

OHIO SECURITIES BULLETIN

A QUARTERLY PUBLICATION OF THE OHIO DIVISION OF SECURITIES

George V. Voinovich
Governor of Ohio

Donna Owens
Director of Commerce

Thomas E. Geyer
Commissioner of Securities

Amendment of the Ohio Control Share Acquisition Act

Commissioner's Note: The Ohio Control Share Acquisition Act ("OCSAA"), set out in R.C. 1701.831 and 1701.832, is designed to ensure that those who hold shares in an Ohio corporation before a takeover bid is announced have a sufficient opportunity to both consider and vote upon the proposal. The OCSAA is not a part of the Ohio Securities Act, but rather is part of the General Corporation Law. However, the OCSAA is often implicated in change of control efforts regulated by the Division of Securities pursuant to the Ohio Control Bid Statute because the jurisdictional predicates of the OCSAA and the Control Bid Statute are similar.

Since being enacted in 1982, the OCSAA's constitutionality has been chal-

lenged in connection with virtually every hostile takeover bid for an Ohio corporation. In a recent trilogy of cases, the OCSAA was held preempted, questioned and then upheld (see The Redoubtable Ohio Control Share Acquisition Act, Ohio Securities Bulletin 96:3).

In response to this constitutional uncertainty, certain amendments to the OCSAA were proposed and were included in Amended Substitute House Bill 170. The Division did not participate in the preparation of these amendments, nor did the Division participate in the legislative process. However, the Division has learned that Am. Sub. H.B. 170 was signed by Governor Voinovich on

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The NSMIA's Impact on Section 3(a)(10)....

by Debbie Dye Joyce

Except with respect to a security exchanged in a case under Title 11 of the United States Code, any security which is issued in exchange for one or more *bona fide* outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval.

So reads the exemption found in Section 3(a)(10) of the Securities Act of 1933 (1933 Act). But what does it mean and was it impacted by the far reaching effects of the National Securities Markets Improvement Act of 1996 (the NSMIA)?

The short answer is that, generally, Section 3(a)(10) provides an exemption for offers and sales of securities in specified exchange transactions and that its use was affected by the NSMIA.

But just how Section 3(a)(10) was affected by the NSMIA involves a much longer response, because questions have arisen from private practitioners and state administrators alike as to the status of state fairness hearings in facilitating exemptions under Section 3(a)(10).

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OHIO DEPARTMENT OF COMMERCE DIVISION OF SECURITIES



Ohio Securities Bulletin

Issue 97:3

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Control Share Act

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August 21, 1997, and will become effective on November 21, 1997.

Following is the Final Analysis of the pertinent parts of Am. Sub. H.B. 170 as prepared by the Legislative Service Commission. The material is being reprinted with the permission of LSC:

Definition of "person" and "interested shares"

(sec. 1701.01(G) and (CC)(1))

The act expands the definition of "person" to specifically include a natural person.

The act also revises the definition of "interested shares," as follows:

(1) "Interested shares" is defined under ongoing law as the shares of an issuing public corporation by which any of the following persons may exercise or direct the exercise of the voting power of the corporation in the election of directors: (a) an acquiring person, (b) any officer of the corporation elected or appointed by the directors of the corporation, or (c) any employee of the corporation who is also a director of the corporation. The act adds to this list any person that transfers such shares for valuable consideration after the record date established by the directors in accordance with law unchanged by the act as to shares so transferred, if accompanied by the voting power in the form of a blank proxy, an agreement to vote as instructed by the transferee, or otherwise.

(2) Under prior law, "interested shares" also generally meant any shares of an issuing public corporation acquired by any person from the holder of such shares for valuable consideration during the period beginning with the date of the first public disclosure of a proposed control share acquisition and ending on the date of any special meeting of the shareholders held thereafter for the purpose of voting on the acquisition. The act modifies this

portion of the definition by rewording it as an addition to the list of persons set forth in (1), above. Thus, that list includes "any person that acquires such shares for valuable consideration during the period beginning with the date of the first public disclosure of a proposed control share acquisition . . . and ending on the record date established by the directors" in accordance with law unchanged by the act (rather than on the date of the special meeting of the corporation's shareholders, as was provided in prior law), if either of the stated conditions applies.

Control share acquisitions

Prior authorization of shareholders

(sec. 1701.831(E))

The General Corporation Law generally requires that a control share acquisition of an issuing public corporation be made only with the prior authorization of the shareholders of the corporation in accordance with the Law. Formerly, the acquiring person was permitted to make the proposed control share acquisition if, among other things, the shareholders who held shares entitling them to vote in the

election of directors authorized the acquisition at a special meeting (at which a quorum was present) by an affirmative vote of a majority of the voting power of the corporation in the election of directors represented at the meeting in person or by proxy, and a majority of the portion of the voting power excluding the voting power of interested shares. A quorum was deemed to be present if at least a majority of the voting power of the issuing public corporation in the election of directors, and a majority of the portion of such voting power excluding the voting power of interested shares, were represented at the meeting in person or by proxy.

