

# OHIO SECURITIES BULLETIN

A QUARTERLY PUBLICATION OF THE OHIO DIVISION OF SECURITIES

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## Division Proposes to Adopt NASAA Model Rules for Sales of Securities at Financial Institutions

by Thomas E. Geyer

In this edition of the *Ohio Securities Bulletin*, the Ohio Division of Securities (the "Division") is publishing public notice of the Division's intent to adopt the North American Securities Administrators Association ("NASAA") Model Rules for Sales of Securities at Financial Institutions (the "Model Rules"). The Division proposes to adopt the Model Rules in order to formalize the Division's guidance regarding the operation of securities dealers on bank premises and to promote uniformity among the states on this issue. The Model Rules *apply exclusively to the activities of a securities dealer on the premises of a bank where retail deposits are taken*. Importantly, the Model Rules do not apply to or regulate the activities of banks; as previously stated, the Model Rules only apply to the activities of securities dealers operating on the premises of a bank where retail deposits are taken.

### Definition of "Bank"

For purposes of the Ohio Securities Act, and the Model Rules, "bank" is defined in Ohio Revised Code ("R.C.") 1707.01(O) as follows:

"Bank" means any bank, trust company, savings and loan association, savings bank, or credit union that is incorporated or organized under the laws of the United States, any state of the United States, Canada, or any province of Canada and that is subject to regulation or supervision by that country, state, or province.

### Impact on the Division's "Guidelines"

In April 1996, the Division promulgated "Guidelines for the Sale of Securities on Bank Premises" (the "Guidelines") (*see*

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## Takeover Advisory Committee Meeting Summary

The meeting of the Takeover Advisory Committee of the Ohio Division of Securities was held on December 10, 1998, following the 1998 SEC and Ohio Securities Issues Conference sponsored by the Ohio Society of Certified Public Accountants and the Division. Committee members in attendance were Edward Schrag, Jr., David Zagore, Thomas Geyer, Michael Miglets and Katherine Brandt who was attending on behalf of John Gall.

The committee began with a review of the revised Form 041. Mr. Miglets provided a summary of the changes which primarily focused on updating statutory cites and clarifying the information requested in a number of questions. The

committee concurred with the revisions, and the updated Form 041 may now be obtained by contacting Michael Miglets at (614) 644-7295.

The next agenda item was a discussion of the Securities and Exchange Commission's proposed Regulation M-A. The five main issues were: free communications, the "Plain English" summary term sheet, tenders during a subsequent offering period, the materiality of the bidder's financial statements, and purchases outside a tender offer.

The committee felt that free communications and the elimination of the five business day rule in the announce-

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## OHIO DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

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



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## NASAA Model Rules

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*Ohio Securities Bulletin 96:1*). The Guidelines are divided into two parts: compensation and conduct. The Model Rules do not address compensation arrangements and therefore adoption of the Model Rules will have *no impact* on the discussion of compensation arrangements contained in the Guidelines. The discussion in the Guidelines is simply an explanation of Ohio Administrative Code (“O.A.C.”) 1301:6-3-19(A)(7), the Division’s commission sharing prohibition (which has been in place since 1983) and applies to all compensation arrangements, not just those involving banks. The discussion contained in the Guidelines is reprinted at the end of this article, as is the Division’s previously issued statement regarding adjustable lease arrangements.

However, the Model Rules will supersede and replace the second part of the Guidelines, which deal with conduct issues.

### Background of the Model Rules

The Model Rules were developed by the NASAA Securities Activities of Banks Committee (the “Committee”) and are based on the NASD’s “Bank Broker/Dealer Rule,” Rule 2350, and the “Interagency Statement on Retail Sales of Nondeposit Investments.” The Committee stated its intent in drafting the Model Rules as follows:

The Committee had three primary purposes in drafting the Model Rules. First, to respond to the need of NASAA members for guidance regarding the state securities law aspects of sales of securities at financial institutions. Second, to create a uniform state law standard for the operation of broker/dealers on the premises of financial institutions. Third, to establish rules that are consistent with the existing standards in this area. To this end, the Committee believes that the Questions and Answers accompanying NASD Rule 2350, contained in NASD Notice to Members 97-89, also provide appropriate guidance for the application of the Model Rules.

## Issues Addressed by the Model Rules

Following is an overview of the substantive issues addressed by the Model Rules. The overview is qualified in its entirety by the actual text of the Model Rules.

### Applicability

As stated earlier, the Model Rules apply exclusively to the broker/dealer services conducted by a dealer on the premises of a bank where retail deposits are taken.

### Setting

Wherever practical, broker/dealer services must be conducted in a physical location distinct from the area in which retail deposits are taken, and in all situations, the dealer must identify its services in a manner that clearly distinguishes those services from the bank’s retail deposit-taking activity.

### Contractual Arrangement

Networking and brokerage affiliate arrangements must be in writing and set forth the responsibilities of the parties and the compensation.

## Disclosures and Acknowledgment

At or prior to the time that a customer’s securities brokerage account is opened, the dealer must disclose, orally and in writing that securities:

- are not insured by the FDIC;
- are not deposits or other obligations of the bank and are not guaranteed by the bank; and
- are subject to investment risks, including possible loss of the principal invested.

The dealer must also make reasonable efforts to obtain from the customer a written acknowledgment of these disclosures.

### Communications with the Public

Dealer confirmations and account statements must indicate clearly that the broker/dealer services are provided by the dealer. Certain advertisements and sales literature used by the dealer must contain the disclosures listed above. The short form, “logo format,” disclosures are permitted under certain circumstances.

## 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

77 South High Street, 22nd Floor • Columbus, Ohio 43215

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

*All listings are area code (614)*

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

## *Notification of Termination*

The dealer must promptly notify the bank if any salesperson of the dealer who is employed by the bank is terminated for cause by the dealer.

## **Rulemaking Process**

A copy of the Model Rules can be obtained by telephoning the Division at 614/644-7381, or through the Division's internet homepage, [www.securities.state.oh.us](http://www.securities.state.oh.us). A public hearing on the Division's proposal to adopt the Model Rules will be held on June 30, 1999, at 10:00 a.m. at the offices of the Division, 77 South High Street, Columbus, Ohio 43215. After this public hearing, the Model Rules will be subject to a public hearing before the Joint Committee on Agency Rule Review in mid-July. The Division anticipates that the Model Rules will become effective towards the end of July.

