

OHIO SECURITIES BULLETIN

A QUARTERLY PUBLICATION OF THE OHIO DIVISION OF SECURITIES

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Governor of Ohio

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Amendments to Ohio Securities Act Contained in Budget Bill

By Thomas E. Geyer, Esq.

Signed by Governor George Voinovich on June 30, 1997, House Bill 215 contains the Ohio state government budget for the 1998-1999 fiscal biennium. In addition, at the suggestion of the Division of Securities, H.B. 215 includes two small, but significant, amendments to the Ohio Securities Act. One amendment extends the control bid review period set out in the Ohio Control Bid Statute, R.C. 1707.041, from three calendar days to five calendar days. The other amendment restores to R.C. 1707.44(A) the prohibition on the unlicensed sale of securities by individuals. These amendments, discussed more fully below, became effective when Governor Voinovich signed the bill. The

text of the amended statutory provisions appears at the end of this article.

Amendment of R.C.1707.041(A)(3)

Reviewing a control bid filing within the statutory three calendar day review period has traditionally presented the Division with one of its greatest challenges. Extending the review period was discussed by the Division's Takeover Advisory Committee at its November 1996 meeting. See "Summaries of the Advisory Committee Meetings held at the 1996 Securities Conference, Takeover Advisory Committee," *Ohio Securities Bulletin* 96:4. The Advisory Committee concurred with the

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Investment Company Notice Filings in the Post-NSMIA Environment

By Debbie Dye Joyce, Esq.

The National Securities Markets Improvement Act of 1996 (NSMIA) was signed into law on October 11, 1996. As a result of the enactment of the NSMIA, the procedures for making filings with the Division, specifically, notice filings for investment companies, have been modified. This article will discuss these modifications and the rationale thereof as well as remind issuers of other Division policies pertaining to investment companies.

Policies to be briefly discussed here will include how effective dates of notice filings are determined, how to make amendments to notice filings, what the components of a notice filing are, and other procedural information.

Components of a Notice Filing

The first component of a notice filing is the summary information consisting of the information previously submitted on the first page of the Form U-1. Notably, the vast majority of issuers continue to submit a complete Form U-1, although the Form NF is gaining favor. The Division will accept either a signed Form NF or a signed Form U-1. Submission of just the first page of the Form U-1 is acceptable provided it has been signed.

In the alternative, the Division will accept a copy of the issuer's federal registration statement as filed with the Securities and Exchange Commission (SEC) as the notice filing. However, the Division strongly encourages submission of the Form U-1 or Form NF due to the

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OHIO DEPARTMENT OF COMMERCE DIVISION OF SECURITIES



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Ohio Securities Act

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Division's suggestion that the three calendar day period was too short. Extending the review period to five calendar days was discussed and the Advisory Committee agreed such an extension would be appropriate. The Committee further agreed that if the review period was extended, the total time for Division review, hearing and decision must not exceed twenty days.

The Ohio State Bar Association Corporation Law Committee Notes accompanying the 1990 revisions of R.C. 1707.041 indicate that the statute was carefully amended to fit within constitutionally permissible time frames. Specifically, the Committee Notes state:

[R.C. 1707.041] requires the Division to act within three days of filing to suspend the continuation of the control bid . . . The Division must complete its hearing process on any such suspension within nineteen (19) calendar days of the original filing, in order to conform to the time frames allowed for control bids under the Williams Act, as interpreted by Cardiff Acquisitions, Inc. v. Hatch, 751 F.2d 906 (8th Cir. 1984), appeal after remand 751 F.2d 917 (8th Cir. 1984).

The Williams Act time frame is contained in the federal regulations promulgated under that Act. Specifically, Securities and Exchange Commission Rule 14e-(1)(a) states in pertinent part: ". . . no person who makes a tender offer shall . . . [h]old such tender offer open for less than 20 business days from the date such tender offer is first published . . ." 17 C.F.R. 240.14e-(1)(a). In considering the constitutionality of the Minnesota Take-Overs Act in the Cardiff Acquisitions case, the Eighth Circuit Court of Appeals noted:

. . . there is no delay under the Minnesota Act . . . because the Commissioner must complete [the review, hearing and decision] process within nineteen calendar days . . . which is prior to the expiration of the twenty business-day mini-

mum offering period specified by federal law. . .

Cardiff Acquisitions, *supra*, 751 F.2d at 910.

In amending the Ohio Control Bid Statute, the Division was faithful to the comments of the Corporation Law Committee and to the holding of Cardiff Acquisitions. While the review period set out R.C. 1707.041(A)(3) has been extended to five calendar days, the post-suspension period set out in 1707.041(A)(4) has been correspondingly reduced from sixteen calendar days to fourteen calendar days. Thus, the entire Division involvement in the control bid will still be resolved within nineteen calendar days, which is the time frame upheld in Cardiff Acquisitions, and is well within the twenty business day time frame of the Williams Act. The requirement that the hearing be held within ten calendar days of the suspension has been maintained, so the practical effect of the reduction of the post-suspension period is that the Division will have two less calendar days to schedule the hearing, conduct the hearing and render a decision. The Division believes that the new fourteen calendar day period provides ample time to complete the post-suspension proceedings.

The Division believes that the extension of the control bid review period from three calendar days to five calendar days is a significant improvement in the Ohio Control Bid Statute. Obviously it will give the Division additional time to determine whether "the control bid materials provided to offerees. . . provide full disclosure to offerees of all material information concerning the control bid." See R.C. 1707.041(A)(3). Further, it will provide the Division additional time to resolve outstanding comments regarding the offering materials before resorting to a suspension of the control bid.

Amendment of R.C. 1707.44(A)

House Bill 488, which became effective on October 11, 1994, is probably best known for its amendments to the licensing provisions of the Ohio Securities Act that require virtually all securities dealers operating in Ohio to be also registered with Securities and Exchange Commission. See "House Bill 488 and its Impact on the Ohio Securities Act," *Ohio Securities Bulletin* 94:3. However, H.B. 488 also amended the definition and prohibition sections of the Ohio Securities Act to eliminate the term "broker" and incorporate its underlying concepts into the defi-

OHIO SECURITIES BULLETIN

Desiree T. Shannon, Esq., Editor

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

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

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Ohio Division of Securities

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Receptionist	644-7381	Enforcement	466-6140
Broker-Dealer	466-3466	Examination	644-7467
Records	466-3001	Registration	466-3440

dition and license provisions of “dealer.” The amendment of the prohibition section, R.C. 1707.44(A), resulted in the unintentional deletion of an express prohibition against the unlicensed sale of securities by an individual.

Prior to H.B. 488, “broker” was a defined term in the Ohio Securities Act meaning “any person who effects purchases or sales of securities for the account of others, in the reasonable expectation of receiving a commission, fee, or any other remuneration as a result of such activity,” with certain enumerated exceptions. Combined with the definition of “person” set out in R.C. 1707.01(D), “broker” included both natural persons and entities. In turn, pre-H.B. 488 R.C. 1707.44(A) provided that “no person shall engage in the business of acting as a broker for others in the purchase or sale of securities . . . without being licensed by the division . . .” subject to certain enumerated exceptions. Given the definitions of “broker” and “person,” this prohibition extended to both natural persons and entities.