This provision is revised by the act, as follows:

—The acquisition must be authorized by the shareholders who hold shares "as of the record date" entitling them to vote in the election of directors.

—There must be an affirmative vote of a majority of the portion of the voting power excluding the voting power of interested shares "represented at the meeting in person or by proxy."

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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Control Share Act

Continued

—One of the conditions for a quorum—that a majority of the portion of the voting power excluding the voting power of interested shares be represented at the meeting—is removed.

Findings of the General Assembly

(sec. 1701.832(D))

The act adds the following as findings of the General Assembly with respect to its earlier enactment of the control share acquisition laws:

—"Although the Ohio General Corporation Law . . . requires that a special meeting be held to enable shareholders of an issuing public corporation to vote on any control share acquisition, it describes meeting procedures, like other states, primarily in general terms."

—"Where the law, or the articles of incorporation and code of regulations of the issuing public corporation, do not mandate specific meeting procedures, the directors of the corporation must define appropriate procedures consistent with their fiduciary duties In carrying out these duties, practices and procedures have developed from experience in this state and elsewhere to ensure fair and efficient meetings . . . [including] the use of a variety of presumptions and forms of proxy."

—"The use of presumptions and forms of proxy reflects the fact that, in this state and other states with similar laws, efficiency and finality are necessary priorities over precision and certitude in the conduct of a meeting. It is the responsibility of the directors to utilize practices and procedures, including presumptions and forms of proxy, that are consistent with their fiduciary duties."

Division Pursues The Infinity Group Company

Throughout the third quarter of 1997, the Division of Securities pursued enforcement efforts against The Infinity Group Company of Fairport Harbor, Ohio.

The Division discovered Infinity through the Division Internet Monitoring Program. Through a number of websites, Infinity offered various investment opportunities including trust units, investments in "Prime Bank" instruments, and multi-level marketing plans. Some of the investments purported to offer a guaranteed return of up to 181%. The Division had no record of any filing for these investment opportunities, and therefore it appeared that these public offerings were taking place without regard for the securities registration provisions of the Ohio Securities Act.

The Division's initial investigation revealed that Infinity had collected 5 million to 9.7 million dollars from over 4,000 investors, including at least 80 Ohio residents, with apparent disregard for the Ohio securities laws. Consequently, on June 9, the Division issued a subpoena to Infinity for certain records and a notice of examination.

When a Division examiner arrived at Infinity's office in Fairport Harbor on June 30, Infinity refused to comply with the subpoena and notice of examination. On July 28, after Infinity's refusal had continued, the Division obtained a temporary restraining order against Infinity in the Lake County Court of Common Pleas. The order, issued under R.C. 1707.25, prohibited Infinity from selling securities until Infinity complied with the Division's subpoena and notice of examination.

Infinity's non-compliance continued, and on August 7, the Lake County court issued a preliminary injunction against Infinity, enjoining Infinity's secu-

rities activities until it complied with the Division's requests. Despite this ruling, Infinity announced its intention to defy the court order.

On August 8th, a Division examiner again visited Infinity's office in Fairport Harbor, only to find it vacant. The Division's investigation continued and revealed that Infinity had moved its office from Fairport Harbor to Chardon, in Geauga County.

After this surreptitious move, the Division sought, and was granted, search warrants for both Infinity offices. With the assistance of the State Highway Patrol and local law enforcement offices, the Division executed the search warrants on August 14th. The Division seized voluminous documents as well as computer hardware and software.

Subsequent to the search warrant, on August 27, the Securities and Exchange Commission obtained a temporary restraining order and freeze of assets against Infinity in the U.S. District Court for the Eastern District of Pennsylvania. On September 4, after a two-day hearing, that same court issued a preliminary injunction against Infinity, continued the freeze on assets, appointed a trustee for Infinity's assets and ordered that all funds and assets held offshore by Infinity be repatriated to the trustee. A hearing on a permanent injunction has been set for November 20th.

The Division's investigation and review of materials seized during the search warrant is continuing.



Impact on Section 3(a)(10)....

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Specifically, if, to claim the securities exemption provided in Section 3(a)(10), an issuer relies on a state fairness hearing relating to the registration or exemption from registration of securities that are “covered securities,” can the issuer use that fairness hearing as a basis for relying on the Section 3(a)(10) exemption? Probably not, as outlined below.