## **Compensation Arrangements**

The following standards govern the compensation arrangements of dealers licensed by the Division:

O.A.C. 1301:6-3-19(A)(7) ("Rule 19(A)(7)") states:

No dealer or salesperson shall...

Share any commission, discount, or other remuneration from the purchase or sale of a security with any person not licensed as a dealer or salesperson in Ohio or in the jurisdiction where the purchase or sale of the security took place.

## **Commission Sharing with Banks and Bank Employees**

*Following is a reprint of the discussion of commission sharing contained in the Guidelines:*

Rule 19(A)(7) prohibits a dealer from sharing commissions with an unlicensed bank or unlicensed bank employee.

The Division rejects the argument that the Rule 19(A)(7) prohibition does not apply to banks because banks are conditionally

exempt from the definition of dealer (as set out in R.C. 1707.01(E)(1)(e)), and thus not required to be licensed. The plain language of Rule 19(A)(7) establishes a flat prohibition on the sharing of commissions with any unlicensed person, without regard to whether the unlicensed person is exempt from the definition of dealer or otherwise not required to be licensed.

The Division also rejects the argument that R.C. 1707.03(J) ("03(J)") permits banks to receive commissions. First, the predecessor to 03(J) was enacted in 1929, before the Glass-Steagall Act's prohibition on banks acting as securities dealers. However, even as initially enacted, the predecessor to 03(J) expressly limited the two percent profit to only "where such bank or trust company is not a regular dealer in securities." Second, by its current statutory location and designation, 03(J) merely creates an exempt transaction; it does not authorize commission sharing. Third, to the arguable extent that 03(J) permits a bank to receive compensation by using the word "profit," the context surrounding the use of that word clearly evidences the intent to permit banks to receive mark up type remuneration in purchasing and selling securities; there is no indication that, contrary to Rule 19(A)(7), commission sharing is permitted.

Note that Rule 19(A)(7) broadly prohibits the sharing of any "commission, discount, or other remuneration from the purchase or sale of a security." In other words, the sharing of any transaction-based compensation is on a fixed or percentage basis.

Further, compensation to unlicensed persons in the form of a referral fee, or remuneration for a referral, is prohibited, even if it is a fixed amount paid regardless of whether a securities transaction is consummated. Under the broad definition of "sale" set out in R.C. 1707.01(C), a referral leads to a "sale" and compensation to the referrer would be "remuneration from the purchase or sale of a security" prohibited by Rule 19(A)(7).

The policy behind Rule 19(A)(7) is to prevent unlicensed persons from giving investment advice or otherwise hyping the sale of securities by prohibiting them from having a remunerative motivation to do so. This policy could be easily flouted in the context of sale of securities on bank premises where a captive group of customers face decisions as

to what to do with their money. If, for instance, an unlicensed bank employee, such as a teller, had a financial motivation to encourage a bank customer to purchase securities, the teller may be tempted to promote the sale of securities without contemplating suitability or other considerations necessary before recommending the purchase or sale of securities.

## **Lease Arrangements**

*Following is a reprint of the discussion of the lease arrangements contained in the Guidelines:*

The Division believes that a strict lease arrangement, with a fixed lease payment, is the best way to avoid violating Rule 19(A)(7). There is little reason why the total value of the leased premises cannot be computed and reflected in a fixed payment. However, the Division recognizes that the percentage or adjustable-type lease is a commercial reality. Subject to the following, the Division views an adjustable lease as acceptable.

First, the adjustment must not consist of a component of "commission, discount, or other remuneration from the purchase or sale of securities" prohibited by Rule 19(A)(7). However, an adjustment consisting of reimbursement for expenses actually incurred, such as secretarial and related overhead-type costs, is permitted.

Second, the more often the lease payment is adjusted, the more it appears that the lease payment is an attempt to circumvent the Rule 19(A)(7) prohibition. A lease that is adjusted on a semi-annual or annual basis is more likely to withstand Division scrutiny than a lease that is adjusted on a monthly or even bi-monthly basis.

Third, the Division reserves the right to examine the facts and circumstances surrounding an adjustable lease to determine whether the adjustable lease is intended to circumvent the Rule 19(A)(7) prohibition. The Division draws supporting authority from a 1988 Opinion of the Attorney General, O.A.G. 88-056, which addresses the analogous situation of lease payments from an insurance agency to a bank. Ohio insurance laws have a similar prohibition on sharing commissions with unlicensed persons. In

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considering the lease arrangement against the backdrop of the prohibition on commission sharing, the Attorney General held:

[L]ease payments by an insurance agency to a bank...for lobby space that are based on a percentage...may be deemed payments of commissions if it is established that such payments are intended to compensate the lessor for the lessor's negotiating, or otherwise procuring, placing, or transmitting contracts of insurance for the agency in question, notwithstanding that such payments also serve as consideration for the fair market value of the agency's leasehold interest.

### Adjustable Lease Arrangements

*Following is a reprint of the discussion of adjustable lease arrangements contained in Ohio Securities Bulletin 96:2:*

In April 1996, in *Ohio Securities Bulletin* Issue 96:1, the Division promulgated Guidelines for the Sale of Securities on Bank Premises (the "Guidelines") to clarify certain applicable provisions of the Ohio Securities Act and related administrative rules. The

Guidelines *do not* establish new laws or administrative rules. Rather, the Guidelines are a collection of the Division's interpretations of the provisions of the Ohio Securities Act and rules that are already applicable to the sale of securities on bank premises. Consequently, the Guidelines outline a "safe harbor" with respect to the Ohio securities regulatory standards.

Among the issues that the Guidelines address is the compensation arrangement between a dealer and a bank. The Guidelines point out that O.A.C. rule 1301:6-3-19(A)(7) ("Rule 19(A)(7)"), which has been in effect since 1983, prohibits a dealer from sharing "any commission, discount or other remuneration from the purchase or sale of a security with any person not licensed as a dealer or salesman in Ohio or in the jurisdiction where the purchase or sale of the security took place." As the Guidelines discuss, this rule establishes a flat prohibition on the sharing of any transaction-based compensation with any unlicensed "person" (as defined in R.C. 1707.01(D)), without regard to whether the unlicensed person is exempt from the definition of dealer or otherwise not required to be licensed.