When H.B. 488 deleted the term “broker” and rolled the underlying concepts into “dealer,” it necessarily also amended R.C. 1707.44(A). Post-H.B. 488 R.C. 1707.44(A) simply states: “No person shall engage in any act or practice that violates division (A), (B), or (C) of section 1707.14 of the Revised Code.” The flaw in this language results from the definition of “dealer,” set out in R.C. 1707.01(E)(1) which states, in pertinent part, that dealer “means every person, *other than a salesman*” (emphasis added). In turn, “salesman” is defined in R.C. 1707.01(F)(1) as “every natural person, other than a dealer, employed, authorized or appointed by a dealer to sell securities within this state.” Thus, a natural person who falls within the definition of “salesman” would not be included in the prohibition of post-H.B. 488 R.C. 1707.44(A), even if that natural person was not licensed as a salesman by the Division. The new amendment to R.C. 1707.44(A) remedies this flaw by adding the prohibition that “no salesperson shall sell securities in this state without being licensed pursuant to section 1707.16 of the Revised Code.”

As proposed by the Division, the amendment to R.C. 1707.44(A) used the statutorily defined term “salesman.” However, pursuant to the gender neutrality mandate of R.C. 1.31, “salesman” was changed to “salesperson” during the legislative process.

The same change was made to R.C. 1707.44(B)(3). Although the semantic result of this gender neutrality is that R.C. 1707.44 does not precisely match R.C. 1707.01(F), R.C. 1.31(B)(1) states in pertinent part:

...it is the intent of the general assembly not to make substantive changes in the statutory language in effect on the date of that enactment by the replacement of the gender specific language with the gender neutral language. The gender neutral language shall be construed as a restatement of, and substituted in a continuing way for, the corresponding statutory gender specific language existing on the date of enactment.

Text of Amended Provisions

1707.041 Control bids; required information; hearings; tender offers; copies of filings liabilities and penalties; adoption of rules; substitution of insurance superintendent; exemptions; severability of section.

(A)(1) No control bid for any securities of a subject company shall be made pursuant to a tender offer or request or invitation for tenders until the offeror files with the division of securities the information prescribed in division (A)(2) of this section. The offeror shall deliver a copy of the information specified in division (A)(2) of this section, by personal service, to the subject company at its principal office not later than the time of the filing with the division of securities. The offeror shall send or deliver to all offerees in this state, as soon as practicable after the filing, the material terms of the proposed offer and the information specified in division (A)(2) of this section.

(3) Within ~~three~~ FIVE calendar days of the date of filing by an offeror of information specified in division (A)(2) of this section, the division of securities may by order summarily suspend the continuation of the control bid if the division determines that all of the information specified has not been provided by the offeror or that the control bid materials provided to offerees do not provide full disclosure to offerees of all material information concerning the control bid. Such a

suspension shall remain in effect only until the determination following a hearing held pursuant to division (A)(4) of this section.

(4) A hearing shall be scheduled and held by the division of securities with respect to each suspension imposed under division (A)(3) of this section. The hearing shall be held within ten calendar days of the date on which the suspension is imposed. Chapter 119. of the Revised Code does not apply to a hearing held under this division. The division of securities may allow any interested party to appear at and participate in the hearing in a manner considered appropriate by the division. The determination of the division of securities made following the hearing shall be made within three calendar days after the hearing has been completed, and no later than ~~sixteen~~ FOURTEEN calendar days after the date on which the suspension is imposed. The division of securities, by rule or order, may prescribe time limits for conducting the hearing and for the making of the determination that are shorter than those specified in this division. If, based upon the hearing, the division of securities determines that all of the information required to be provided by division (A)(2) of this section has not been provided by the offeror, that the control bid materials provided to offerees do not provide full disclosure to offerees of all material information concerning the control bid, or that the control bid is in material violation of any provision of this chapter, the division shall maintain the suspension of the continuation of the control bid, subject to the right of the offeror to correct disclosure and other deficiencies identified by the division and to reinstitute the control bid by filing new or amended information pursuant to this section.

1707.44 Prohibitions.

(A) No person shall engage in any act or practice that violates division (A), (B), or (C) of section 1707.14 of the Revised Code, AND NO SALESPERSON SHALL SELL SECURITIES IN THIS STATE WITHOUT BEING LICENSED PURSUANT TO SECTION 1707.16 OF THE REVISED CODE.

Mr. Geyer is the Commissioner of Securities.

Notice Filings

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easily accessible and discernible information contained on those forms.

Generally, the information contained on the first page of the Form U-1 is the most relevant. It includes fund, portfolio, and class names of the entities seeking eligibility to sell in Ohio, as well as the contact person's name, telephone number, and address. It also discloses a description of securities, the amount of securities to be eligible for sale in the State, the sales commission, and, on initial filings, whether the fund has become effective with the SEC.

The information regarding the identity of the entity seeking to sell securities is vitally important. The past few years have seen a significant increase in the number of name changes for investment companies, their funds, portfolios, and even classes. In addition, procedurally, the restructurings of funds, reorganizations, reconfigurations, and other changes, are treated as name changes and cause even greater difficulty in tracking. At times, it is extremely difficult to determine the origins of a reconfigured prospectus or to determine prior filings as a result of name changes. The Division often resorts to mapping out a family tree for a fund to be able to trace the history of a particular portfolio.

In general, whatever funds, portfolios, and classes are contained on one prospectus are also contained on one notice filing. (Ohio is a "prospectus" state, meaning that any funds, portfolios, or classes contained on one prospectus may be filed on one notice filing. Any fund, portfolio or class contained on a separate prospectus will necessitate a separate notice filing for that prospectus.) At times however, some issuers may seek to sell securities only from certain portfolios on a prospectus in the State.

Consequently, without accurate information regarding the identity of the entity seeking to sell securities, it becomes difficult to keep track of subsequent reconfigurations, name changes,

and so on. Although the Division will accept a copy of the federal registration statement as the notice filing, the federal registration statement does not summarize the issuer's intent as does the filing of the Form U-1 or Form NF, which both provide quick and accurate information regarding the securities to be sold.

Information pertaining to the contact person is, of course, a necessity. Information pertaining to a description of the securities, e.g., shares of beneficial interest, shares of common stock, etc., the amount of the securities to be sold, the sales commission, and, on initial filings, an SEC effective date, is used to complete the Division Certificate sent to the issuer.

Prior to the NSMIA, the Division issued Division Orders of Effectiveness. With the enactment of the NSMIA and current use of Notice Filings, the Division now provides Division Certificates of Effectiveness to issuers. Despite the fact that the filing is considered just a notice, it appears that issuers want to continue to receive something from the Division with regard to their eligibility to sell securities in Ohio other than a mere date-stamped copy of the cover letter accompanying the filing.

The second component of the notice filing, as applicable, would be a duly executed consent to service of process and resolution for those issuers not domiciled in Ohio. Either the Form U-2 and U-2A, or the Ohio Form 11 may be used. Currently, filings—including consents and resolutions, are destroyed once the files have been retained eight years. The Division is now in the process of redesigning the manner in which consents to service of process are filed and retained. The proposed amendments to Ohio Administrative Code 1301:6-3-09, contained in Issue 97:1 of the Ohio Securities Bulletin, address incorporating by reference consents to service of process previously filed.

Specifically, the Division's proposed amendment to Ohio Administrative Code 1301:6-3-09 would permit the incorporation by reference of a previ-

ously submitted signed consent and resolution for managed investment companies. The Division would verify that a consent and resolution were previously filed, add the information to a database specifically designed for the consents and resolutions, and retain the consent and resolution permanently.

The enactment of the NSMIA did not change the filing fee component of a notice filing. The fee is two-pronged: a flat one-hundred-dollars plus a calculated amount of one-tenth of one percent of the aggregate amount of securities to be sold in Ohio. For those issuers desiring to sell more than one million dollars worth of securities in Ohio, maximum fees of \$1100 should be submitted. Once the maximum fees have been paid, the Division will automatically list the amount to be sold in Ohio as indefinite.