As most securities practitioners and regulators can almost recite by heart in this post-NSMIA age, the NSMIA provides that no law, rule, regulation, or order, or other administrative action of any State requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that is a covered security or will be a covered security upon completion of the transaction.

Generally, for purposes of the NSMIA, one type of security included as a “covered security,” is a security with respect to a transaction that is exempt from registration pursuant to section 3(a) of the 1933 Act. (The NSMIA details some of the exceptions from this inclusion as a “covered security.” Specifically, paragraphs (4) and (11) of Section 3(a) are not included within the framework of “covered securities.” Also not included within the framework of “covered securities” are securities exempted from registration by paragraph (2) of Section 3(a) with respect to the offer or sale of a municipal security in the State in which the issuer of such security is located.)

The Securities and Exchange Commission’s Division of Corporation Finance (Division of CF) has issued a legal bulletin expressing their view on this issue. Staff Legal Bulletin No. 3 (CF) dated July 25, 1997, notes however, that the views expressed in the Bulletin represent the views of the staff of the Division of CF, and that the Bulletin is not a rule, regula-

tion, or statement of the Securities and Exchange Commission. Further, the Bulletin notes that the Securities and Exchange Commission has neither approved nor disapproved the Bulletin’s content.

The Bulletin discusses the mechanics of the Section 3(a)(10) exemption. With regard to the exemption itself, the staff points out that the securities for which the Section 3(a)(10) exemption is sought must be issued in exchange for securities, claims, or property interests—they cannot be offered for cash.

Second, a court or authorized governmental entity must approve the fairness of the terms and conditions of the exchange. Prior to approving the transaction, the court or authorized government entity must find the terms and conditions of the exchange to be fair to those who will be issued securities.

Further, the court or authorized governmental entity must be advised before the hearing that the issuer will rely on the Section 3(a)(10) exemption based on the court’s or authorized governmental entity’s approval of the transaction.

Lastly, before approval, the court or authorized governmental entity must hold a hearing to approve the fairness of the terms and conditions of the transaction. It should be noted that the governmental entity must be expressly authorized by law to hold the hearing, but it is not required that the law require the hearing. Further, the fairness hearing must be open to everyone who is proposed to be issued securities in the exchange. Adequate notice must be given to all such persons, and there cannot be any improper impediments to the appearance by those persons at the hearing.

With regard to the availability of the Section 3(a)(10) exemption in the post-NSMIA environment, recall that the language in new Section 18 of the Securities Act reads, “...requiring, or with respect to,

registration or qualification of securities...” (Emphasis added.) Consequently, when a state fairness hearing relates to the registration, or exemption from registration of securities that are “covered securities” before the hearing, the Division of CF staff perceives Section 18 to preempt the state law authorizing that hearing. An issuer could not then use that hearing as a basis for relying on the Section 3(a)(10) exemption for securities that are “covered securities” before the hearing.

According to the Division of CF staff, this preemption would not apply to a fairness hearing relating to securities that are not “covered securities” prior to the hearing. Such issuers could therefore use the fairness hearing as a basis for relying on the Section 3(a)(10) exemption.

The preemption would also not apply to a fairness hearing conducted outside the scope of the state securities laws. For example, a state’s corporation, banking, or insurance law authorizing a fairness hearing is not preempted if that law does not relate to the registration, or an exemption from registration, of the securities.

The Section 3(a)(10) exemption is available to issuers without any action by the Securities and Exchange Commission. Issuers unsure of the availability of the exemption for a contemplated transaction may request a “no-action” position from the Division of CF. Note that the staff cautions that it will not issue a “no-action” letter after the fairness hearing. Further, a “no-action” request submitted too close to the hearing date may not give the staff sufficient time to respond prior to the hearing.

The Division of CF’s Bulletin discusses some of the issues commonly arising from “no-action” requests. The Bulletin also provides a thorough discussion of the basic components of the exemption, including the resale status of securities received in a transaction exempt from the registration provisions of the Securities Act by virtue of Section 3(a)(10).

Investors Alerted to Non-Traditional Investment Schemes

On July 2, 1997, the Division joined the Federal Trade Commission and the North American Securities Administrators Association in urging Ohioans to take a thorough, critical look when encouraged to invest in any non-traditional investment scheme. In raising public awareness of recent schemes, the Division warned investors that, while swindlers' "sales pitches may seem out of the ordinary, they are often times just new twists on old schemes."