The Guidelines also point out that a strict lease arrangement, with a fixed lease payment, does not violate the commission sharing prohibition of Rule 19(A)(7). Further, the Guidelines state that the Division views a bona fide adjustable-type lease as

acceptable subject to some general conditions. First, the adjustment must not consist of "commission, discount, or other remuneration from the purchase or sale of securities." However, adjustments based on factors like actual expenses incurred, assets on deposit with the dealer, dealer revenue, dealer net income, or other factors not consisting exclusively of transaction-based compensation are permitted. Second, the Guidelines suggest that the more often the lease payment is adjusted, the more it may appear that the adjustable lease payment is an attempt to circumvent the Rule 19(A)(7) prohibition. Third, the parties to the agreement should examine the facts and circumstances surrounding an adjustable lease to determine whether the arrangement is intended to circumvent the Rule 19(A)(7) prohibition. Dealers and banks should ensure that the agreements they enter into are bona fide lease arrangements, rather than agreements designed to share "commission[s], discount[s], or other remuneration from the purchase or sale of securities."

*Mr. Geyer is the Commissioner of Securities. He served as Chair of the NASAA Securities Activities of Banks Committee when the Model Rules were finalized, and currently serves as Chair of the NASAA Securities Activities of Banks Project Group.*

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## Technology Advisory Committee Meeting Summary

The Division of Securities Technology Advisory Committee met on December 10, 1998 to consider a full agenda, despite the small number of committee members present. The committee discussed Internet Security and Digital Signatures; concerns related to the emergence of On-line Broker-Dealers; the potential dangers of On-line Day Trading, and the impact of recent amendments to the Ohio Securities Act for the On-line Registration of securities offerings. The committee also considered the way that technology in general, and the internet, in particular, have rejuvenated classic investment schemes by putting bitter old wine in new bottles.

The committee expressed a consensus that the securities industry, rather than

state or federal enactments, would lead the way in establishing a universal standard for providing a secure environment for internet transactions. Digital Signatures, encryption or some other process may provide the means, but the adoption and acceptance of a pervasive standard for reliable internet identification would be business-driven.

The committee also noted consistent concern for the growth of on-line trading, particularly on-line day trading. The group was particularly concerned with the difficulty, if not impossibility, of complying with the "know your customer" rule when the only communications between dealer and customer are electronic. On-line day trading, in particular, was described as inappropriate for all but the most experienced investors.

The recent amendments to the Ohio Securities Act received support from the panel, and the committee had a spirited exchange of thoughts on the internet's ability to provide a new forum for some of the traditional and historic securities scams and schemes. The group expressed concern for the increased audience that questionable programs can gain by establishing a web site, and applauded the Division of Securities for establishing and following through with a viable internet enforcement program.

Following this discussion, the Technology Advisory Committee joined with the Licensing Committee to review together the items considered in each committee, and to discuss issues of mutual interest.

## Takeover Committee Summary

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ment of a tender offer provided greater information to shareholders. The access to information for all shareholders seemed to level the playing field for small shareholders as under current standards only the larger institutional investors may have access to information. In addition to the proposed enforcement authority of the Securities and Exchange Commission, R.C. § 1707.042 appears to give the Division the authority to bring an enforcement action against any person who used free communications in a fraudulent or manipulative manner. The committee agreed that no filing would be required with the Division if a person was using the free communication provisions, but that the Form 041 would still have to be filed with the Division concurrently with the Form 14D-1 filing with the Securities and Exchange Commission.

The committee agreed that the “Plain English” summary term sheet provided shareholders with an overview of the material terms of a tender offer. The committee was concerned that the summary term sheet did not include complete information, but the committee was satisfied that the term summary could only be delivered with the complete offer to purchase. The committee also noted that extensive information was available to investors in documents incorporated by reference in the offer to purchase.

The Regulation M-A proposal includes a practice from the United Kingdom which allows tenders during a ten business day period following the close of the tender offer. Tendere during this subsequent offering period do not include withdrawal rights. The committee felt that this additional tender period did not present a problem as the Division’s review of the tender offer disclosures is

completed within the first five days of the tender offer. It was also noted that the Division’s continuing authority to pursue actions involving fraud and manipulation provide additional safeguards.

The Securities and Exchange Commission also addressed the materiality of the bidder’s financial statement during a cash offer. Under Regulation M-A, financial statements are not material when: only cash is offered, there is no financing condition, and either the bidder is a public reporting company under the exchange, or the offer is for all outstanding securities of the target company. If financial statements are deemed material, Regulation M-A would require only financial statements for the last two years. The committee concurred that financial statements may not be material in an all cash offer if the bidder has sufficient financing, but noted that if Regulation M-A is adopted, R.C. § 1707.041(A)(2)(g) must be amended to allow the Division to waive the requirement for financial statements and to provide for only two years of financial statements instead of the current three year requirement.

The Regulation M-A discussion concluded with a review of the proposal to allow purchases outside of a tender offer. Regulation M-A may permit three types of transactions outside of a tender offer during the offering period: (1) the exercise of options or related securities, (2) purchase of securities by or for employee plans, or (3) unsolicited purchases by the dealer-manager for or on behalf of persons not involved in the offer. The committee felt that these three limited transactions did not constitute part of the tender offer and should be permitted.

David Zagore submitted draft language to amend the Ohio Securities Act to prohibit fraud in the purchase of a security. The proposal would allow the

Division to use its current enforcement powers in cases involving frauds committed during the purchase of a security without creating any new civil liabilities under the Ohio Securities Act. Commissioner Geyer noted that the Division would not be able to use its authority under R.C. § 1707.042 during any of the recent “mini-tenders” for shares of public corporations at below market prices because the “mini-tenders” did not constitute “control bids”. While the Ohio Securities Act clearly prohibits fraud in the sale of a security, the committee concluded that fraud during the purchase of a security may, or may not, be covered under “solicitation of an offer to buy” in the definition of sale in R.C. § 1707.01(C). The committee agreed that Mr. Zagore’s proposal would eliminate potential problems in “mini-tenders” or other purchases of securities which would not fall within the 10% threshold of control bid under R.C. § 1707.01(V).

