioners should also note that the proposed exemption is for issuers formed primarily to provide professional services. Issuers formed to operate or own real estate or equipment would not be covered under this exemption. Those transactions must comply with other provisions of the Ohio Securities Act or the Division's rules.

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Currently, the Ohio Administrative Code ("OAC") details merit standards for investment companies (mutual funds). These standards may be found in OAC 1301:6-3-09(E), (F), and (G). Paragraph (H) of that rule details the manner by which investment companies may renew their ability to sell in Ohio. The standards contained in OAC 1301:6-3-09(E), (F), and (G) became "moot" upon the enactment of the National Securities Markets Improvement Act of 1996 ("NSMIA"). In enacting the NSMIA, Congress effectively preempted the states' ability to conduct merit reviews on investment company applications.

As a result of the preemption, and in accordance with the mandate contained in the NSMIA that the states modify their respective statutes for notice filings, the Division proposes to delete the investment company merit standards at this time. In addition, the Division proposes amending paragraph (D) of OAC 1301:6-3-09 to reflect the notice filing standards for all investment companies.

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Public notice of the hearing on the proposed rules is included in this issue of the *Ohio Securities Bulletin.* Copies of the text of the proposed rules may be obtained from the Division. Written comments on the proposed rules may also be submitted to the Division to be included in the public hearing.

PUBLIC NOTICE

At 10:00 a. m. on Monday, June 16, 1997, the Ohio Division of Securities will hold a public hearing regarding proposed amendments to Ohio Administrative Code (OAC) rules 1301:6-3-03 and 1301:6-3-09. The hearing will be held in the offices of the Division located at 77 South High Street, 22nd Floor, Columbus, Ohio 43215. The Division has proposed the following changes:

OAC 1301:6-3-03, Exempt transactions: Provisions will be added to the rule creating an exemption from the registration requirements of the Ohio Securities Act for professional organizations desiring to sell security interests in the professional organization to members.

OAC 1301:6-3-09, Registration by qualification: Investment limitations contained in this rule regarding investment companies will be deleted. The remaining provisions regarding investment companies will be modified to reflect recent changes stemming from the National Securities Markets Improvement Act of 1996 (NSMIA).

The purpose of the amendment to OAC 1301:6-3-03 is to provide professional organizations, selling interests in the professional organization to its members, with an exemption from the registration requirements of the Ohio Securities Act. The exemption will also enable professional organizations to use the cash method of accounting under applicable IRS laws.

The purpose of the amendment to OAC 1301:6-3-09 is to delete investment limitations pertaining to investment companies. As a result of the NSMIA, the Division's jurisdiction to conduct merit reviews based on investment limitations was preempted. Deleting the preempted provisions will therefore help the Division align its regulatory framework regarding investment companies with the provisions of the NSMIA.

Copies of the proposed amendments to OAC 1301:6-3-03 and OAC 1301:6-3-09 may be obtained by contacting the Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43215.

Administrative Orders

Anthony Michael Gardini

On December 3, 1996, the Division issued Division Order No. 96-224, Final Order to Grant the Application for an Ohio Securities Salesman's License of Anthony Michael Gardini of West Islip, New York. The Final Order followed an administrative hearing on the matter, which was held on October 2, 1996.

O.R.C. 1707.19 permits the Division to refuse an application for a securities license if the applicant is not of "good business repute". At the administrative hearing, the Division alleged that Gardini failed to meet the "good business repute" standards set out in O.A.C. 1301:6-3-19(D)(7) and (9). The Division's allegations were based upon, among other things, an NASD censure and fine, resulting from an allegation by the NASD that Gardini violated Art. III, Section I of the NASD Rules of Fair Practice by forging public customers' signatures on purchase agreements. Gardini presented evidence attempting to refute the Division's allegation.

Following the administrative hearing, the Hearing Officer recommended that the application for an Ohio securities salesman's license be granted. Pursuant to O.R.C. 119.09, the Division considered the Hearing Officer's recommendation, the transcript of the testimony and the evidence. Upon such consideration, the Division issued its final order, ordering that Gardini's application for an Ohio securities salesman's license be granted.

Team Columbus Aerospace, Inc.

On December 27, 1996, the Division issued Division Order No. 96-264, Final Order Declaring Form 3-Q, File No. 455346, Partially Null and Void, against Team Columbus Aerospace, Inc. of Columbus, Ohio ("Respondent").

In or about January 1994, Respondent filed with the Division a Form 3-Q, File No. 455346, reporting the sale of 183,000 shares of Common stock at $1.00 per share. An investigation by the Division revealed that 12,500 shares of common stock sold by Respondent on January 9, 1994 brought the total number of shares of stock sold pursuant to Form 3-Q, File No. 455346 to 186,500. The records of the Division revealed that no valid registration or claim of exemption had been filed with the Division to cover the 3,500 additional shares of stock or the sales thereof. Therefore, the 3,500 additional shares of stock were sold by Respondent in violation of O.R.C. 1707.44(C)(1).