Called "Project Field of Schemes," the initiative was backed by 61 recent enforcement actions in 21 states and two Canadian provinces, including Ohio. Actions by the Division included a Cease and Desist Order issued by the Division against the managing partner for a joint venture that involved the marketing and selling of the frozen embryos of a cow named Missy Cool. The joint venture interests were not registered for sale in Ohio or exempt from registration. (*See Ohio Securities Bulletin 97:2 for a summary of this Division action*). Other actions taken by the Division included Cease and Desist Orders issued against the sale of unregistered interests sold in the following: (1) Specialized Mobile Radio, a set of dedicated radio frequencies or channels similar to cellular telephone communication; (2) a gold-refining Canadian operation; and (3) promissory notes in timber operations of Idaho and Arizona companies.

Investors were warned to beware of "can't miss" deals and "guaranteed returns." NASAA and the FTC published educational materials in conjunction with the public warning announcement of the enforcement actions. A short educational quiz for investors to test their investment knowledge, entitled "Facts for Consumers: Test Your Investment I.Q.," is located on the FTC's Web site at www.ftc.gov.

1997 Ohio State Fair

The Division worked toward its goal of investor protection by distributing investor education information at the 1997 Ohio State Fair in August. The Division's new flyer entitled "Preying on the Faithful" was distributed along with its two brochures, "How to Select and Work with a Securities Salesperson" and "Avoiding Fraud in Your Securities Investments." This participation at the Ohio State Fair allowed the Division to target educational efforts to the approximate 950,000 fair attendees.

Division Enforcement Section Reports

Administrative Orders

INVESTORS ASSOCIATES, INC.

On May 29, 1997, the Division issued Final Order No. 97-190 to Investors Associates, Inc., a New Jersey corporation. The order denied the company's application for an Ohio securities dealer license.

On February 3, 1997, the Division issued Division Order No. 97-024 Amended, a Notice of Opportunity for Hearing, to Investors Associates, Inc. The order stated the Division's intent to deny the Respondent's application for licensure as a dealer of securities in Ohio. It also stated that the basis of the impending denial was that the Respondent was not of "good business repute" as that phrase is used in Ohio Revised Code sections 1707.15 and 1707.19, and Ohio Administrative Code rule 1301:6-3-19(D)(2), (7) and (9). The Respondent had been the subject of several actions initiated by the NASD, SEC and several state securities regulators, including a license revocation by the Alabama Securities Commission. (See *Ohio Securities Bulletin 97:2*, for more on this action). After receiving the order, the Respondent requested an adjudicative hearing by correspondence. The Hearing Officer recommended that the Division approve Investors Associates, Inc.'s license application. However, the Division rejected the Hearing Officer's recommendation and issued Division Order 97-190, ordering the denial of the Respondent's application for a license as a dealer of securities in Ohio.

BURKE, LAWTON, BREWER & BURKE

On May 28, 1997, the Division issued a Cease and Desist Order and Consent Agreement, Division Order No. 97-201 against Burke, Lawton, Brewer and Burke of Pennsylvania.

The Division had issued Order No. 97-148, a Notice and Opportunity for Hearing, to the Respondent on May 21, 1997. The order stated the Division's intention to issue a Cease and Desist Order based on evidence that the Respondent and its agents had been selling securities in Ohio before they were licensed to do so, in violation of R.C. 1707.44(A). After the order was served on the Respondent, the Division and the Respondent agreed to and signed a Consent Agreement, which was incorporated in the final Cease and Desist order, Division Order No. 97-201. The Consent Agreement principally calls for the parties to stipulate, consent and agree to the findings, conclusions and orders set forth in the Cease and Desist order, and requires the Respondent to waive its right to a hearing and appeal pursuant to Chapter 119 of the Revised Code.

ASHLEY OIL CORPORATION; LAURA PASQUALE

On June 6, 1997, the Division issued Order No. 97-211, a Cease and Desist Order, against Ashley Oil Corporation and Laura Pasquale of Florida.

On March 11, 1997, the Division issued to each of the Respondents Order No. 97-078, a Notice of Opportunity for Hearing. The order stated that the Division intended to issue a Cease and Desist Order against the Respondents for violations of the Ohio Securities Act. The order alleged the Respondents had violated R.C. 1707.44(C)(1), selling securities without registration with the Division or an applicable claim of exemption. The Division claimed the Respondents incurred the violation when they engaged an Ohio resident in a transaction involving an interest in an oil concern. The Division could not obtain service of the order, and proceeded to effect service by publication in the *Miami Herald*. The Respondents did not request an adjudicative hearing, allowing the Division to issue its final Cease and Desist Order No. 97-211.

MYRON LEE BLACKMAN

On June 9, 1997, the Division issued Order No. 97-213, a Final Order, to Myron Lee Blackman, a California resident. The order granted him an Ohio securities salesman's license.