The last component of the notice filing is a copy of the fund's prospectus and statement of additional information, as applicable. Of course, on initial filings, the prospectus and SAI would be contained in the federal registration statement. In instances where a copy of the issuer's federal registration statement is used as the notice filing, separate copies of the issuer's prospectus and statement of additional information are not necessary. Unit investment trusts need only provide the final prospectus at time of effectiveness.

Effectiveness of a Notice Filing

The effectiveness of a notice filing will be one of three dates. If the notice filing is an initial filing and the fund has already become effective with the SEC, the date the Division received the notice filing will be the effective date in Ohio—unless the issuer requests a later date. A complete initial filing not yet effective with the SEC would pend until it did become effective with the SEC. Then, Ohio would give a concurrent effective date.

Renewals are given the cyclical renewal date that, in Ohio, is every thirteen months. On occasion, the Division

does receive requests for an early renewal and the renewal notice filing is given the requested date. Note that the thirteen-month effective period is calculated by month rather than by day. Therefore, if an issuer's effective date in 1996 was May 31, 1996, the renewal date would be the last day of the month thirteen months later, on June 30, 1997.

In no event can the effective date of a notice filing be prior to the Division's date of receipt of the fees.

Amendment of a Notice Filing

Amendments to the notice filing take one of two forms: a name change or an increase in the aggregate amount to be sold. Changes to the name of the entity submitting the notice filing, whether a literal name change or a change resulting from a prospectus reconfiguration or purchase, are most readily accomplished by the submission of an amended facing page of the Form U-1 or Form NF. No fee is required for name changes.

For issuers seeking to sell a definite amount of securities in Ohio, the notice filing may be amended to reflect an additional amount of securities beyond what was originally contemplated. Again, these amendments are most readily accomplished by the submission of an amended facing page of the Form U-1 or Form NF. There is a calculated fee for the amendment, but there is no flat fee.

For example, Issuer A filed a notice to sell \$300,000 of securities in Ohio. The total fees paid by Issuer A at this time would be \$400. Two months later, Issuer A decides to sell even more than the \$300,000 currently eligible in the State. Issuer A wants to increase the aggregate amount to be sold to a total of \$700,000. Therefore, the amendment is for an additional \$400,000. The calculation for the fee is the same as presented above. Issuer A would need to submit a check payable to the Ohio Division of Securities in the amount of \$400 (one-tenth of one percent of the additional aggregate amount to be sold).

Termination of a Notice Filing

It is not necessary to apprise the Division of the termination of a fund, portfolio, or class, if the entire notice filing is being terminated. If, however, less than the entire notice filing is being terminated, procedurally, the Division would treat the change as a name change. For example, Issuer B submits a notice for XYZ Fund (Equity Portfolio/High Yield Portfolio/Aggressive Portfolio), and later, during the effectiveness of the filing, determines to terminate the High Yield Portfolio. Issuer B should notify the Division of the "name change." To accomplish this most readily, Issuer B should follow the procedures described above.

Prospectus Requirement

As noted above, Ohio is a "prospectus" state. In other words, whatever is contained in one prospectus may be filed on one notice. Consequently, if Class Y of ABC Fund is on one prospectus and Class A is on another prospectus, the issuer will need to make two notice filings. It is especially important to keep this "prospectus" requirement in mind when renewing a notice filing as the failure to timely renew may subject an issuer to penalty fees.

For example, DEF Fund (High Yield Portfolio/Mid Cap Equity Portfolio) is contained on one prospectus and has an effective notice filing that will expire on September 23, 1997. In July, DEF Fund decides to reconfigure its prospectus and now has the High Yield Portfolio on one prospectus and the Mid Cap Equity Portfolio on a second prospectus.

DEF Fund mistakenly submits both portfolios/prospectuses on one renewal notice filing. The Division notifies DEF Fund that it must submit a notice filing for each portfolio since the portfolios are contained on separate prospectuses. (In addition, DEF Fund will need to submit either an amended facing page of the Form U-1 or Form NF for the original notice filing listing only the port-

folio to remain on that filing.) DEF Fund should submit the second notice filing to the Division before the expiration of the prior filing, September 23, 1997, in order to avoid penalty fees pursuant to Revised Code 1707.39 or 1707.391.

Corrective Filings

In the event an issuer fails to renew a notice filing on time or sells, during the period of an effective notice filing, more securities than that issuer was eligible to sell in Ohio, the provisions of either Revised Code 1707.391 or Revised Code 1707.39 may be applicable. These corrective filings in the post-NSMIA environment will emphasize penalty fees and written indication addressing which sales are targeted by the "correction." Issuers are encouraged to use the Division's Form 391 or Form 39 to accomplish this, but may provide similar information in a cover letter.

Proposed Administrative Rule

This article has previously mentioned the Division's proposals to amend some of the provisions in Ohio Administrative Code 1301:6-3-09 regarding investment companies. The Notice for Public Hearing and the proposed language was contained in Issue 97:1 of the Ohio Securities Bulletin. Since the publication of the last Bulletin, the Division has submitted certain technical revisions to this rule. The revisions were made at the suggestion of the Investment Company Institute and further clarify the filing procedures and requirements for investment companies. The Division is confident that the revisions to the original amendments will be regarded even more favorably by the investment company industry.

Ms. Dye Joyce is the Supervisor of the Division's Registration Section and has been responsible for the Division's mutual fund program since 1994.

National White Collar Crime Center

In furtherance of investor protection, the Division applied for membership with the National White Collar Crime Center (NWCCC), and its application was approved on approximately April 15, 1997. The NWCCC is a service-oriented, non-profit corporation headquartered in Richmond, Virginia. Its mission is to provide a national support system for the prevention, investigation, and prosecution of economic crimes. NWCCC-designated investigations relate to multi-jurisdictional allegations of criminal charges such as fraud, theft, conspiracy, and other related violations of state and federal laws. Civil and administrative actions are commonly undertaken by member agencies utilizing information obtained in successful NWCCC investigations.

The NWCCC provides analytical evaluations and background information garnered from public and criminal intelligence databases in pursuing investigative matters. The NWCCC also provides training to member agencies in such matters as computer-related crimes and investigative techniques. Additionally, the NWCCC provides national teleconference broadcasts on pertinent topics for its members. Membership is comprised of voting member agencies from 46 states and Puerto Rico. Included in the voting membership are over 40 securities regulators.

-Karen Terhune

Business Opportunity Surf Day

On March 18, 1997, the Division participated in "Business Opportunity Surf Day" along with the North American Securities Administrators Association (NASAA), the Federal Trade Commission (FTC) and numerous other law enforcement officials at the state, federal

and international level. The Division, in cooperation with these other agencies, surfed the Internet for three hours for companies using the World Wide Web to promote business opportunities using false and unsubstantiated earnings claims.

Notices were sent to 191 business opportunity Web sites resulting from the Division's and other agencies' Internet surfing. The notices included a warning that claims regarding potential earnings to be made by consumers who buy into their business opportunities must be backed up by solid evidence. NASAA and the FTC announced that upon checking the Web sites on the Internet after the notices had been sent, officials found that 23 percent of the sites had been changed or taken down. The goal of Business Opportunity Surf Day was to warn those marketing business opportunities on the Internet that they must have evidence to support any objective claim-including earnings claims.

-Karen Terhune

Investors Urged to Exercise Caution on the Internet

On February 26, 1997, the Division issued a release to the public warning prospective investors "to be keenly aware of the potential fraud in cyberspace." The release set forth the Division's Internet Monitoring Program, as reported in *Ohio Securities Bulletin* 96:3, which was initiated to ensure that securities offerings available to Ohio residents on the Internet comply with Ohio securities laws.