On October 22, 1996, the Division had issued to Respondent Division Order No. 96-162, Notice of Opportunity for Hearing, alleging the sale of unregistered, non-exempt securities in Ohio in violation of O.R.C. 1707.44(C)(1).

The notice order was properly served on Respondent, but no request for an administrative hearing on the matter was made as permitted by the notice order and O.R.C. Chapter 119. Consequently, the Division issued the final order, declaring Form 3-Q, File No. 4555346, partially null and void.

Robby Joe Sadlak

On December 31, 1996, the Division issued Division Order No. 96-274, Final Order to Deny the Application for an Ohio Securities Salesman's License of Robby Joe Sadlak of Lansing, Michigan.

O.R.C. 1707.19 permits the Division to refuse an application for a securities license if the applicant is not of "good business repute". On October 17, 1996, the Division had issued to Sadlak Division Order No. 96-156, Notice of Opportunity for Hearing, which set forth the Division's allegations that Sadlak was not of "good business repute". Specifically, the Division alleged that Sadlak failed to meet the "good business repute" standards set out in O.A.C. 1301:6-3-19(D)(7) and (9). The Division's allegations were based upon a one-year suspension of Sadlak's agent's license by the Corporations and Securities Bureau of the State of Michigan, resulting from an allegation by the Bureau that Sadlak made a false statement in his agent's license application.

The notice order was properly served on Sadlak, but he did not request an administrative hearing on the matter as permitted by the notice order and O.R.C. Chapter 119. Consequently, the Division issued the final order, denying his application for an Ohio securities salesman's license.

Jerome Lawrence Castle

On December 31, 1996, the Division issued Division Order No. 96-275, Final Order to Deny the Application for an Ohio Securities Salesman's License of Jerome Lawrence Castle of Miami Beach, Florida

O.R.C. 1707.19 permits the Division to refuse an application for a securities license if the applicant is not of "good business repute". On November 25, 1996, the Division had issued to Castle Division Order No. 96-210, Notice of Opportunity for Hearing, which set forth the Division's allegations that Castle was not of "good business repute". Specifically, the Division alleged that Castle failed to meet the "good business repute" standards set out in O.A.C. 1301:6-3-19(D)(3), (7) and (9). The Division's allegations were based upon, among other things, a conviction in federal court of conspiracy and mail and wire fraud and a sentence of fifteen months in federal prison camp.

The notice order was properly served on Castle, but he did not request an administrative hearing on the matter as permitted by the notice order and O.R.C. Chapter 119. Consequently, the Division issued the final order, denying his application for an Ohio securities salesman's license.

George Cable Kelley

On December 31, 1996 the Division issued Division Order No. 96-276, Final Order to Deny the Application for an Ohio Securities Salesman's License of George Cable Kelley of Fort Meyers, Florida.

O.R.C. 1707.19 permits the Division to refuse an application for a securities license if the applicant is not of "good business repute". On September 29, 1995, the Division had issued to Kelley Division Order No. 95-066, Notice of Opportunity for Hearing, which set forth the Division's allegations that Kelley was not of "good business repute". Specifically, the Division alleged that Kelley failed to meet the "good business repute" standards set out in O.A.C. 1301:6-3-19(D)(7) and (9). The Division's allegations were based upon, among other things, a censure, fine and suspension by the NASD in

December 1993, resulting from Kelley's failure to adequately supervise trading in the accounts of public customers.

The notice order was properly served on Kelley, but he did not request an administrative hearing on the matter as permitted by the notice order and O.R.C. Chapter 119. Consequently, the Division issued the final order, denying his application for an Ohio securities salesman's license.

Thomas Harold Risher

On December 31, 1996 the Division issued Division Order No. 96-277, Final Order to Deny the Application for an Ohio Securities Salesman's License of Thomas Harold Risher of Mooring Buoy, Hilton Head, South Carolina.

O.R.C. 1707.19 permits the Division to refuse an application for a securities license if the applicant is not of "good business repute". On November 14, 1996 the Division had issued to Risher Division Order No. 96-193, Notice of Opportunity for Hearing, which set forth the Division's allegations that Risher was not of "good business repute". Specifically, the Division alleged that Risher failed to meet the "good business repute" standards set out in O.A.C. 1301:6-3-19(D)(7) and (9). The Division's allegations were based upon, among other things, an NASD fine and censure, resulting from Risher's failure to adequately supervise securities sales personnel in the handling of customer accounts and opening option accounts for public customers without financial information being recorded on the customer's option account forms.

The notice order was properly served on Risher, but he did not request an administrative hearing on the matter as permitted by the notice order and O.R.C. Chapter 119. Consequently, the Division issued the final order, denying his application for an Ohio securities salesman's license.