On January 10, 1997, the Division had issued Order No. 97-004, a Notice of Opportunity for Hearing, to Blackman notifying him of its intent to deny his application for licensure as a salesman of securities in Ohio. The order stated that the potential denial was based on the Division's allegations that Blackman was not of "good business repute" as that phrase is used in Ohio Revised Code sections 1707.16 and 1707.19 and Ohio Administrative Code Rule 1301:6-3-19(D)(6) and (9). The allegations were based on the existence of two prior customer complaints, and an NASD censure against the Respondent, as well as a license denial by the Florida Division of Securities in 1980. After receiving service of the order, Blackman requested an adjudicative hearing. The hearing was held, and the Hearing Officer ultimately recommended that Blackman be granted an Ohio securities salesman's license. The Division upheld the Hearing Officer's recommendation and issued Order No. 97-213, ordering that Blackman be granted a license.

ALBERT DIGIULIO, JR.

On June 9, 1997, the Division issued Final Order No. 97-214 to Albert Digiulio, Jr., a resident of New York state. The order granted him an Ohio securities salesman's license.

On November 7, 1996, the Division had issued Order No. 96-188, a Notice of Opportunity for Hearing to the Respondent. The order stated the Division's intention to deny him an Ohio securities salesman's license. The order also stated that the Division's impending action was based on evidence that indicated Digiulio was not of "good business repute" as that

phrase is used in R.C. 1707.16 and 1707.19 and Ohio Administrative Code Rule 1301:6-3-19(D)(3) and (9). The Division alleged that the Respondent had been found guilty in 1988 of violating of 26 U.S.C. 7203, a misdemeanor count of failure to pay income taxes, and the corporation with which he was associated, Western New York Geological Services, was found guilty of violating of 26 U.S.C. 7206(1), a felony count of filing a false income tax return. After receiving the order, the Respondent requested an adjudicative hearing. The Hearing was held and the Hearing Officer recommended that Digiulio be granted a license. The Division affirmed the Hearing Officer's recommendation and, with the issuance of Division Order No. 97-190, ordered that he be granted an Ohio securities salesman's license.

STEPHEN ALLAN DUDURICH

On June 7, 1997, the Division issued Order No. 97-215, a Final Order, to Stephen Allan Dudurich, a Pennsylvania resident. The order granted him an Ohio securities salesman's license.

On October 24, 1996, the Division had issued Order No. 96-168, a Notice of Opportunity for Hearing, to Dudurich. The order informed him of the Division's intent to deny his application for an Ohio securities salesman's license. The order stated the denial would be based upon the allegation that the Respondent was not of good "business repute" as understood in R.C. 1707.16 and R.C. 1707.19, and Ohio Administrative Code Rule 1301:6-3-19(D)(7) and (9). The Division based its allegation of lack of good business repute on the existence of an NASD complaint filed against Dudurich. After the order was served on him, the Respondent requested a hearing on the matter. The Hearing Officer recommended that he be denied a license; Dudurich filed objections to the Hearing Officer's report and recommendation. The Division ultimately disapproved the Hearing Officer's recommendation, and issued Division Order No. 97-215, ordering that Dudurich be granted an Ohio securities salesman's license.

FACT GOLD TECHNOLOGIES CANADA, LTD.; RICHARD FURRER; M. WARD HUGHES

On June 10, 1997, the Division issued Order No. 97-219, a Cease and Desist Order, against a Canadian company, Fact Gold Technologies Canada, Ltd.

On April 4, 1997, the Division had issued Order No. 97-103, a Notice of Opportunity for Hearing, to the Respondents. The order stated the Division's intent to issue a Cease and Desist Order on the basis of allegations that the Respondents variously violated R.C. 1707.44(C)(1) and R.C. 1707.44(B)(4), selling unregistered securities and selling securities while knowingly making false representations concerning a material and relevant fact. The Division claimed the misrepresentations stemmed from information that was included in solicitation materials made available to an Ohio investor which promised the investor the option of requesting a full refund of money used to purchase the securities, which were common shares of stock. The order was properly served on the respondents, who did not request an adjudicative hearing regarding the matter. The Division therefore issued its final Cease and Desist Order No. 97-219, which found that Richard Furrer had violated R.C. 1707.44(B)(4) and that Furrer and M. Ward Hughes had violated R.C. 1707.44(C)(1).