Several self-defense tactics were provided for investors to protect themselves against cyberfraud, including: (1) Not to post your name and other personal information on-line; (2) Don't assume that just because someone says that they have checked something out that they have done so; (3) Don't forget to always be on the look-out for conflicts of interest; (4) Don't act on the advice of a person who hides his or her identity; (5) Don't assume your on-

line computer service polices its investment bulletin boards; (6) Don't expect to get rich quick in cyberspace; (7) Don't buy thinly traded, little known stocks strictly on the basis of on-line hype; (8) Verify that an investment opportunity is registered and the person promoting it is licensed with the Division.

A copy of the release can be accessed through the Division's home page, <http://www.securities.state.oh.us/>.

-Karen Terhune

Division Joins Other States in Nationwide Enforcement Effort

On May 29, 1997, the Ohio Division of Securities participated in the largest nationwide enforcement effort ever coordinated by state securities agencies. The Division joined 19 other states which filed a total of 37 actions against 14 securities dealers that engage in abusive sales practices and have other compliance problems.

Specifically, the Division issued a final order, No. 97-190, denying the application of Investors Associates, Inc., of Hackensack, New Jersey, for an Ohio securities dealer license. The Division found that Investors Associates was not of "good business repute," as defined by the Ohio Securities Act. The Division's order was based on the dealer's record of 12 separate disciplinary incidents over the past five years.

In addition to the administrative action taken by the Division, 14 other states announced action against Investors Associates. The Division's license denial was not based on the other states' enforcement actions against Investors Associates, but on incidents that had been the subject of an administrative hearing before the Division. Investors Associates did not appeal the final order.

The Division's action against Investors Associates coincided with the first phase of a national campaign by state securities agencies and the North Ameri-

can Securities Administrators Association against securities dealers that use fraudulent sales practices and have other compliance problems. The coordinated actions resulted both from NASAA-organized examinations as well as investigations by individual states. The campaign is designed to protect both investors and the marketplace from problem securities dealers.

-Tom Geyer

Division Issues Release Regarding "Preying on the Faithful"

On June 16, 1997, the Department of Commerce issued a press release alerting the public to religious affinity scams. Con artists use religious organizations, often posing as one of the faithful, to swindle church members in investment scams.

Investors should be on their guard for investment promoters who claim to have special ties to, or endorsements from, a faith or congregation. Investors should also be careful to check the background of any promoter by calling the Division of Securities to determine whether the promoter is licensed to sell securities in Ohio and if the security is registered.

An Investor Alert entitled "Preying on the Faithful" is available for free by calling or writing the Division of Securities. The Alert sets forth seven tips to help investors protect themselves from con artists in the religious community. Investors should be wary of new church members who spring up out of nowhere with a "surefire" investment scheme, or investments that seem closely tied to a particular religious belief. To obtain your free copy of the Investor Alert, call the Division's toll free hotline at (800) 788-1194. Columbus-area residents should call 644-7381. Copies may also be obtained by writing to the Division of Securities at 77 S. High Street, 22nd Floor, Columbus, Ohio 43215.

-Caryn Francis

Rescission Under The Ohio Securities Act

When securities are sold illegally in Ohio, in violation of the Ohio Securities Act, the transaction may give rise to a statutory right of rescission under the Ohio Securities Act. Rescission is a remedy, not a penalty, intended to return the parties to the positions they were in prior to the transaction. As a result, damages through rescission are limited to the amount paid by the purchaser, not including interest.

The first sentence of R.C. 1707.43, the Ohio Securities Act section entitled "Remedies of Purchaser in Unlawful Sale," states:

"Every sale or contract for sale made in violation of Chapter 1707. of the Revised Code, is voidable at the election of the purchaser."

Because the statute only refers to the option of the purchaser, the Ohio law has generally been interpreted to limit rescission to transactions where an investor buys securities.

The second and third paragraphs of R.C. 1707.43 establish an equally significant distinction between rescission offers initiated by the seller and claims of rescission initiated by the buyer. When a buyer is offered rescission in writing by a seller, the buyer has thirty days from the date of the offer to rescind the transaction. When the seller does not notify the buyer that the right of rescission is available, the buyer can seek rescission up to two years after he or she knew, or had reason to know, that the sale was made in violation of the Securities Act, or four years from the date of the illegal sale, whichever is shorter.

The full text of R.C. 1707.43, "Remedies of Purchaser in Unlawful Sale," follows:

Every sale or contract for sale made in violation of Chapter 1707. of the Revised Code, is voidable at the election of the purchaser. The person making such sale or contract for sale, and every person who has participated in or aided the seller in any way in making such sale or contract for sale, are jointly and severally liable to such purchaser, in an action at law in any court of competent jurisdiction, upon tender to the seller in person or in open court of the securities sold or of the contract made, for the full amount paid by such purchaser and for all taxable court costs, unless the court determines that the violation did not materially affect the protection contemplated by the violated provision.

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

No purchaser is entitled to the benefit of this section who has failed to accept, within thirty days from the date of such offer, an offer in writing made after two weeks from the date of such sale or contract of sale, by the seller or by any person who has participated in or aided the seller in any way in making such sale or contract of sale, to take back the security in question and to refund the full amount paid by such purchaser.

-William Leber

NEW ADMINISTRATIVE RULE

Ohio Administrative Code 1301:6-3-03 has been amended to provide an exemption from the registration requirements of the Ohio Securities Act for professional organizations selling securities to members, and to enable professional organizations to use the cash method of accounting under applicable IRS laws. The amendment became effective mid-July.

A more detailed description of these changes is contained in Bulletin Issue 97:1, which also gave notice of the public hearing on this proposal. The public hearing was held by the Division on June 16, 1997.

KEY:

- New language appears in uppercase, and each letter to remain in uppercase is underlined.
- *** indicates where unamended language has not been reprinted.

1301:6-3-03 Exempt transactions.

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

(10) THE SALE OF ANY SECURITY, INCLUDING THE ISSUANCE OF SECURITIES IN MERGERS, CONSOLIDATIONS, COMBINATIONS OR CONVERSIONS, BY AN ISSUER FORMED PRIMARILY TO PROVIDE PROFESSIONAL SERVICES AS SUCH TERM IS DEFINED IN DIVISION (A) OF SECTION 1785.01 OF THE REVISED CODE IS EXEMPT PURSUANT TO DIVISION (V) OF SECTION 1707.03 OF THE REVISED CODE PROVIDED THAT:

- (a) NO COMMISSION OR OTHER REMUNERATION IS PAID DIRECTLY, OR INDIRECTLY, IN CONNECTION WITH THE SALE OF THE SECURITY; AND
- (b) OWNERSHIP OF THE SECURITIES OF THE ISSUER IS LIMITED TO:
 - (i) EMPLOYEES, PARTNERS, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS WHO PERFORM PROFESSIONAL SERVICES FOR THE ISSUER;
 - (ii) RETIRED EMPLOYEES, PARTNERS, OFFICERS, DIRECTORS, SHAREHOLDERS, MANAGERS OR MEMBERS WHO HAVE PERFORMED PROFESSIONAL SERVICES FOR THE ISSUER;
 - (iii) EMPLOYEE BENEFIT PLANS HOLDING SECURITIES FOR THE BENEFIT OF EMPLOYEES, PARTNERS, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS WHO PERFORM, OR WHO HAVE PERFORMED, PROFESSIONAL SERVICES FOR THE ISSUER;
 - (iv) THE ESTATE OF ANY INDIVIDUAL DESCRIBED IN PARAGRAPH (D)(10)(b)(i), (D)(10)(b)(ii), OR (D)(10)(b)(iii) OF THIS RULE; OR
 - (v) ANY OTHER PERSON WHO ACQUIRED SUCH OWNERSHIP INTEREST BY REASON OF THE DEATH OF AN INDIVIDUAL DESCRIBED IN PARAGRAPH (D)(10)(b)(i), (D)(10)(b)(ii), OR (D)(10)(b)(iii) OF THIS RULE.