Cypress Securities Group, Inc.

On December 31, 1996, the Division issued Division Order No. 96-278, Final Order to Deny the Application for an Ohio Securities Dealer License of Cypress Securities Group, Inc. of New Orleans, Louisiana.

O.R.C. 1707.19 permits the Division to refuse an application for a securities license if the applicant is not of "good business repute". On October 3, 1996, the Division had issued to Cypress Securities Group, Inc. Division Order No. 96-278, Notice of Opportunity for Hearing, which set forth the Division's allegations that Cypress Securities Group, Inc. was not of "good business repute". Specifically, the Division alleged that Cypress Securities Group, Inc. failed to meet the "good business repute" standards set out in O.A.C. 1301:6-3-19(D)(7) and (9). The Division's allegations were based upon, among other things, a nine month suspension from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD.

The notice order was properly served on Cypress Securities Group, Inc., but the firm did not request an administrative hearing on the matter as permitted by the notice order and O.R.C. Chapter 119. Consequently, the Division issued the final order, denying its application for an Ohio securities dealer license.

Gilbert Marshall & Company

On January 6, 1997, the Division issued Division Order No. 97-002, Suspension of Ohio Securities Dealer License No. 26506 against Gilbert Marshall & Company of Greeley, CO.

On October 10, 1996, the Division had issued to Gilbert Marshall & Company Division Order No. 96-152, Notice of Opportunity for Hearing, setting forth the Division's allegations and describing the right to request a hearing on the matter. Specifically, the Division alleged that Gilbert Marshall & Company violated O.R.C. 1707.44(A) by acting as a dealer without being licensed by the Division in violation of O.R.C. 1707.14.

The notice order was properly served on Gilbert Marshall & Company. In response to the notice, Gilbert Marshall & Company entered into a Consent Agreement with the Division. Consequently, the Division issued the final order, suspending the securities dealer license of Gilbert Marshall & Company for fifteen days beginning on January 1, 1997.

Direct Participation Services dba Government Financial; Joseph T. Nemchik

On January 22, 1997, the Division issued Division Order No. 97-018, a Final Order to Cease and Desist with Consent Agreement, against Joseph T. Nemchik of Amherst, Ohio. On March 3, 1997, the Division issued Division Order No. 97-073, a Final Order to Cease and Desist, against Direct Participation Services dba Government Financial.

An investigation by the Division revealed that in 1994, Nemchik and Government Financial sold Secured Promissory Notes to two Ohio residents for an aggregate amount of $28,000. However, the records of the Division contained neither a registration nor a claim of exemption for the Secured Promissory Notes or the sale thereof. Therefore, the Secured Promissory Notes were sold by the Respondents in violation of O.R.C. 1707.44(C)(1).

On December 10, 1996, the Division had issued to Nemchik and Government Financial Division Order No. 96-228, a Notice of Opportunity for Hearing, setting forth the Division's allegations and describing the right to request a hearing on the matter.

In response to the notice, Nemchik entered into a Consent Agreement with the Division. Consequently, the Division issued the final order against Nemchik, ordering him to cease and desist from violations of the Ohio Securities Act.

The Division was unable to perfect service of the notice on Government Financial through certified mail and published notice of the notice order, as required by O.R.C. Chapter 119. After the statutory publication requirements were satisfied and Government Financial failed to request an administrative hearing, the Division issued a final order, ordering Government Financial to cease and desist from violations of the Ohio Securities Act.

Universal Funding Corporation; David L. Maynard, Jr.; Donald Gilliland

On January 23, 1997, the Division issued Division Order Nos. 97-021, 97-022

and 97-023, Final Orders to Cease and Desist, against Universal Funding Corporation, David L. Maynard, Jr. and Donald Gilliland (collectively "Respondents"), respectively.

An investigation by the Division revealed that on or about November 1993, Respondents sold an investment interest in Key West Wireless Partners to an Ohio resident for a total amount of $5,000. However, the records of the Division contained neither a registration nor a claim of exemption for the investment interest or the sale thereof. Consequently, the investment interest was sold by the Respondents in violation of O.R.C. 1707.44(C)(1). The investigation also revealed that Universal Funding Corporation violated O.R.C 1707.44(A), by acting as a dealer without a license in violation of O.R.C. 1707.14(A). Further, the investigation revealed that Maynard and Gilliland violated O.R.C. 1707.44(B)(4) by making material false representations in the sale of the investment interest and violated O.R.C. 1707.16 by selling the investment interest without being licensed by the Division.

On November 1, 1996, the Division had issued to Respondents Division Order No. 96-174, a Notice of Opportunity for Hearing, setting forth the Division's allegations and describing the right to request a hearing on the matter.