After further discussion, Mr. Zagore’s proposed language was amended. Under the amendment, “purchase” was added to the definition of fraud under R.C. § 1707.01(J) and the prohibitions under R.C. § 1707.44(G). A definition of the term “purchase” was added to R.C. § 1707.01. This language was added by amendment to H.B. 6, the electronic proxy legislation. H.B. 6 was unanimously voted out of the House on March 17, 1999 and is waiting introduction in the Senate.

The committee discussed an interim meeting or conference call in 1999 prior to the annual meeting held in conjunction with the Securities Conference. It was agreed that a meeting or conference call could be held if the Regulation M-A proposal was either amended or adopted by the Securities and Exchange Commission. The meeting was then adjourned.



# Registration/Exemption Advisory Committee Meeting Summary

The annual Registration/Exemption Advisory Committee meeting was held on December 10, 1998 in conjunction with the *1998 SEC & Ohio Securities Issues Conference* sponsored by the Ohio Society of Certified Public Accountants and co-sponsored by the Division. In attendance were Debbie Dye Joyce, Securities Registration Supervisor and Mark Heuerman, Registration Examiner, for the Division, Robert Fein of Kahn Kleiman Yanowitz & Aronson, Timothy Hoberg of Taft Stettinius & Hollister LLP, Jason Blackford of Weston Hurd Fallon Paisley & Howley LLP, Greg Glick of Gregory R. Glick LLC, Glenn Bower of Coolidge Wall Womsley & Lombard, and Tom Julius of Buckingham Doolittle & Burroughs.

The meeting was called to order and the floor opened for general discussion. Three main topics were discussed by the members: (1) the function and purpose of the Advisory Committee, (2) Division outreach, and (3) the Division's proposal to create an electronic filing process.

First, the members discussed the function and role of the Advisory Committee. Some members felt the Committee should be put to more use and felt, in some respects, that the Committee's role had diminished over time. In essence, the members wanted to feel more useful. A discussion ensued regarding the role such a committee should play in conjunction with the Division. It was noted that the Committee does indeed have an important role with regard to administrative rule changes in the exemption and registra-

tion provisions of the Ohio Securities Act. As administrative—or even statutory changes—do not necessarily occur annually with regard to the exemption and registration provisions of the Act, the role of the Committee would, of course, be diminished during that time.

It was further noted that many of the administrative changes involving the exemption and registration provisions of the Act do indeed originate as a result of the Committee's work. Importantly, this discussion led to the second topic of discussion regarding the creation of a program targeted at acceptance of electronic filings.

The impetus for a discussion of the creation of a program by which the Division could begin acceptance of electronic filings was the then current Am. Sub. H.B. 695. (Of note is the fact that Am. Sub. H.B. 695 was signed by Governor Voinovich a week later on December 17, 1998. The changes contained therein became effective on March 18, 1999.) It was discussed that Am. Sub. H.B. 695 contained new statutory language, Revised Code 1707.093, allowing the Division to promulgate administrative rules for the acceptance of electronic filings. It was further discussed that the Committee would play an important role in assisting the Division during the developmental phase of this program.

Developing such a program would entail consideration of the electronic format of filings, payment of fees, and the nature of a signature or other authorization to replace a manual signature. It was discussed that a procedure and form similar to that used by

the Securities and Exchange Commission would probably be used by the Division. Lastly, it was discussed that the Division hoped to begin work and soliciting aide from the Committee on this topic beginning in the second quarter of 1999.

The last major topic of discussion dealt with the Division's practice and ability for outreach. The members discussed the nature of the Division's role with regard to disseminating securities information to small towns and rural areas. It was noted that the Division has expanded its outreach during the past couple of years and hopes to continue doing so. "Savings and Investing Week," sponsored annually by the Department of Commerce, involves many of the Division's personnel traveling state-wide to give presentations to community groups and different school age children, teenagers and adults.

Further, it was discussed that the Division speaks to many industry groups regarding various degrees of securities law topics and capital formation. It was noted that the Division is working with the Ohio Secretary of State's Office and the Department of Development Office of Small Business, One Stop Business Permit Center, regarding assistance to the public in starting small businesses. Members discussed enhancing the Division's role even further by the Division speaking to local bar associations and CPA societies. The members also thought it may be helpful for the Division to expand its web site and increase the amount of brochures and handouts available for distribution.

## Enforcement Advisory Committee Meeting Summary

The Enforcement Advisory Committee meeting was chaired by Caryn Francis and Ross Tullman. The meeting was held on December 10, 1998. As there was no old business to discuss, Ms. Francis opened the meeting with a discussion of the new Investment Adviser legislation. Ms. Francis noted that there were several areas related to Enforcement that would be impacted by Am. Sub. H.B. 695. Specifically, the general enforcement powers under the Ohio Securities Act would be changed to include investment advisers and investment adviser representatives as parties who are subject to examination, subpoena, criminal proceedings, etc. by the Division. In addition, she

indicated that there are two significant changes to the Attorney Inspector's powers and the criminal penalties section. The Attorney Inspector's office will be designated a criminal justice agency giving the Division access to NCIC and LEADS database information. The criminal penalties will be changed to a sliding scale that range from a fifth degree felony to a first degree felony depending on the amount of money involved.

Ms. Francis then noted the significant changes under the Division's anti-fraud authority. The statute under R.C. 1707.44(M) will relate only to investment advisers and investment adviser representatives. R.C. 1707.44(M) generally will prohibit fraudu-

lent acts and practices, custody, and material misstatements and omissions in the solicitation of prospective clients. The rules to be promulgated under R.C. 1707.44(M) will cover advertising, custody, cash payments for client solicitations, disclosure of financial and disciplinary information, general prohibitions, and agency cross transactions. A general overview was given as to each of these rules.

Following the Investment Adviser legislation overview, the Committee discussed and elected Ross Tullman as co-chair for the 1999 Enforcement Advisory Committee. There being no additional new business to discuss, Ms. Francis adjourned the meeting.