MARK MARADEI; RON SANTORA; D.R. WILLIAMS CONSULTING; LIN HARPER; PETER HOMER; MIKE GAFFREY

On June 11, 1997, the Division issued Division Order No. 97-220, a final Cease and Desist Order against Mark Maradei of San Diego, California. On July 17, 1997, the Division issued Division Order No. 97-268, a final Cease and Desist Order against Ron Santora and Division Order No. 97-270, a final Cease and Desist Order against D. R. Williams Consulting, Inc. (D.R. Williams), and Division Order No. 97-271, a final Cease and Desist Order against Lin Harper, all of Woodland Hills,

California. On August 14, 1997, the Division issued Division Order No. 97-301, a final Cease and Desist Order against Peter Homer and Division Order No. 97-302, a final Cease and Desist Order against Mike Gaffrey, both of Los Angeles, California.

The Division investigation found that nine membership units in Knoxville Ltd. Liability Company (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 Wireless Solutions, Inc. (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.

Maradei was an officer of WSI and KLLC. Gaffrey and Homer were salespeople for WSI. D.R. Williams was utilized by WSI and Maradei to sell units of KLLC to the public. Santora and Harper were salespeople for D.R. Williams.

Maradei, Santora, D.R. Williams, Harper, Homer and Gaffrey 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 by Maradei, Gaffrey, Homer, D.R. Williams, Harper and Santora 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 manager 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). (See *Bulletin* 97:2 for additional enforcement actions in this matter.)

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WILLIAM DONALD HARRISON

On June 13, 1997, the Division issued Order No. 97-223, a Final Order, to William Donald Harrison, an Ohio resident. The Order granted Harrison a securities salesman's license.

On December 18, 1996, the Division had issued Order No. 96-248 to the Respondent. The order stated that the Division intended to deny his application for licensure as a salesman of securities in Ohio and alleged that the Respondent 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). These violations were incurred because of a prior sanction against Harrison by the NASD. He requested an adjudicative hearing regarding the matter, and the Hearing Officer recommended that the Division deny Harrison a license. The Division ultimately rejected the Hearing Officer's recommendation and granted Harrison a securities salesman's license, issuing Order No. 97-223.

FUTURE-NET COMMUNICATIONS, INC.

On June 17, 1997, the Division issued Order No. 97-228, a Final Order to Cease and Desist, against Future-Net Communications, Inc.

An investigation by the Division revealed that on or about July 3, 1996, Respondent sold a limited partnership interest to an Ohio resident for \$5,000. The records of the Division contained neither a registration nor a claim of exemption for the limited partnership interests sold by the Respondent to the Ohio resident. Consequently, the Respondent was selling securities in violation of O.R.C. 1707.44(C)(1).

On May 15, 1997, the Division issued to the Respondent Division Order 97-168, 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 the Respondent 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 the Respondent to cease and desist from violations of the Ohio Securities Act.

THOMAS EHRLICH; GREATER COLUMBIA BASIN WIRELESS CABLE LIMITED-LIABILITY COMPANY

On June 20, 1997, the Division issued Order No. 97-231, a final Cease and Desist Order against Thomas Ehrlich of Stateline, Nevada. On August 5, 1997, the Division issued Division Order No. 97-289, a final Cease and Desist Order against Greater Columbia Basin Wireless Cable Limited-Liability Company of Pacific Palisades, California.

The Division's investigation found that Nationwide Wireless Corporation (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 were to be operated through licenses issued by the Federal Trade Communications Commission in the Greater Columbia Basin, in the southern portion of Washington state. Ehrlich was the president of Kingsbury Communication Company, a company that solicited and sold interests in GCB.

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 NWC 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. 1707.44(C)(1). GCB and Ehrlich were not licensed to sell securities by the Division, and therefore in violation of R.C. 1707.44(A). There were also omissions of material fact by NWC, in violation of R.C. 1707.44(G), including the failure to disclose that a relationship existed between Sonny Bloch and NWC. (See *Bulletin* 97:2 for additional enforcement actions in this matter.)

JOHN CASPER

On June 23, 1997, the Division issued Order No. 97-232, a Final Order to Cease and Desist, against John Casper.

An investigation by the Division revealed that on or about July 19, 1996, Respondent sold common stock in Cornucopia Resources Limited to an Ohio resident for \$15,000. The records of the Division contained neither a registration nor a claim of exemption for the stock sold by the Respondent to the Ohio resident. Consequently, the Respondent was selling securities in violation of O.R.C. 1707.44(C)(1). The Division's investigation also revealed that the Respondent made material false representations and knowingly engaged in acts and practices declared illegal, defined as fraudulent or prohibited, in connection with the sale of securities to the Ohio resident, in violation of O.R.C. 1707.44(B)(4) and 1707.44(G).

On March 31, 1997, the Division had issued to the Respondent Division Order 97-094, 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 the Respondent failed to request an administrative hearing, the Division issued the final order, ordering the Respondent to cease and desist from violations of the Ohio Securities Act.