The Division was unable to perfect service through certified mail and published notice of the notice order, as required by O.R.C. Chapter 119. After the statutory publication requirements were satisfied and Respondents failed to request an administrative hearing, the Division issued the final orders, ordering Respondents to cease and desist from violations of the Ohio Securities Act.

Plaza Partners General Partnership; Net-One Consulting, Inc.; Mark D. McClafferty

On January 31, 1997, the Division issued Division Order No. 96-032, Final Order to Cease and Desist, against Plaza Partners General Partnership, Net-One Consulting, Inc. and Mark D. McClafferty (collectively, "Respondents").

An investigation by the Division revealed that in or about April 1996, Respondents solicited an Ohio resident for the purchase of a general partnership interest in Plaza Partners. However, the records of the Division contained neither a registration nor a claim of exemption for the general partnership interest or the offering for sale thereof. Therefore, the general partnership interest was offered for sale by the Respondents in violation of O.R.C. 1707.44(C)(1). The investigation also revealed that Net-One Consulting, Inc. violated O.R.C 1707.44(A), Inc. by acting as a dealer without a license in violation of O.R.C. 1707.14(A).

On October 22, 1996, the Division had issued to the Respondents Division Order No. 96-163, Notice of Opportunity for Hearing, setting forth the Division's allegations and describing the right to request a hearing on the matter.

The notice order was properly served on the Respondents, but no request for an administrative hearing on the matter was made as permitted by the notice order and O.R.C. Chapter 119. Consequently, the Division issued the final order, ordering the Respondents to cease and desist from violations of the Ohio Securities Act.

Bruce Schuerger

On February 6, 1997, the Division issued Division Order No. 97-043, Final Order to Cease and Desist against Bruce Schuerger of Fairfield, Ohio. An investigation by the Division revealed that in 1994, Schuerger sold stock in American Framing Outlets, Inc., a promissory note through Spectrum Capital Group and an investment in a radio license to Ohio residents for an aggregate total of $52,900. However, the records of the Division contained neither a registration nor a claim of exemption for the securities sold by the Respondent or the sales thereof. Therefore, the securities were sold in violation of O.R.C. 1707.44(C)(1). The Division's investigation also revealed that Schuerger made material false representations in connection with the securities transactions in violation of O.R.C. 1707.44(B)(4).

On January 3, 1997, the Division had issued to Schuerger Division Order No. 97-001, Notice of Opportunity for Hearing, setting forth the Division's allegations and describing the right to request a hearing on the matter.

The notice order was properly served on Schuerger, but he did not request an administrative hearing on the matter as permitted by the notice order and O.R.C. Chapter 119. Consequently, the Division issued the final order, which orders Schuerger to cease and desist from violations of the Ohio Securities Act.

Todd Michael Ficeto

On February 11, 1997, the Division issued Division Order No. 97-049, Final Order to Deny the Application for an Ohio Securities Salesman's License of Todd Michael Ficeto of Los Angeles, California.

O.R.C. 1707.19 permits the Division to refuse an application for a securities license if the applicant is not of "good business repute". On December 27, 1996, the Division had issued to Ficeto Division Order No. 96-261, a Notice of Opportunity for Hearing, which set forth the Division's allegations that Ficeto was not of "good business repute". Specifically, the Division alleged that Ficeto failed to meet the "good business repute" standards set out in O.A.C. 1301:6-3-19(D)(7) and (9). The Division's allegations were based upon an NASD fine and censure, resulting from violations of Art. III, Section 1 of the NASD Rules of Fair Practice stemming from transactions in penny stock which amounted to approximately $36,500.

The notice order was properly served on Ficeto, but he did not request an administrative hearing on the matter as permitted by the notice order and O.R.C. Chapter 119. Consequently, the Division issued the final order, denying his application for an Ohio securities salesman's license.

Steven Angelo Gesualdi

On February 13, 1997, the Division issued Division Order No. 97-051, a Final Order to Deny the Application for an Ohio Securities Salesman's License of Steven Angelo Gesualdi of Longmeadow, Massachusetts.

O.R.C. 1707.19 permits the Division to refuse an application for a securities license if the applicant is not of "good business repute". On November 18, 1996, the Division had issued to Gesualdi Division Order No. 96-206, a Notice of Opportunity for Hearing, which set forth the Division's allegations that Gesualdi was not of "good business repute". Specifically, the Division alleged that Gesualdi failed to meet the "good

business repute" standards set out in O.A.C. 1301:6-3-19(D)(7) and (9). The Division's allegations were based on, among other things, an NASD fine, censure and suspension, resulting from violations of Art. III, Sections 1 and 4 of the NASD Rules of Fair Practice stemming from the charging of unfair and unreasonable prices to customers.

The notice order was properly served on Gesualdi, but he did not request an administrative hearing on the matter as permitted by the notice order and O.R.C. Chapter 119. Consequently, the Division issued the final order, denying his application for an Ohio securities salesman's license.