# PUBLIC NOTICE

At 10:00 a. m. on Wednesday, June 30, 1999, the Ohio Division of Securities will hold a public hearing regarding the Division's intent to amend Ohio Administrative Code (OAC) rules 1301:6-3-01, 1301:6-3-14, 1301:6-3-15, and 1301:6-3-151. The hearing will be held in the offices of the Division located at 77 South High Street, 22nd Floor, Columbus, Ohio 43215. The Division has proposed the following changes:

**OAC 1301:6-3-01** Pursuant to Revised Code 1707.01(E)(1)(f), the rule creates an exception from the definition of the term dealer as used in Revised Code 1707.01(E).

The purpose for the proposed amendment is to except from the definition of dealer, banks that are members of the New York Stock Exchange and subject to certain provisions of the Securities Exchange Act of 1934.

**OAC 1301:6-3-14** Creates an exception from the dealer licensing requirements of Revised Code 1707.14.

The purpose for the proposed amendment is to allow banks that are members of the New York Stock Exchange and subject to certain provisions of the Securities Exchange Act of 1934 to sell securities to institutional investors without licensure by the Division.

**OAC 1301:6-3-15** Provides that dealers conducting certain services on the premises of banks where retail deposits are taken must comply with the provisions of this rule. Standards are set forth in the rule including the physical location of the services provided, networking and brokerage affiliate arrangements, customer disclosure and written acknowledgments, communications with the public and the notification of termination of salespersons.

Clairifies the responsibilities of licensed securities dealers with regard to the sale of securities on the premises of financial institutions. The rule represents the proposed adoption of the North American Securities Administrators Association's model rules for sales of securities at financial institutions.

**OAC 1301:6-3-151** Adds the requirement that the Form ADV-E be included in investment adviser applications and renewals for licensure if the investment adviser has custody or possession of client funds or securities.

The purpose for the proposed amendment is to clarify the application components with regard to investment adviser applications.

Copies of the proposed amendments to OAC 1301:6-3-01, 1301:6-3-14, 1301:6-3-15, and 1301:6-3-151 may be obtained by contacting the Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43215 or by calling the Division at 614-644-7381. Copies of the proposed amendments may also be obtained from the Division's Internet Home Page at [www.securities.state.oh.us](http://www.securities.state.oh.us).

## Division Enforcement Section Reports

### *Administrative*

#### *Orders*

#### **JAMES S. POWELL; POWELL FINANCIAL GROUP; POWELL FINANCIAL GROUP LIMITED PARTNERSHIP**

On August 31, 1998, the Division issued a Cease and Desist Order, Order No. 98-368, to James S. Powell; Powell Financial Group; Powell Financial Group Limited Partnership. All are located in Ohio.

On May 29, 1998, the Division issued and thereafter served a Notice of Opportunity for Hearing, Division Order No. 98-204 to James S. Powell, Powell Financial Group and Powell Financial Group Limited Partnership, in accordance with Ohio Revised Code Chapter 119. The order alleged the Respondents had violated R.C. 1707.44(C)(1) and R.C. 1707.44(B)(4), respectively, selling unregistered securities and selling securities while knowingly making a false representation concerning a material or relevant fact. Upon receipt of the Order, Respondents timely requested an administrative hearing, but later withdrew the request. Therefore, the Division issued its Cease and Desist Order against the Respondents, Order No. 98-368, incorporating the allegations set forth in the Notice of Opportunity for Hearing.

#### **RAYMOND KORFANT**

On September 1, 1998, the Division issued Order No. 98-372, a Final Order, to Raymond Korfant, an Ohio resident. The order granted him a securities salesman license.

On June 17, 1998, the Division issued Division Order No. 98-223 against Raymond Korfant, alleging that Respondent 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)(3) and (9). The Order gave the Respondent notice of the Division's intent to deny Respondent's application for licensure as a salesman of securities. The Respondent timely requested an adjudicative hearing as permitted pursuant to Chapter 119 of the Revised Code, but Respondent later withdrew his request for an administra-

tive hearing and requested that, pursuant to Ohio Revised Code section 119.07, his position and contentions be considered as previously submitted. The Division granted his request and issued its Final Order granting the Respondent a securities salesman license.

#### **SUMMIT BROKERAGE SERVICES, INC.**

On September 2, 1998, the Division issued Order No. 98-374, a Cease and Desist order, to Summit Brokerage Services, Inc. The Respondent's business residence is in Florida.

On July 2, 1996, Summit Brokerage Services, Inc. made application to the Division for licensing as a dealer of securities. On August 27, 1998, the Division issued and subsequently served on Summit Brokerage Services, Inc., Division Order No. 98-359, a Notice of Opportunity for Hearing. The Division alleged that the Respondent violated the provisions of R.C. 1707.44(A), which prohibits the unlicensed sale of securities. The Respondent and the Division entered into discussions which resulted in both parties entering into a Consent Agreement. The agreement requires the Respondent to offer rescission in accordance with R.C. Chapter 1707 to purchasers in all sales made in violation of the Ohio Securities Act from January 1, 1997, through May 14, 1998, and through and including the date of the issuance of the license. In conjunction with the Consent Agreement, the Division issued its final Cease and Desist Order No. 98-374.

#### **WILLIAM MICHAEL ABBATE**

On September 9, 1998, the Division issued Order No. 98-387, a Final Order to Deny Application for Securities Salesman License, to William Michael Abbate. The Respondent's business residence is in New Jersey.

On August 3, 1998, the Division issued to the Respondent Division Order No. 98-296, a Notice of Opportunity for Hearing pursuant to Ohio Revised Code Chapter 119. The Division alleged that Respondent was not of "good business repute" as that term is used in Ohio Administrative Code Rule 1301:6-3(D)(9) and Revised Code sec-

tion 1707.19(A). Respondent did not timely request an administrative hearing as permitted by such Notice and Ohio Revised Code Chapter 119. Therefore, pursuant to Revised Code Chapters 119 and 1707, the Division denied the Respondent's application for an Ohio securities salesman license.