**SUNBELT DEVELOPMENT
CORPORATION;
WENDELL J. ROGERS**

On June 27, 1997, the Division issued Order No. 97-234, a final Cease and Desist Order against Wendell J. Rogers, and Division Order No. 97-235, a final Cease and Desist Order against Sunbelt Development Corporation, both of Farmerville, Louisiana.

The Division's investigation found that Wendell J. Rogers sold securities in Sunbelt Development Corporation while he was unlicensed by the Division at the time of the sales, in violation of R.C. 1707.44(A).

Eight Ohio investors were found to have invested \$236,250. Investors were led to believe that Sunbelt investment funds would be invested in Cedar Hill Game Call Company. However, the owner of this company said that there had been discussions about Sunbelt purchasing some of his company, but that no contract was ever signed and he received no money. The Director and CEO of Sunbelt, Rev. Wendell Rogers, 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. 1707.44(G). The securities were not registered with the Division or exempt from such registration, in violation of R.C. 1707.44(C)(1). (See *Bulletin* 97:2 for additional enforcement actions in this matter.)

S.D. COHN & CO.

On July 8, 1997, the Division issued Order No. 97-254, a Revocation Order, against S.D. Cohn & Co., Inc., a New York company.

On June 3, 1997, the Division had issued to Respondent a Notice of Opportunity for Hearing, Amended Division Order 97-127, informing the Respondent of its intent to revoke the Respondent's securities dealer license. The order was

based on the Division's findings that the Respondent failed to meet the requirements of the provisions of Administrative Code Rule 1301:6-3-15(H)(1), thereby violating Revised Code sections 1707.19(I) and 1707.19(C). Specifically, the Respondent failed to timely file required financial statements and was insolvent, thereby incurring violations of the statutes and rule cited above. The Division properly served this order on S.D. Cohn & Co.; the company did not timely request an administrative hearing on the matter. Finally, the Division issued Order No 97-254, revoking S.D. Cohn & Co.'s securities dealer license.

**KEVIN G. DUFFY;
GAMING WORLD, LTD.**

On July 10, 1997, the Division issued Orders No. 97-258 and 97-259, Cease and Desist Orders against Kevin G. Duffy and Gaming World, Ltd., an International Business Company incorporated in the British Virgin Islands and located at St. John's, Antigua, West Indies. The Internet monitoring program of the Division discovered that Gaming World, Ltd. and its president, Kevin G. Duffy offered securities over the Internet at the following web site addresses including: (1) <http://www.gamingworld.com/>; (2) <http://www.gamingworld.com/investen.htm> ; and (3) <http://www.antol.ag/gamingworld/prospectus.html>. The offering invited subscriptions from accredited investors. No filing for an exemption or registration had been completed by Gaming World, Ltd.

The Division sent correspondence to the parties requesting clarification of their Ohio Securities Act compliance and informing the parties that Chapter 1707 does not have an accredited investor exemption for individual investors. The parties failed to respond to the Divisions correspondence. The Division found these Internet practices to constitute the sale of securities or transactions in securities that were not exempt or registered, thereby violating R.C. 1707.44(C)(1). The Division issued Orders 97-202 and 97-203, each a Notice and Opportunity for Hearing, on June 4, 1997. The parties did not request a hearing as permitted by Chapter

119 of the Revised Code. Therefore, the Division issued the final Cease and Desist Orders, Division Orders 97-258 and 97-259.

AMR IBRAHIM ELGINDY

On July 25, 1997, the Division issued a Final Order to Deny Application for License, Order No. 97-274, against Amr Ibrahim Elgindy, a Texas resident.

On January 10, 1997, the Division had issued a Notice of Opportunity for Hearing to the respondent, Division Order No. 97-003. The Order alleged that the Respondent was "not of good business repute" as that phrase is used in R.C. 1707.16, 1707.19 and O.A.C. 1301:6-3-19(D)(9). The Order cited several NASD arbitrations involving the Respondent which resulted in monetary settlements.

The respondent requested a hearing regarding the allegations set forth in the Order. A hearing was held, and the Hearing Officer ultimately issued a report recommending that the Division deny the Respondent a securities salesman's license. Upon receiving the Hearing Officer's report and recommendation, Elgindy filed objections; the Division ultimately confirmed and approved the Hearing Officer's report and recommendation. It therefore issued Order No. 97-274, denying Elgindy a salesman's license.

MICHAEL M. REPASKY

On August 7, 1997, the Division issued Order No. 97-290, a Final Order to Cease and Desist, against Michael M. Repasky, an Ohio resident.