William J. North

On February 14, 1997, the Division issued Division Order No. 97-055, Final Order to Cease and Desist to William J. North of Lancaster, Texas. In lieu of an administrative hearing, North and the Division agreed to present their respective positions, arguments and contentions to the Hearing Officer in writing. The Division submitted its position, arguments and contentions to the Hearing Officer on October 22, 1996. North submitted his position, arguments and contentions to the Hearing Officer on November 5, 1996

The Division presented evidence that North had violated O.R.C 1707.44(A), as in effect at the time of the violations, by selling securities while not being licensed and O.R.C 1707.44(C)(1) by selling unregistered securities. North presented evidence attempting to show that his actions were not in violation of the Ohio Securities Act. However, the Hearing Officer recommended that an order to cease and desist should be issued against North.

Subsequent to the issuance of the Hearing Officer's report and recommendation, North filed objections thereto, as permitted by O.R.C. 119. Pursuant to O.R.C. 119.09, the Division considered the Hearing Officer's recommendation, the transcript of the testimony, the evidence and the objections. Upon such consideration, the Division issued its Final Order, ordering that North cease and desist from the acts and practices described in the Hearing Officer's report and recommendation which violate the Ohio Securities Act.

James Singelis

On February 14, 1997, the Division issued Division Order No. 97-056, Final Order to Cease and Desist to James Singelis of Warren, Ohio. The Final Order followed an administrative hearing on the matter, which was held on August 15, 1995.

At the administrative hearing, the Division presented evidence that Singelis had violated O.R.C 1707.44(A), as in effect at the time of the violations, by selling securities while not being licensed and O.R.C 1707.44(C)(1) by selling unregistered securities. Singelis presented evidence attempting to show that his actions were not in violation of the Ohio Securities Act. However, the Hearing Officer recommended that an order to cease and desist should be issued against Singelis.

Subsequent to the issuance of the Hearing Officer's report and recommendation, Singelis failed to file objections thereto, as permitted by O.R.C. 119. Pursuant to O.R.C. 119.09, the Division considered the Hearing Officer's recommendation, the transcript of the testimony and the evidence. Upon such consideration, the Division issued its Final Order, ordering that Singelis cease and desist from the acts and practices described in the Hearing Officer's report and recommendation which violate the Ohio Securities Act.

Edward A. Markowitz; Goal: Russia, Inc.; The Goal Limited Partnership

On February 25, 1997, the Division issued Division Order No. 97-064, Final Order to Cease and Desist, against Edward A. Markowitz, Goal: Russia, Inc. and the Goal Limited Partnership (collectively, "Respondents"). An investigation by the Division revealed that in 1993, Respondents sold one share of stock in Goal: Russia, Inc. for $5,000 and a one-half unit interest in a limited partnership in the Goal Limited Partnership to Ohio residents. The investigation revealed that the share of stock and the one-half unit interest were sold by the Respondents in violation of O.R.C. 1707.44(C)(1). Respondents also violated O.R.C. Section 1707.44(B)(4) by making false representations in connection with the securities transactions and omitted material information in violation of O.R.C. 1707.44(G). Finally, Respondents violated O.R.C 1707.44(A), as in effect at the time of the violations, by acting as a salesman and dealer without being licensed by the Division.

On November 12, 1996, the Division had issued to the Respondents Division Order No. 96-191, Notice for Opportunity for Hearing, setting forth the Division's allegations and describing the right to request a hearing on the matter. The notice order was properly served on the Respondents and in response to the notice, counsel for Respondents requested that an administrative hearing be held on the matter. However, Respondents, subsequently, withdrew their request for a hearing. Consequently, the Division issued the final order, ordering the Respondents to cease and desist from violations of the Ohio Securities Act.

1:30, Inc.

On February 25, 1997, the Division issued Division Order No. 97-066, a Continuation of Suspension of Registration Numbers 469587 and 469623; Suspension of the Right of 1:30, Inc. and Any Dealer to Buy, Sell or Deal in Securities Purported to be Registered under Registration Numbers 469587 and 469623. The continuation order was issued against 1:30, Inc. of Parma, Ohio.

On December 31, 1996, the Division had issued to 1:30, Inc. Division Order No. 96-280, Suspension of Registration Numbers 469587 and 469623; Suspension of the Right of 1:30, Inc. and any Dealer to Buy, Sell or Deal in Securities Purported to be Registered under Registration Numbers 469587 and 469623; and Notice of Hearing. The suspension order was based upon allegations by the Division that, among other things, 1:30, Inc. failed to provide additional information requested by the Division to clarify a registration of a securities issue by description.

The suspension order was properly served on Respondent. In response to the suspension order, 1:30, Inc. submitted to the Division a Letter of Agreement. Consequently, the Division issued the continuation order, suspending Registration Numbers 469587 and 469623 and suspending the right of 1:30, Inc. and any dealer to buy, sell or deal in securities purported to be registered under Registration Numbers 469587 and 469623.