#### **PETER LAWRENCE TRANQUILLI**

On September 9, 1998, the Division issued Order No. 98-388, a Final Order to Deny Application for Securities Salesman License, against Peter Lawrence Tranquilli. Respondent's business residence is in New Jersey.

On July 28, 1998, the Division issued Division Order No. 98-288, a Notice of Opportunity for Hearing pursuant to Ohio Revised Code Chapter 119. The Division alleged that Respondent was not of "good business repute" as that term is used in Administrative Code Rule 1301:6-3-19(D)(2), (7) and (9), and Revised Code section 1707.19(A). The Respondent did not make a timely request for an administrative hearing. Therefore, pursuant to Chapters 119 and 1707 of the Ohio Revised Code, the Division denied the Respondent's application for a securities salesman license, issuing its Final Order to Deny Application for Securities Salesman License.

#### **ROBERT GIST**

On September 9, 1998, the Division issued Order No. 98-389, a Final Order to Deny Application for Securities Salesman License, to Robert Gist. The Respondent's business residence is in Georgia.

On July 28, 1998, the Division issued Division Order No. 98-389, a Notice of Opportunity for Hearing. The Order alleged that Respondent was not of "good business repute" as that term is used in Ohio Administrative Code Rule 1301:6-3-19(D)(9) and Revised Code section 1707.19(A). Respondent did not timely request an administrative hearing. Therefore, the Division denied the Respondent's application for a securities salesman license, issuing its Final Order to Deny Application for Securities Salesman License.



## **JEFFREY ELMER CLARK**

On September 9, 1998, the Division issued Order No. 98-390, a Final Order to Deny Application for Securities Salesman License, against Jeffrey Elmer Clark. The Respondent's business residence is in Arizona.

On August 5, 1998, the Division issued to the Respondent Division Order No. 98-213, a Notice of Opportunity for Hearing. The Division alleged that the Respondent was not of "good business repute" as that term is used in Ohio Administrative Code Rule 1301:6-3-19(D)(7) and (9) and Revised Code section 1707.19(A). The Order also notified the Respondent of the Division's intention to issue a final order denying him an Ohio securities salesman license. The Respondent did not timely request an administrative hearing as permitted by Chapter 119 of the Revised Code. Therefore, the Division issued its Final Order to Deny Application for Securities Salesman License, Order No. 98-390.

## **THE STERLING MULTI-MEDIA CO.**

On September 9, 1998, the Division issued Order No. 98-391, a Cease and Desist order, against the Sterling Multi-Media Company. The Respondent's business residence is in Colorado.

On August 6, 1998, the Division issued to the Respondent Division Order No. 98-317, its Notice of Opportunity for Hearing. The Order alleged that the Respondent violated provisions of Ohio Revised Code sections 1707.44(C)(1) and 1707.44(B)(4), which, respectively, prohibit selling unregistered securities and knowingly making false representations concerning material and relevant facts in the sale of securities. The Order also notified the Respondent of the Division's intention to issue a Cease and Desist Order incorporating these allegations. The Respondent did not timely request an administrative hearing as permitted by Chapter 119 of the Revised Code. Therefore, the Division issued its Cease and Desist Order No. 98-391.

## **GARY HESS; GREGORY JOHN; PAUL MORRISON**

On September 9, 1998, the Division issued Order No. 98-394, a Cease and Desist Order, against Gary Hess, Gregory John and Paul Morrison, all Ohio residents.

On August 6, 1998, pursuant to Ohio Revised Code Chapter 119, the Division issued to Respondents its Notice of Opportunity for Hearing. The Division alleged that the Respondents had violated the provisions of Ohio Revised Code sections 1707.44(A) and 1707.44(C)(1). The sections prohibit, respectively, selling unregistered securities and the sale of securities without a license. The Order also notified the Respondent of the Division's intention to issue a Cease and Desist Order incorporating these allegations. Respondent did not timely request an administrative hearing as permitted by Chapter 119 of the Revised Code. Therefore, the Division issued its Cease and Desist Order No. 98-394.

## **GREGORY JAMES BEST**

On September 10, 1998, the Division issued Order No. 98-395, a Cease and Desist Order, against Gregory James Best, an Ohio resident.

On July 22, 1998, the Division issued Division Order No. 98-280, a Notice for Opportunity for Hearing, pursuant to Ohio Revised Code Chapter 119. The Division alleged that the Respondent had violated the provisions of Ohio Revised Code section 1707.19 by violating Ohio Administrative Code Rule 1301:6-3-19(A)(19), namely, selling securities not recorded on the regular books and records of the dealer which the salesman represents. The Order also notified the Respondent of the Division's intention to issue a Cease and Desist Order incorporating this allegation. Respondent did not timely request an administrative hearing as permitted by Chapter 119 of the Revised Code. Therefore, the Division issued its Cease and Desist Order No. 98-395.

## **HEMISPHERE CAPITAL COR- PORATION**

On September 15, 1998, the Division issued Order No. 98-398, a Confirmation of Suspension of Ohio Securities Dealer Li-

cence No. 16458 and Revocation of Ohio Securities Dealer License No. 16458, against Hemisphere Capital Corporation. The Respondent's business residence is in New York.

On August 6, 1998, pursuant to Revised Code Chapter 119, the Division issued to Respondent its Suspension of Ohio Securities Dealer License No. 16458, Notice of Intent to Revoke Ohio Securities Dealer License No. 16458, Order No. 98-320. The Order alleged the Respondent had violated Revised Code section 1707.19 and O.A.C. Rule 1301.6-3-15(C). This rule requires every dealer to furnish evidence to the Division of a natural person who has passed an approved examination on behalf of the dealer and who will serve as the designated principal on behalf of the dealer. The Order notified the Respondent that Revised Code section 1707.19(I) provides for the suspension or revocation of a dealer's license if the dealer "conducts business in violation of such rules and regulations as the Division prescribes for the protection of investors". The Respondent failed to timely request an administrative hearing as permitted by Chapter 119 of the Revised Code. Therefore, the Division issued its final order to confirm the suspension and to revoke the Respondent's dealer license, Order No. 98-398.