CONTROL BID SUMMARY

by Michael P. Miglets, Control Bid Attorney

During the second quarter of 1997, the Division received three Control Bid filings. Two Control Bids involved filings with the Securities and Exchange Commission under the Williams Act, while the third Control Bid was solely under the jurisdiction of the Division as the target company was not registered under Section 12 of the Exchange Act of 1933.

T R Sport, Inc./Sportco, L.L.C.

On April 9, 1997, Sportco L.L.C. ("Sportco"), a newly formed Ohio limited liability company, filed a Form 041 with the Division to pursue a control bid for T R Sport, Inc. ("T R Sport"), an Ohio corporation, engaged in the distribution of maternity undergarments. Since T R Sport was not registered under Section 12 of the Exchange Act of 1933, no filing was made under the Williams Act. The tender offer was for the \$1,009,000 aggregate principal amount of outstanding unsecured debt securities and the 1,330,800 outstanding shares of T.R. Sport's Common Stock. The tender offer was conditioned upon 95% acceptance by the security holders of T R Sport. The aggregate consideration offered by Sportco was \$77,000 plus an interest in assets to be liquidated. Bob Binsky, an officer, director and 65% shareholder of T R Sport, was also a 50% owner of Sportco. The offering materials indicated that T R Sport was in financial difficulty and that the control bid was an alternative to a bankruptcy filing.

The Division issued a comment letter on April 10, 1997, requesting additional information and amended offering materials. Sportco withdrew the Form 041 filing on April 11, 1997, due to other business considerations.

Sinter Metals, Inc./ GKN Metallurgy Holdings, Inc. and GKN plc

GKN Metallurgy Holdings, Inc. ("GKN Holdings"), a Delaware corporation, filed a Form 041 on May 5, 1997, in connection with a control bid for Sinter Metals, Inc. ("Sinter"), a Delaware corporation with its principal executive offices in Cleveland, Ohio. GKN Holdings is a wholly-owned subsidiary of GKN plc, a public limited company registered in the United Kingdom. Sinter was the largest powder-metal producer in the world with over 25% of the U.S. market. GKN plc and its subsidiaries produce automotive and agritechnical components. They also design and produce defense and aerospace products, and provide industrial services in the United Kingdom, the United States and Europe.

Sinter and GKN Holdings entered into a merger agreement on April 29, 1997. The Board of Directors of Sinter unanimously approved both the offer and the merger and determined that the terms of the offer and the merger were in the best interests of and fair to the stockholders of Sinter. The offer was for \$37.00 per share of Common Stock of Sinter with an aggregate transaction value of \$391,000,000 including fees and expenses. The offer represented a 40% premium over April 27, 1997, closing price for the Common Stock of Sinter.

GKN Holdings announced on June 2, 1997, that the tender offer expired on May 30, 1997, and that over 97% of the shares of Common Stock of Sinter were tendered.

Riser Foods, Inc./ Giant Eagle, Inc. and Talon Acquisition Company

Giant Eagle, Inc. ("Giant Eagle"), a Pennsylvania corporation, through its wholly-owned subsidiary Talon Acquisition Company, a Delaware Corporation, submitted a Form 041 on May 21, 1997. The filing was in connection with a control bid for Riser Foods, Inc. ("Riser Foods"), a Delaware Corporation with its principal executive offices in Bedford Heights, Ohio. Riser Foods' principal line of business is the distribution of groceries and related items through its retail supermarket subsidiary and its wholesale distribution subsidiary. Giant Eagle engages in the retail and wholesale distribution of groceries and related products in Youngstown, Warren and Pittsburgh. The offer was \$42.00 cash per share of Common Stock of Riser Foods for an aggregate transaction value of \$403,000,000 including the assumption of \$47,000,000 of Riser Foods' debt.

Riser Foods and Giant Eagle signed a merger agreement on May 13, 1997, with Riser Foods to operate as a subsidiary of Giant Eagle if the tender offer is completed. The Board of Directors of Riser Foods unanimously approved both the merger and the bid and determined that the merger and the bid are in the best interests of and fair to the shareholders of Riser Foods. The tender offer closed on June 17, 1997. At the close of the tender offer, 96% of the shares of Class A Common Stock and 100% of the shares of Class B Common Stock of Riser Foods had been tendered. The Offer to Purchase indicates that Giant Eagle may acquire the remaining shares by merger.

DIVISION ENFORCEMENT SECTION REPORTS

Administrative Orders

Nationwide Wireless Corporation; Philip J. Caratozollo

On March 12, 1997, the Division issued Division Order No. 97-079, a final Cease and Desist Order against Nationwide Wireless Corporation (NWC), of Pacific Palisades, California. On May 20, 1997, the Division issued Division Order 97-182, a final Cease and Desist Order against Philip J. Caratozollo of Lauderhill, Florida.

The Division's investigation found that NWC formed Greater Columbia Basin Wireless Cable Limited-Liability Company (GCB), purportedly to engage in the development and operation of a wireless cable operation that would include Super High Frequency television channels. These channels would be operated through licenses issued by the Federal Trade Communications Commission in the Greater Columbia Basin, in the southern portion of Washington state. Caratozollo was the president of NWC.

Six membership interests in GCB, at \$5,000 per interest, were sold to three Ohio investors. Part of the sales efforts included the personal endorsement of a nationally syndicated financial radio talk show host, Irwin Harry Bloch a.k.a. Sonny Bloch. Bloch utilized his talk show to tell listeners about Nationwide and included a toll-free number for potential investors to call.

The membership interests in GCB were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1). NWC and Caratozollo were not licensed to sell securities by the Division, and therefore in violation of R.C. section 1707.44(A). There were also omissions of material fact in violation of R.C. 1707.44(G), including the failure to disclose that a relationship existed between Sonny Bloch and NWC.

Bret Collier; Donald E. Hammond; Greg Collier; and Willie E. Davis

On March 17, 1997, the Division issued the following final Cease and Desist Orders: Division Order No. 97-085, against Bret Collier of West Portsmouth, Ohio; Division Order No. 97-086, against Rev. Donald E. Hammond of Portsmouth, Ohio; and Division Order No. 97-087, against Greg Collier of New Boston, Ohio. On April 24, 1997, the Division issued Division Order No. 97-133, a final Cease and Desist Order against Rev. Willie E. Davis of Grove City, Ohio.

The Division's investigation found that Bret Collier, Rev. Hammond, Greg Collier and Rev. Davis sold securities in Sunbelt Development Corporation to Ohio investors while they were unlicensed by the Division at the time of the sales, in violation of R.C. section 1707.44(A).

Eight Ohio investors were found to have invested \$236,250. Investors were led to believe that Sunbelt investments would be invested in Cedar Hill Game Call Company. However, the owner of this company said that there had been discussions on Sunbelt purchasing some of his company, but that no contract was ever signed and he received no money. The Director and CEO of Sunbelt, also a Pentecostal minister, Rev. Wendell Rogers of Farmerville, Louisiana, was found to have been a convicted felon. It was not disclosed to investors that Rogers was a convicted felon and that Sunbelt investment funds were not going towards the Cedar Hill Game Call Company as promised, in violation of R.C. section 1707.44(G). The securities were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1).