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Text of New Administrative Rules

Certain amendments to the administrative rules of the Ohio Division of Securities became effective on April 21, 1997. O.A.C. 1301:6-3-03(B) was amended to permit the filing of the federal Form D to claim the exemption pursuant to R.C. 1707.03(Q), and to clarify that any filing made pursuant to R.C. 1707.03(Q) must be manually executed in order to properly claim the exemption. O.A.C. 1301:6-3-03(D) was amended to add a new subsection (9), which creates a safe harbor for certain offerings on the Internet.

A more detailed description of these changes is contained in Bulletin Issue 96:4, which also gave notice of a public hearing on these issues. The public hearing was held by the Division on March 17, 1997.

KEY:
- New language appears in uppercase, and each letter to remain in upper case is underlined.
- Language to be deleted is lined through.
- *** indicates where unamended language has not been reprinted.

1301:6-3-03 Exempt transactions.

(A) Definitions. For the purposes of this rule and section 1707.03 of the Revised Code:

***

(10) "Charitable gift annuity" shall mean an agreement between a qualified charity and a donor in which the qualified charity agrees to pay to an annuitant ~~to~~ OR annuitants for life or for a term of years a fixed percentage of the amount deposited by the donor with the qualified charity.

***

(B) Claims of exemption in accordance with division (O) of section 1707.03 of the Revised Code and division (Q) of SECTION 1707.03 OF the Revised Code.

(1) The issuer or dealer shall file with the division a report of sales on a MANUALLY EXECUTED form 3-Q not later than sixty days after each sale of any security in reliance on division (Q) of section 1707.03 of the Revised Code AND SECTION 4(2) OF THE SECURITIES ACT OF 1933. All sales within any sixty-day period which have not been reported on a prior form 3-Q may be included on a single form 3-Q.

(2) THE ISSUER OR DEALER RELYING ON RULE 506 OF REGULATION D OF THE SECURITIES AND EXCHANGE COMMISSION SHALL FILE NOT LATER THAN SIXTY DAYS AFTER EACH SALE A REPORT OF THE SALE OF SECURITIES IN RELIANCE ON DIVISION (Q) OF SECTION 1707.03 OF THE REVISED CODE EITHER ON A MANUALLY EXECUTED FORM D, INCLUDING THE APPENDIX, OR A MANUALLY EXECUTED FORM 3-Q. ALL SALES WITHIN ANY SIXTY DAY PERIOD WHICH HAVE NOT BEEN REPORTED ON A PRIOR FORM 3-Q OR FORM D MAY BE REPORTED ON A SINGLE FORM 3-Q OR FORM D. A CONSENT TO SERVICE ON EITHER FORM 11 OR FORM U-2 SHALL ALSO BE SUBMITTED WHEN APPLICABLE UNDER SECTION 1707.11 OF THE REVISED CODE.

~~(2)~~ (3) When the division receives a form 3-Q which appears to be defective, the division shall notify the claimant and shall allow not more than thirty days for the amendment of the form. If the defects are remedied by amendment in a timely manner, the form shall be deemed filed as of the date of the original filing. If the defects are not remedied by proper amendment, the division shall note on its records that the form is defective and that no effective claim of exemption has been made.

~~(3)~~ (4) Where the division determines by examination or otherwise that the information reported on a form 3-Q is inaccurate or incomplete, the division shall notify the claimant and shall afford the claimant an opportunity to present proof to establish that the exemption was properly claimed. In the absence of satisfactory proof to the division that claimant was entitled to claim the exemption, the division shall make a finding that the facts necessary for claiming the exemption did not exist at the time such exemption was claimed and that the claim of exemption was null and void and of no effect when made. The division shall thereupon order its records endorsed in accordance with that finding. If the division determines that an exemption has been improperly claimed, it may take action in accordance with Chapter 1707. of the Revised Code.

~~(4)~~ (5) The issuer shall maintain or cause to be maintained books and records which reflect all material transactions involving the sale of securities under division (O) of section 1707.03 of the Revised Code or under division (Q) of section 1707.03 of the Revised Code for a period of four years from the date of the last sale by the issuer under the claim of exemption.

~~(5)~~(6) For the purpose of determining the date of sale for division (O) or (Q) of section 1707.03 of the Revised Code, a sale shall be deemed to have occurred on the later of:

(a) The date that a subscription agreement or its equivalent, signed by the purchaser, is received by the issuer or the dealer, or the purchaser transfers or loses control of the purchase funds, whichever is earlier; or

(b) The first date of disbursement of any proceeds of the sale of the securities which have been deposited directly into an escrow account.

~~(6)~~ (7) No salesman shall sell securities in reliance on an exemption under division (O) or (Q) of section 1707.03 of the Revised Code other than through or with the salesman's employing dealer.