## **GREATER MINISTRIES IN- TERNATIONAL; GERALD PAYNE; BETTY PAYNE PATRICK HENRY TALBOT; DON HALL; BRENDA HALL**

On September 21, 1998, the Division issued Order No. 98-403, a Final Order to Cease and Desist, against Greater Ministries International, Gerald Payne, Betty Payne, Patrick Henry Talbot, Don Hall and Brenda Hall. The Respondents' business residences are in Maryland.

On February 24, 1998, the Division issued Order No. 98-055, a Notice for Opportunity for Hearing against Greater Ministries International, Gerald Payne, Betty Payne, Don Hall and Brenda Hall and Patrick Henry Talbot alleging that the Respondents violated Ohio Revised Code section 1707.44(C)(1), which prohibits selling unregistered securities. Upon receipt of the Order, the Respondent timely requested a hearing regarding the matter as permitted

under Chapter 119 of the Revised Code. A hearing was granted and the Hearing Officer found in the Division's favor. The Hearing Officer's Report and Recommendation was confirmed and approved. Therefore, the Division issued a Final Order to Cease and Desist, Order No. 98-403, which incorporated the allegations stated in Order No. 98-055.

### **SAMUEL LEWIS WEREB**

On October 1, 1998, the Division issued Order No. 98-414, a Final Order, to Samuel Lewis Werek, an Ohio resident. The Order granted him a securities salesman license.

On May 29, 1998, the Division issued Division Order No. 98-205, to Samuel Lewis Werek. The Order alleged that Respondent 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)(9) and gave the Respondent notice of the Division's intent to deny the Respondent's application for licensure as a securities salesman. The Respondent timely requested an adjudicative hearing pursuant to Chapter 119 of the Revised Code after receiving service of the Order. A hearing was held and the Hearing Officer found in the Respondent's favor, subject to the stipulation that he comply with all other licensing requirements contained in the Ohio Securities Act. The Respondent ultimately complied and the Division confirmed and approved the Hearing Officer's Report and Recommendation. Therefore, it was ordered that the Respondent be granted a license as a salesman of securities in the state of Ohio, pursuant to Order No. 98-414.

### **CULVER FINANCIAL MANAGEMENT, INC.**

On October 15, 1998, the Division issued Order No. 98-436, a Cease and Desist Order with Consent Agreement, against Culver Financial Management, Inc. The Respondent's business residence is in Tennessee.

On October 5, 1998, the Division issued Order No. 98-435, a Notice of Opportunity for Hearing, to the Respondent. The Order alleged the Respondent had violated R.C. 1707.44(A), which prohibits the

unlicensed sale of securities. The Order also notified the Respondent of the Division's intent to issue a final Cease and Desist Order against it. Upon issuance of the order, the Division and the Respondent entered into a Consent Agreement, which was accompanied by the issuance of a Cease and Desist Order, Order No. 98-436. The agreement requires the Respondent to consent, stipulate and agree to terms set forth in the Notice of Opportunity for Hearing and to issuance of a Cease and Desist Order. The agreement requires the Respondent to offer rescission to purchasers in all sales from June 1994 through October 1997 and through and including the date of the issuance of the license. The agreement also requires the Respondent to waive appeal rights in this matter.

### **WILLIAM A. SKAIFE; THE MARGARET SKAIFE'S GARDEN CLUB, INC.**

On October 20, 1998, the Division issued Order No. 98-437, an Amended Final Order to Cease and Desist, against William A. Skaife and The Margaret Skaife's Garden Club, Inc. The Respondents' business residence is in California.

On March 31, 1998, the Division issued Division Order No. 98-114, a Notice of Opportunity for Hearing against the Respondents alleging that Respondents violated Ohio Revised Code sections 1707.44(B)(4), 1707.44(C)(1) and 1707.44(G). These sections prohibit, respectively, making false representations in the sale of securities; selling securities without proper registration or claim of exemption from registration and selling securities while knowingly engaging in any act or practice which is declared illegal, defined as fraudulent or prohibited under the provisions of Chapter 1707 of the Revised Code. The Order also notified the Respondents of the Division's intent to issue a Final Order to Cease and Desist. Upon receiving service of the Order, the Respondents requested an administrative hearing pursuant to Revised Code Chapter 119 on the matters set forth in the Notice of Opportunity for Hearing. A hearing was granted and the Hearing Officer found in the Division's favor. The Division approved the Hearing Officer's Report and Recommendation, thereby issuing a final

Cease and Desist Order against the Respondents, Order No. 98-437 Amended.

### **ROYAL PALM INVESTMENTS, LTD.**

On October 16, 1998, The Division issued Order No. 98-438, a Final Order Revoke (sic) Ohio Securities Dealer License No. 28761, to Royal Palm Investments, Ltd. The Respondent's business residence is in Florida.

On May 8, 1998, the Division issued Division Order No. 98-177, a Suspension of Ohio Securities Dealer License No. 28761/Notice of Intent to Revoke Ohio Securities Dealer License No. 28761/Notice of Opportunity for Hearing to Royal Palm Investments, Ltd. The Order gave notice of intent to revoke the Respondent's Ohio Securities Dealer License for violating Ohio Revised Code sections 1707.19(A), 1707.19(I) and 1707.19(J). The Respondent requested an administrative hearing as permitted pursuant to Chapter 119 of the Revised Code. A hearing was granted and the Hearing Officer found in the Division's favor. The Division approved the Hearing Officer's Report and Recommendation, thereby, issuing a Final Order revoking the Respondent's dealer's license, Order No. 98-438. This order incorporated allegations set forth in Order No. 98-177.

### **MARK DARREN MORROW**

On October 16, 1998, the Division issued Order 98-439, a Final Order, to Mark Darren Morrow, an Ohio resident.

On June 26, 1998, the Division issued Division Order No. 98-231 to Mark Darren Morrow, alleging that Respondent was not of good "business repute" as that phrase is used in Ohio Revised Code section 1707.16 and 1707.19 and Ohio Administrative Code Rule 1301:6-3-19(D)(9) and giving the Respondent notice of intent to deny Respondent's application for licensure as a salesman of securities in the state of Ohio. The Respondent timely requested an adjudicative hearing pursuant to Chapter 119 of the Revised Code after receiving service of the Order. The Division confirmed and approved the Hearing Officer's Report and Recommendation, which was in the Respondent's favor. Therefore, it was ordered that the Respondent, upon compliance with all other licens-

ing requirements contained in the Ohio Securities Act and related administrative rules, be granted a license as a salesman of securities in Ohio, pursuant to the Division's Final Order No. 98-439.