On December 27, 1996, the Division had issued a Notice of Opportunity for Hearing to Repasky. The Order alleged that Repasky had incurred violations of R.C. 1707.44(G) and 1707.44(B)(4). The Order stated that the Respondent sold stock in a company called Digital Equipment Corporation to an Ohio investor and then failed to purchase the stock on behalf of that investor.

The Respondent requested a hearing regarding the allegations set forth in the Order. A hearing was held, and the Hearing Officer ultimately issued a report recommending that the Division issue a final Cease and Desist Order against Repasky. After perfecting service of notice of the Hearing Officer's Report and Recommendation upon the Respondent, who did not timely submit objections to the report, the Division affirmed the Hearing Officer's recommendation and issued the Final Cease and Desist Order No. 97-290.

FIRST INTERREGIONAL EQUITY CORP.

On August 7, 1997, the Division issued Order No. 97-291, a Final Order of Revocation of the Ohio Securities Dealer License of First Interregional Equity Corporation, located in Milburn, N.J.

R.C. 1707.19 permits the Division to suspend or revoke a securities dealer license if the dealer is not of "good business repute." On June 30, 1997, the Division had issued a Notice of Opportunity for Hearing, Division Order 97-224, suspending the Respondent's Ohio securities dealer license. Specifically, the division alleged that First Interregional Equity Corp. failed to meet the good business repute standards set forth in Ohio Administrative Rule 1301:6-3-19(D)(2) and (9), based upon the issuance of a temporary restraining order issued by a federal court in New Jersey against the broker-dealer. The TRO was granted on the basis of SEC allegations that the company had committed securities fraud by conducting an on-going Ponzi scheme.

Editor's Note: Reports of additional Final Administrative Orders issued by the Division during the third quarter of 1997 will appear in the next issue of the Ohio Securities Bulletin.

Criminal Actions

JOSEPH T. NEMCHICK

On July 15, 1997, Joseph T. Nemchick pled no contest to 121 felony counts in the Lorain County Court of Common Pleas. He was found guilty on 38 counts of selling unregistered securities, 30 counts of misrepresentations in selling securities, 38 counts of making omissions in the selling of securities, and 15 counts of theft by deception. Nemchick, who held an Ohio securities salesman's license and was registered with the SEC as an investment advisor, sold secured promissory notes issued by his company, Government Financial. He represented to customers that the notes were insured. Customers lost more than one million dollars. On October 3, 1997, Nemchick was sentenced to 12 years incarceration.

ROBERT DELUNA

On August 9, 1997, Robert DeLuna was arrested in Lakewood, Colorado, after the Division assisted the Franklin County Prosecutor's office in locating him. DeLuna had been indicted by a Franklin County Grand Jury on November 3, 1994, on twenty-one counts, including five counts of theft and four counts each of the sale of unregistered securities, false representations in the sale of securities, securities fraud and the unlicensed sale of securities. DeLuna allegedly sold bulk gem contracts to Ohio investors and failed to use investor funds for the purchase of retail gems abroad, as represented.



Registration Statistics

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

<i>1707</i>	<i>3Q'97</i>	<i>YTD '97</i>	<i>3Q'96</i>	<i>YTD '96</i>
.03(Q)	354	1027	296	819
.03(W)	13	47	34	107
.04	0	0	0	0
.041	0	5	3	6
.06(A)(1)	22	75	13	63
.06(A)(2)	5	24	8	30
.06(A)(3)	1	10	7	18
.06(A)(4)	4	13	2	13
NF*	615	706	-	-
.09	125	637	62	267
.091	321	1837	1034	2983
.39	2	14	9	22
.391/.09	1	4	1	1
.391/.091	1	7	0	10
.391/.03(O)	1	7	1	11
.391/.03(Q)	20	82	30	102
.391/.03(W)	0	1	1	4
.391/.06(A)(1)	0	0	0	0
.391/.06(A)(2)	0	0	0	1
.391/.06(A)(3)	2	2	0	0
.391/.06(A)(4)	0	0	0	0
<i>Totals</i>	1487	4498	1501	4457

* The Form NF is a new form adopted by the North American 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, second and third quarters of 1997, compared to the first, second and third quarters of 1996, as well as the fourth quarter of 1996 compared to the fourth quarter of 1995.

	End of Q3 1997	End of Q3 1996	End of Q2 1997	End of Q2 1996	End of Q1 1997	End of Q1 1996	End of Q4 1996	End of Q4 1995
Number of Salesmen Licensed:	83,545	83,438	82,135	81,795	80,289	78,890	82,498	71,658
Number of Dealers Licensed:	2,154	2,061	2,113	2,011	2,050	1,928	2,060	1,863

OHIO SECURITIES BULLETIN

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