Lydia L. King; Duane Enterprises, Inc.

On March 18th, 1997, the Division issued Division Order No. 97-083, a Cease and Desist Order, against Lydia L. King and Duane Enterprises, Inc. An investigation by the Division revealed that King, who was

vice-president of Duane Enterprises, Inc., sold 10 1/2 shares of the company's stock to an Ohio couple for \$9,500. The couple never received certificates for this stock, and King refused to refund their money. The Division, as noted in Division Order No. 97-083, found that King had violated R.C. 1707.44(G), because she knowingly engaged in a fraudulent act by promising the couple stock certificates and then failing to deliver them as promised. The Division also found her in violation of R.C. 1707.44(A), selling securities without a license to do so, and of R.C. 1707.44(C)(1), selling securities that were not registered for sale in Ohio and not the subject matter of an exempt transaction. Duane Enterprises, Inc. was also found in violation of R.C. 1707.44(C)(1).

The Division had issued Division Order 97-053, a Notice of Opportunity for Hearing, against King and Duane Enterprises, Inc. on February 13, 1997. The Order alleged the facts stated above, and was properly served on King and Duane Enterprises, Inc. They did not request an administrative hearing regarding this matter as permitted by Chapter 119 of the Revised Code. Therefore, the Division issued the final Cease and Desist Order, Division Order No. 97-083.

Horan Securities, Inc.

On March 21, 1997, the Division issued Division Order 97-089, a Cease and Desist Order with Consent Agreement, against Horan Securities, Inc. Horan Securities, Inc. had sought an Ohio securities dealer license from the Division. Through the course of the company's application to the Division for the license, it was discovered that Horan Securities, Inc. had already sold securities in Ohio, though it had not yet obtained a license to sell securities in the state. The Division issued Division Order 97-088, a Notice of Opportunity for Hearing, alleging that Horan Securities, Inc. had been selling securities in Ohio without a license in violation of R.C. 1707.44(A).

The Division and Horan Securities, Inc. entered into a consent agreement in connection with the issuance of Division Order 97-089. Generally, Horan Securities, Inc. stipulated and agreed with the orders set

forth in the Division Order to Cease and Desist, and waived its right to request an adjudicative hearing and appeal as would have been allowed under Chapter 119 of the Revised Code. Horan Securities, Inc. also agreed to offer rescission to investors to whom it had sold securities during the prohibited period. Horan Securities, Inc. was ultimately granted an Ohio dealer's license.

David Anthony Andriacco

On March 31, 1997, the Division issued Division Order No. 97-095, a Final Order, to David Anthony Andriacco, an Ohio resident. The Order grants Andriacco's application for an Ohio securities salesman license.

R.C. 1707.19 permits the Division to refuse an application for a securities salesman license if the applicant is not of "good business repute." On October 3, 1996, the Division had issued Division Order No. 96-144 to Andriacco. The Order alleged that he was not of "good business repute" as that phrase is used in Revised Code sections 1707.16 and 1707.19, and Ohio Administrative Code Rule 1301:6-3-19(D)(7) and (9). This was based on the fact that Andriacco had been censured, fined and suspended by the NASD for violation of Article III, Sections 1, 40 and 43 of the NASD's Rules of Fair Practice. The Order also gave Andriacco notice of the Division's intent to deny his application for licensure as a salesman of securities in Ohio. This Order was properly served on Andriacco, who timely requested a hearing pursuant to Chapter 119 of the Revised Code.

The hearing was held, and the Hearing Officer issued a report on March 12, 1997 recommending that Andriacco be issued an Ohio securities salesman license. The Division accepted the Hearing Officer's recommendation and issued its Final Order, Division Order 97-095, granting Andriacco a salesman's license.

Douglas H. Kennett; J. Douglas Pummill; American Housing Funds III, V, VI, and VII

On April 3, 1997, the Division issued a final Cease and Desist Order, Division Order No. 97-096, to respondents Douglas H. Kennett, J. Douglas Pummill,

American Housing Fund III, American Housing Fund V, American Housing Fund VI, and American Housing Fund VII. Kennett served as Chairman of the Board, Chief Executive Officer, and Director of American Housing Funds III, V, VI, and VII. Pummill served as a securities salesman for American Housing Fund III.

On May 22, 1996, the Division had issued to respondents Division Order No. 96-073, a Notice of Opportunity for Hearing to the respondents. In its Notice of Opportunity for Hearing, the Division alleged that beginning in May 1993, through June 1993, respondents solicited the sale of limited partnership units in advertisements in the Investor's Business Daily publication. Respondents sought limited partners to invest in low-income housing opportunities in Texas. Respondents claimed investors could reallocate tax liability through advantageous provisions in the federal Low-Income Housing Tax Credit Program. Respondents also claimed investors would receive financial returns from rental income and real estate appreciation. Upon investigation, the Division learned that respondents sold eleven (11) limited partnership units to three (3) Ohio investors.

In its Notice of Opportunity for Hearing, the Division alleged that Kennett violated R.C. 1707.44(A), the unlicensed sale of securities, as in effect at the time of the sales described above; and R.C. 1707.44(B)(4), misrepresentation; (C)(1), sale of unregistered securities; and (G), fraud; that Pummill violated R.C. 1707.44(A), as in effect at the time of the sales described therein, and R.C. 1707.44(C)(1); that American Housing Fund III violated R.C. 1707.44(A)(1), as in effect at the time of the sales described therein, and R.C. 1707.44(C)(1); that American Housing Fund V violated R.C. 1707.44(A), as in effect at the time of the sales described therein, and R.C. 1707.44(B)(2) and (4), (C)(1), and (G); that American Housing Fund VI violated R.C. 1707.44(A), as in effect at the time of the sales described therein, and R.C. 1707.44(B)(2) and (4), (C)(1), and (G); and, that American Housing Fund VII violated R.C. 1707.44(A), as in effect at the time of the sales described therein, and R.C. 1707.44(C)(1). Upon investigation, the Division determined that the sales con-

stituted the sales of unregistered securities as the limited partnership units were not registered by description, coordination, or qualification, or not the subject matter of a transaction that had been registered by description. The Division further determined that no effective claim of exemption had been perfected for the prohibited transactions.

The Division properly served Division Order No. 97-096 upon the Respondents, but failed to obtain service. Notice of the Order was published in The Union Leader, Manchester, New Hampshire, on April 23, 30, and May 7, 1997, and, also in The Dallas Morning News, Dallas, Texas, on April 22, 29, and May 6, 1997. Having received no response from the Respondents, the Division issued its final Cease and Desist Order, Order No. 97-096.

Cary Todd Weinstein

On April 9, 1997, the Division issued Division Order 97-107, a Cease and Desist Order, against Cary Todd Weinstein. An investigation by the Division revealed that Weinstein violated Ohio Administrative Rule 1301:6-3-19(A)(3) in that, as a salesman for Camelot Investment Corp., a California company, he executed a transaction on behalf of a customer without authority to do so. The violation of the Administrative Rule also put Weinstein in violation of R.C. 1707.01(I), which prohibits securities sellers from violating the Division's rules. Weinstein incurred this violation when he sold 1,351 shares of Max and Erma's Restaurants, Inc. stock owned by an Ohio investor for \$11,710 and purchased 2,320 shares of stock in a company called Best Resources, Inc. for \$11,692. By the time the investor learned of these transactions, Best Resources, Inc. had undergone a five-for-one stock split reducing the 2,320 shares to 464, with a value of \$143.