***

(D) Additional exemptions in accordance with division (V) of section 1707.03 of the Revised Code.

***

(9) THE OFFER OF SECURITIES BY AN ISSUER ON THE INTERNET, OR SIMILAR ELECTRONIC MEDIUM, IS EXEMPT PURSUANT TO DIVISION (V) OF SECTION 1707.03 OF THE REVISED CODE, PROVIDED THAT:

(a) THE OFFER OF SECURITIES INDICATES, DIRECTLY OR INDIRECTLY, THAT SECURITIES ARE NOT BEING OFFERED TO ANY PERSON IN THIS STATE AND THE ISSUER DOES NOT OTHERWISE ATTEMPT TO SELL SECURITIES IN THIS STATE;

(b) THE OFFER OF SECURITIES IS NOT SPECIFICALLY DIRECTED TO ANY PERSON IN THIS STATE BY, OR ON BEHALF OF, THE ISSUER; AND

(c) NO SALES OF SECURITIES ARE MADE IN THIS STATE AS A RESULT OF THE OFFER OF SECURITIES UNTIL THE SECURITIES HAVE BEEN REGISTERED BY DESCRIPTION, QUALIFICATION OR COORDINATION, OR ARE SUBJECT MATTER OF A TRANSACTION THAT HAS BEEN REGISTERED BY DESCRIPTION, OR ARE OTHERWISE EXEMPT OR ARE SUBJECT MATTER OF AN EXEMPT TRANSACTION, AND A FINAL PROSPECTUS, OFFERING CIRCULAR OR FORM U-7, IF REQUIRED UNDER THE OHIO SECURITIES ACT OR DIVISION REGULATIONS, HAS BEEN DELIVERED TO PERSONS IN THIS STATE PRIOR TO SUCH SALE.

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Criminal Cases

Roger D. Carter

On October 8, 1996, Roger D. Carter was sentenced to six months incarceration on each of five counts of fourth-degree theft, one year on each of three counts of third-degree theft, and six months on one count of unlawful possession of a firearm without a license, to be served consecutively. Carter's case went to trial in September in Sandusky County Common Pleas Court in connection with his involvement with Kris Oil Company. Carter had solicited Ohio investors to purchase interests in oil and gas wells in Texas. The money Carter obtained from investors was used for personal bills and salaries to employees of another business rather than for oil and gas exploration. Carter was originally indicted on October 18, 1994. The jury found Carter guilty of eight counts of theft and one count of possession of a firearm without a license.

Floyd Bishop

On November 15, 1996, Floyd Bishop was sentenced to one year incarceration on four counts of securities violations and two to fifteen years on a theft violation, to be served concurrently, by Lorain County Court of Common Pleas Judge Thomas W. Janas. Bishop was found guilty by Judge Janas on July 22, 1996 on all five counts, after Bishop entered a no contest plea. Bishop was immediately turned over at sentencing to the Lorain County Sheriff's Department for incarceration. Judge Janas denied bond, and said he felt that Bishop was a threat to society and a flight risk. (See *Bulletin 96:3*)

Gary Kannegiesser

Gary Kannegiesser, aka Gary Christopher, pled guilty in Lorain County Common Pleas Court on January 24, 1997, to one count each of selling unregistered securities, selling securities without a license, making false representations in connection with the sale of securities, and engaging in a prohibited act in selling securities. Kannegiesser had sold stock to three Ohio residents. In effecting the sales, Kannegiesser represented to the investors that the investment proceeds would be used for the expansion of Avon Lake Travel and promised that the investors would receive free cruises, airline tickets, and hotel accommodations. Instead, Kannegiesser misappropriated the investment funds for his own personal use and to repay personal debts.

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Division Consolidates Automated Document "Fax Back" Service

During the fourth quarter of 1994, the Division implemented an automated document "fax back" service to provide Division forms and documents. This automated service allows a caller to request a specific form or document and have it sent directly to a designated fax machine. As originally established, the service contained 26 separate lines offering dealer licensing, securities registration and enforcement materials.

After reviewing the use of this service, the Division decided to consolidate the fax back service. The consolidation took effect on Monday, April 1, 1997. The general information number for the fax back service, which provides an explanation of the service and general instructions, will remain 614-227-3345. The menu for the consolidated service is:

Description	***Fax Back Number***
Instructions and Index to Forms	614-227-3346
Dealer Licensing:	
Dealer License Application for NASD Member	614-227-3352
Securities Registration:	
Registration by Description - All Form 6's	614-227-3356
Private Placement/Reg D - Forms 3(Q) & 3(W)	614-227-3357
Corrective Filings - Forms 39/391 - 3(O), 3(Q) & 3(W)	614-227-3369
Consent to Service - Form 11	614-227-3371
Enforcement:	
Complaint Form	614-227-3349

Instructions for Using the Fax Back Service

From a fax machine:

1. Call the direct dial number for the form you wish to receive.
2. When instructed to do so, press "R" (the 7 key) to receive the fax.
3. Press the start button on the fax machine.