On March 6, 1997, the Division had issued Division Order 97-075, a Notice of Opportunity for Hearing, against Weinstein. This Notice was properly served on Weinstein, who did not request an administrative hearing regarding the matter as permitted by Chapter 119 of the Revised Code. Therefore, the Division issued the final Cease and Desist Order, Division Order 97-107.

Knoxville Ltd. Liability Company; Wireless Solutions, Inc.; Steven J. Moran; TENEVA Impound Management Corporation

On April 9, 1997, the Division issued Division Order No. 97-108, a final Cease and Desist Order, against Knoxville Ltd. Liability Company (KLLC) of San Diego, California, and Wireless Solutions, Inc. (WSI) of Los Angeles, California. On May 20, 1997, the Division issued Division Order No. 97-184, a final Cease and Desist Order against Steven J. Moran of San Diego, California. On May 28, 1997, the Division issued Division Order No. 97-187, a final Cease and Desist Order against TENEVA Impound Management Corporation (TIM) of San Diego, California.

The Division's investigation found that nine membership units in KLLC, at \$6,250 each, were sold to five Ohio investors. Investors were told that KLLC was to acquire an 80% interest in a joint venture with WSI to own a wireless cable television system, referred to as the Super High Frequency Television System to be built and operated in Knoxville, Tennessee. TIM was employed to supervise the sales efforts of WSI and Moran was the president of TIM.

KLLC, WSI, Moran and TENEVA were not licensed by the Division at the time of the sales, in violation of R.C.1707.44(A). The membership units in KLLC were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1). The KLLC units were misrepresented to investors as investments suitable for retirement funds that were approved for purchase in IRAs, that the wireless cable television stations to be acquired for KLLC were valuable when they had not been constructed, and that the units were not securities, in violation of R.C. 1707.44(B)(4). Investors were not told material facts regarding the background, identity, experience and education of the promoters, officers and directors of WSI and TENEVA, as well as that of the managers who would acquire the licenses, acquire and install equipment and facilities, and manage the system. Omission of such material facts constitutes a violation of R.C. section 1707.44(G).

E*Trade Securities, Inc.

On April 15, 1997, the Division issued Division Order 97-119, a Cease and Desist Order with Consent Agreement against E*Trade Securities, Inc. This company had been a previously licensed broker-dealer in Ohio. Its license expired in December, 1996; it made application in March, 1997 for a dealer's license. During the course of its application to the Division for the license, it was discovered that E*Trade Securities, Inc. had been doing business as a securities dealer from January through March, 1997, though it had no license to do so. As a result of E*Trade Securities Inc.'s actions, the Division issued Division Order 97-106, a Notice of Opportunity for Hearing, alleging that E*Trade Securities, Inc. had been operating as a securities dealer without an Ohio dealer's license, thereby violating R.C. 1707.44(A).

The Division entered into a consent agreement with E*Trade Securities, Inc. in conjunction with the issuance of Division Order 97-119. Pursuant to the agreement, the company waived its right to request an adjudication hearing and appeal as would have been allowed under Chapter 119 of the Revised Code, and generally stipulated and agreed to the orders set forth in the Division's Order to Cease and Desist. E*Trade Securities, Inc. also agreed to offer to rescind transactions made during the period it was unlicensed to act as a dealer in Ohio. Based upon these undertakings, E*Trade Securities, Inc. was granted an Ohio securities dealer license.

Michael D. Mahaffey

On April, 21, 1997, the Division issued Division Order No. 97-124, a Cease and Desist Order, against Michael D. Mahaffey. An investigation by the Division revealed that Mahaffey had entered into a joint venture agreement with an Ohio resident which qualified as a "security" under R.C. 1707.01(B) of the Revised Code. The investor paid \$9,000 for the joint venture interest. The joint venture, called Missy Cool 1995 Embryo Joint Venture, was not registered for sale in Ohio or the subject matter of an exempt transaction as found in Chapter 1707 of the Ohio Revised Code. Therefore, the Division found Mahaffey in violation of R.C. 1707.44(C)(1).

On March 7, 1997, the Division had issued Division Order No. 97-077, a Notice

of Opportunity for Hearing, against Mahaffey. The Division properly served this notice on Mahaffey, who did not request an administrative hearing regarding the matter as permitted by Revised Code Chapter 119. Therefore, the Division issued its Final Order, Division Order No. 97-124.

**James M. Cogley;
Capital Investors Group**

On April 23, 1997, the Division issued a final Cease and Desist Order, Division Order No. 97-132, to James M. Cogley and Capital Investors Group. Cogley serves as "President, Senior Estate Counselor, Trust Consultant, and 'Portfolio Management'" for Capital Investors Group.

On February 13, 1997, the Division issued and subsequently served on the Respondents Division Order No. 97-054, a Notice of Opportunity for Hearing, which alleged that Respondents violated R.C. 1707.44(C)(1), sale of unregistered securities. In its Notice, the Division alleged that Cogley solicited the sale of investment opportunities in Capital Investors Group to an Ohio investor. The Division also alleged that the solicited securities constituted unregistered securities since they were not registered by description, coordination, or qualification, or not the subject matter of a transaction that had been registered by description. The Division alleged that no effective claim of exemption had been perfected for the prohibited transactions.

The Division properly served Order No. 97-054 upon the Respondents. Subsequently, by and through counsel, Respondents entered in a consent agreement with the Division whereby the Respondents agreed to cease and desist violations of the the Ohio Securities Laws. On April 23, 1997, the Division issued its final Cease and Desist Order, Order No. 97-132.

Colin Shing Yun Chow

On April 29, 1997, the Division issued Order No. 97-142, a Final Order to Deny the Application for an Ohio Securities Salesman's License of Colin Shing Yun Chow of Vancouver, BC.

R.C. 1707.19 permits the Division to refuse an application for a securities salesman's license if the applicant is not of "good business repute." On January 15, 1997, the

Division had issued to Chow Division Order No. 97-019, a Notice of Opportunity for Hearing which set forth the Division's allegations that Chow was not of "good business repute." Specifically, the Division alleged that Chow failed to meet the good business repute standards set out in O.A.C. 1301:6-3-19(D)(7) and (9), based on a license denial from Maryland, a cease and desist order from Hawaii, and a fine from the Vancouver Stock Exchange.

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

Kenneth Allan Geary, Jr.

On April 29, 1997, the Division issued Order No. 97-143, a Final Order to Deny the Application for an Ohio Securities Salesman's License of Kenneth Allan Geary, Jr. of Upper Saddle River, NJ.

R.C. 1707.19 permits the Division to refuse an application for a securities salesman's license if the applicant is not of "good business repute." On February 11, 1997, the Division had issued to Geary Division Order No. 97-047, a Notice of Opportunity for Hearing which set forth the Division's allegations that Geary was not of "good business repute." Specifically, the Division alleged that Geary failed to meet the good business repute standards set out in O.A.C. 1301:6-3-19(D)(7) and (9), based on a NYSE censure and bar.

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

Citizens Securities, Inc.

On May 1, 1997, the Division issued Division Order 97-139, a Cease and Desist Order with Consent Agreement against Citizens Securities, Inc. The company had previously been licensed to do business as a broker-dealer in Ohio. Its license expired in December, 1996 and it submitted an appli-

cation to the Division for a new license in March, 1997. During the course of the application process, the Division discovered that Citizen's Securities, Inc. had been doing business as a broker-dealer from January through March, 1997, though it had no license to do so.

As a result of Citizens Securities, Inc.'s actions, the Division had issued Division Order 97-138, a Notice of Opportunity for Hearing. The Order alleged that Citizens Securities, Inc. had been operating as a securities dealer without a license to do so, thereby violating R.C. 1707.44(A). The Division entered into a Consent agreement with Citizens Securities, Inc. in conjunction with the issuance of Division Order 97-139, the Cease and Desist Order. Pursuant to the agreement, the company waived its right to an adjudication hearing and appeal as would have been permitted under Chapter 119 of the Revised Code, and generally agreed and stipulated to the orders set forth in Division Order 97-139. Citizens Securities, Inc., also agreed to offer to rescind transactions made during the period it was not licensed to do business as a broker-dealer in Ohio. Citizens Securities was ultimately granted an Ohio dealer's license.

Fredrick Steven Greetham

On May 12, 1997, the Division issued Division Order No. 97-157, a Final Order to Cease and Desist, against Fredrick Steven Greetham ("Respondent").

An investigation by the Division revealed that on or about May 9, June 1 and June 16, of 1994, Respondent sold promissory notes to Ohio residents for a total amount of \$79,486.66. However, the records of the Division revealed that the Respondent was not licensed by the Division as a dealer. Consequently, the Respondent was acting as a dealer in violation of O.R.C. section 1707.44(A).

On April 9, 1997, the Division had issued to the Respondent Division Order 97-109, 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 Respondent, but he did not request an administrative hearing on the matter as permitted by Revised Code Chapter 119. Consequently, the Division issued Order No. 97-

157, which orders the Respondent to cease and desist from violations of the Ohio Securities Act.

Criminal Actions

Theodore E. Mong, II

On June 19, 1997, Theodore E. Mong, II was indicted by a Licking County Grand Jury on eight counts of securities fraud, in violation of R.C. 1707.44(G), eight counts of making false representations for the purpose of selling securities, in violation of R.C. 1707.44(B), thirty-two counts of unlicensed sale of securities in violation of R.C. 1707.44(A), thirty-one counts of selling unregistered securities in violation of R.C. 1707.44(C)(1), one count of receiving stolen property in violation of R.C. 2913.51 and one count of engaging in a pattern of corrupt activity in violation of R.C. 2923.32. All seventy-nine violations of the Ohio Securities Act upon which Mong was indicted are fourth degree felonies. Violations for receiving stolen property and engaging in a pattern of corrupt activity are second and first degree felonies respectively.

The indictment was based upon Mong's activities while President of Liberty Bell Association, Inc. ("Liberty Bell"). While President of Liberty Bell, Mong sold promissory notes to Ohio residents through Liberty Bell's "Value Added Program." The Value Added Program purportedly invested the proceeds from the sale of promissory notes into an Ohio mortgage company and a Texas compressed natural gas company.

The indictment alleges that Mong falsely represented material information to investors regarding the companies in which Liberty Bell was investing. Specifically, Mong falsely represented the safety of the investment and the ability of these companies "to go public." Additionally, Mong fraudulently omitted material information relating to how investor money was to be used by these companies.

The indictment also alleges that Mong misappropriated investment proceeds and in so doing was engaging in a pattern of corrupt activity.

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.

1997 OHIO SECURITIES CONFERENCE

October 24, 1997

Columbus Marriott North

6500 Doubletree Ave., Columbus, Ohio 43229

* * * *

NEW FORMAT

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Luncheon Speaker: Ronald J. Coffey, *Professor of Law, Case Western Reserve Law School*
"Efficiency Standards for Judging State and Federal Interventions"

8:00 to 8:30 a.m. Conference Registration

8:30 to 10:15 a.m. Panel Presentation: Current State of
Securities Laws in Cyberspace

Moderator

William Kelly, *Porter, Wright, Morris & Arthur*

Overview of Cyber-Securities Law

Professor Howard Friedman, *University of Toledo College of Law*

Regulatory Perspectives

Mark Heuerman, *Ohio Division of Securities*

On-line Offerings

Michael Stovsky, *Ulmer & Berne*

10:30 to 12 noon Panel Presentation: Current
Developments in Securities Law

Moderator

Ann Gerwin, *Strauss & Troy*

Securities Litigation Reform

Howard Groedel, *Roetzel & Andress*

Forward-Looking Statements

Glenn Morrill, *Arter & Hadden*

Regulation M and NASD Developments

Suzanne Rothwell, *NASD Regulation, Inc.*

12 noon to 1:15 p.m. Lunch
Ronald J. Coffey, *Luncheon Speaker*

1:30 to 3:00 p.m. Panel Presentation: Developments at the
Ohio Division of Securities

Moderator

Thomas Geyer, *Commissioner*

Investment Adviser Initiative

Michael Miglets, *Control Bid Attorney*

Developments in Registration

Debbie Dye Joyce, *Registration Supervisor*

Developments in Licensing

William Leber, *Division Senior Counsel*

3:00 to 3:45 p.m. Reception

3:45 to 5:00 p.m. Advisory Committee Meetings

Enrollment Fee is \$150 per person in advance,
\$175 at the door. The Division has applied for
five hours CLE credit and for CPE credit for
accountants.

1997 OHIO SECURITIES CONFERENCE ENROLLMENT FORM

Name: _____

Firm/Organization: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Amount Enclosed: _____

Choice of Luncheon Entree: Beef Chicken Vegetarian

Do you plan to attend an Advisory Committee Meeting? Yes No

If "yes", which Advisory Committee? _____

For special accommodations, please contact Donna Miglets at (614) 644-9530 before October 15, 1997.

Make checks payable to: "Ohio Division of Securities." Send Enrollment Form and Payment to: Ohio Division of Securities,
77 South High Street, 22nd Floor, Columbus, Ohio 43215. Enrollment Deadline is October 15, 1997.

Registration Statistics

The table to the right sets out the number of registration filings received by the Division during the second quarter and year to date totals for 1997, compared to the number received during the second quarter and year to date totals for 1996.

<i>1707</i>	<i>2Q'97</i>	<i>YTD '97</i>	<i>2Q'96</i>	<i>YTD '96</i>
.03(Q)	346	660	244	523
.03(W)	19	33	30	73
.04	0	0	0	0
.041	3	5	2	3
.06(A)(1)	32	52	23	50
.06(A)(2)	12	19	15	22
.06(A)(3)	3	9	4	11
.06(A)(4)	4	9	7	11
NF*	91	91	-	-
.09	263	506	84	205
.091	670	1516	968	1949
.39	4	12	6	13
.391/.09	3	3	0	1
.391/.091	5	6	2	8
.391/.03(O)	0	4	4	10
.391/.03(Q)	30	61	33	73
.391/.03(W)	1	1	2	3
.391/.06(A)(1)	0	0	0	0
.391/.06(A)(2)	0	0	1	1
.391/.06(A)(3)	0	0	0	0
.391/.06(A)(4)	0	0	0	0
<i>Totals</i>	1486	2987	1425	2956

* The Form NF is a new form adopted by the National Association of Securities Administrators Association to be used by investment companies in making notice filings. The form was drafted as a result of the National Securities Markets Improvement Act of 1996 and is used at the election of the issuer.

Licensing Statistics

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

	End of Q2 1997	End of Q2 1996	End of Q3 1996	End of Q3 1995	End of Q4 1996	End of Q4 1995	End of Q1 1997	End of Q1 1996
Number of Salesmen Licensed:	82,135	81,795	83,438	72,062	82,498	71,658	80,289	78,890
Number of Dealers Licensed:	2,113	2,011	2,061	1,891	2,060	1,863	2,050	1,928

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