From a touch-tone phone:

1. Call the direct dial number for the form you wish to receive.
2. When instructed to do so, press "I" (the 4 key) to input a number.
3. Enter the number of the fax machine where the form is to be sent. Be sure to enter 1 + area code if the fax is located outside the local Columbus, Ohio, calling area.
4. Press "A" (the 2 key) to accept the fax.

Registration Statistics

The table to the right sets out the number of registration filings received by the Division during the first quarter of 1997, compared to the number received during the first quarter of 1996.

1707	*1Q'97*	*YTD '97*	*1Q'96*	*YTD '96*
.03(Q)	314	314	279	279
.03(W)	14	14	43	43
.04	0	0	0	0
.041	2	2	1	1
.06(A)(1)	20	20	27	27
.06(A)(2)	7	7	7	7
.06(A)(3)	5	5	7	7
.06(A)(4)	5	5	4	4
.09	243	243	122	122
.091	846	846	981	981
.39	8	8	7	7
.391/.09	0	0	1	1
.391/.091	1	1	6	6
.391/.03(O)	4	4	6	6
.391/.03(Q)	31	31	40	40
.391/.03(W)	0	0	1	1
.391/.06(A)(1)	0	0	0	0
.391/.06(A)(2)	0	0	0	0
.391/.06(A)(3)	0	0	0	0
.391/.06(A)(4)	0	0	0	0
Totals	1500	1500	1532	1532

Licensing Statistics

The table below sets out the number of Salesmen and Dealers licensed by the Division at the end of the first quarter of 1997, compared to the first quarter of 1996 as well as the second, third, and fourth quarters of 1996 compared to the corresponding quarter of 1995.

	End of Q1 1997	End of Q1 1996	End of Q2 1996	End of Q2 1995	End of Q3 1996	End of Q3 1995	End of Q4 1996	End of Q4 1995
Number of Salesmen Licensed:	80,289	78,890	81,795	70,580	83,438	72,062	82,498	71,658
Number of Dealers Licensed:	2,050	1,928	2,011	1,873	2,061	1,891	2,060	1,863

Criminal Cases

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Joseph T. Nemchik

On February 26, 1997, Joseph T. Nemchik was indicted in Lorain County Common Pleas Court on 38 counts of selling unregistered securities, 30 counts of making false representations in connection with the sale of securities, and 38 counts of "selling away," i.e., selling securities not through a licensed broker. Nemchik had sold Secured Promissory Notes issued by Government Financial to many elderly Ohio residents. Nemchik allegedly represented to investors, many of whom invested their retirement funds, that the notes were insured. Nemchik was previously indicted in November 1996 on 15 counts of grand theft in Lorain County in connection with a similar company.

Stephen T. Haley

On March 13, 1997, the Tenth District Court of Appeals (Franklin County) affirmed the Franklin County Court of Common Pleas' dismissal of a declaratory judgment action filed by Stephen T. Haley, who is currently incarcerated at the Orient Correctional Institution. The action sought a declaration of Haley's legal rights with regard to the constitutionality of R.C. 1707.44(C)(1), R.C. 1707.44(G) and O.A.C. 1301:6-3-02(C).

In December 1989, Haley was indicted by a Greene County Grand Jury on 22 counts of the sale of unregistered securities and six counts of passing bad checks. In January 1990, Haley was indicted again in Greene County on one count of the sale of unregistered securities, one count of false representation in the sale of securities, and one count of engaging in a pattern of corrupt activity. The indictments were based on Haley's fraudulent business ventures, including the sale of limited partnerships under the name of Global Investment Trading Company, commercial paper to be backed by governmental securities sold under the name of Intermark International, Inc., and stock of Novaferon Labs, Inc. Haley claimed to operate Global Investment Trading Company in Akron, Ohio, and Intermark International and Novaferon Labs in Houston, Texas. It was estimated that Haley's schemes defrauded 250 southwest Ohio residents out of $5,000,000.

In June 1990, Haley was convicted on all counts in the Greene County Court of Common Pleas. He was subsequently sentenced to 83 years imprisonment and fined $93,500. The conviction was affirmed on appeal.

In September 1995, while incarcerated, Haley filed in the Franklin County Court of Common Pleas a declaratory judgment action attacking the constitutionality of R.C. 1707.44(C)(1), R.C. 1707.44(G) and O.A.C. 1301:6-3-02(C). The court dismissed the action in July 1996. The dismissal was affirmed as described above.

Editor's note: Reports of final administrative orders issued by the Division during the first quarter of 1997 not reported in this issue will appear in the next issue of the Bulletin.

OHIO SECURITIES BULLETIN

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