### **MEYERS POLLOCK ROBBINS, INC.**

On October 23, 1998, the Division issued Order No. 98-451, a Revocation of Ohio Securities Dealer License No. 13436, to Meyers Pollock Robbins, Inc. The Respondent's business residence is in New York.

On June 24, 1998, the Division issued Division Order No. 98-230, a Suspension of Ohio Securities Dealer License, Notice of Intention to Revoke Ohio Securities Dealer License, and Notice of Opportunity for Hearing of Myers Pollock Robbins, Inc. The Order alleged the Respondent was not of "good business repute" as that term is used in R.C. 1707.15, 1707.16, 1707.19 because the Respondent violated Ohio Administrative Code Rule 1301:6-3-19(D)(1),(2),(3),(7),(8) and (9) and Revised Code sections 1707.19(A) and R.C. 1707.19(I). The order also gave the Respondent notice of intent to revoke the Respondent's securities dealer license. The Respondent failed to timely request an adjudicative hearing pursuant to Chapter 119 of the Revised Code. Therefore, the Division issued its final order revoking the Respondent's dealer license, Order No. 98-451 incorporating allegations set forth in the Notice of Opportunity for Hearing as findings.

### **BREWSERV CORPORATION**

On November 18, 1998, the Division issued Division Order No. 98-488, a Cease and Desist Order against Brewserv Corporation. The Respondent is an Idaho corporation conducting business in Ohio.

On October 1, 1998, the Division issued to the Respondent its Notice of Opportunity for Hearing, Division Order No. 98-420, pursuant to Ohio Revised Code Chapter 119. The Division alleged that the Respondent violated the provisions of Ohio Revised Code section 1707.44(C)(1) by selling unregistered securities and notified the Respondent of its right to an adjudicatory hearing pursuant to Chapter 119 of the Re-

vised Code. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued its Cease and Desist Order No. 98-488.

### **FUTURE VISION INTERACTIVE, INC.**

On December 8, 1998, the Division issued Division Order No. 98-522, Cease and Desist Order, against Future Vision Interactive, Inc. The Respondent's business residence is in Nevada.

On October 2, 1998, the Division issued to Future Vision Interactive, Inc. its Notice of Opportunity for Hearing, Division Order No. 98-434, pursuant to Ohio Revised Code Chapter 119. The Division alleged that the Respondent violated the provisions of Ohio Revised Code section 1707.44(C)(1), which prohibits selling unregistered securities. The Order also notified the Respondent of its right to an adjudicatory hearing pursuant to Chapter 119 of the Revised Code. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued its Cease and Desist Order No. 98-522.

### **JOHN G. BOBB**

On December 8, 1998, the Division issued Division Order No. 98-523, a Cease and Desist Order, against John G. Bobb, an Ohio resident.

On October 30, 1998, the Division issued to John G. Bobb its Notice of Opportunity for Hearing, Division Order No. 98-463, pursuant to Ohio Revised Code Chapter 119. The Division alleged that the Respondent violated the provisions of Ohio Revised Code section 1707.44(C)(1), which prohibits the sale of unregistered securities. The Order also notified the Respondent of his right to an adjudicatory hearing pursuant to Chapter 119 of the Revised Code. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued its Cease and Desist Order No. 98-523.

### **LAWRENCE CORNA; TELONIX MICROWAVE INDUSTRIES, INC.**

On December 21, 1998, the Division issued Order No. 98-549, a Cease and Desist Order, against Lawrence Corna and Telonix Microwave Industries, Inc., both of whom reside in Ohio.

On November 5, 1998, the Division issued against Respondents its Notice of Opportunity for Hearing, Division Order No. 98-475, pursuant to Ohio Revised Code Chapter 119. The Division alleged that the Respondents violated the provisions of Ohio Revised Code section 1707.44(C)(1) and 1707.44(B)(4). These provisions prohibit, respectively, selling unregistered securities and selling securities while knowingly making false representations regarding material and relevant facts. The Order also notified the Respondents of their right to an adjudicatory hearing pursuant to Chapter 119 of the Revised Code. The Respondents failed to timely request an administrative hearing. Therefore, the Division issued its Cease and Desist Order No. 98-549.

### **ROBERT MALONE FEHRMAN**

On January 4, 1999, the Division issued Division Order No. 99-001, a Final Order to Deny Application for License, against Robert Malone Fehrman. The Respondent's business address is in Missouri.

On June 11, 1998, the Division issued Division Order No. 98-217, a Notice of Intent to Deny Application for Securities Salesman License and Notice of Opportunity for Hearing, against the Respondent. The Order alleged that the Respondent was "not of good business repute" as that phrase is used in Ohio Revised Code section 1707.16 and 1707.19, and Ohio Administrative Code Rule 1301:6-3-19(D)(7) and (9). The Division gave the Respondent its notice of intent to deny his application for licensure as a salesman of securities. Upon issuance of the Order, the Respondent timely requested an adjudicative hearing pursuant to R.C. Chapter 119 on the matters set forth in the Order. A hearing was granted and the Hearing Officer found in the Division's favor. The Division approved the Hearing Officer's Report and Recommendation and issued Order No. 99-001, denying the Respondent a license as a salesman of securities. 11

## **MICHAEL ANTHONY SCHIAVELLO**

On January 4, 1999, the Division issued Division Order No. 99-002, a Final Order, to Michael Anthony Schiavello. The Respondent's business residence is in New York. The Order granted the Respondent a securities salesman license.

On August 31, 1998, the Division issued Division Order No. 98-370, Notice of Intent to Deny Application for Securities Salesman License and Notice of Opportunity for Hearing, to Michael Anthony Schiavello. The Division alleged that the Respondent 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)(2), (7) and (9). The Division also gave the Respondent notice of its intent to deny the Respondent's application for licensure as a salesman of securities. Upon receipt of the Order, the Respondent timely requested an adjudicative hearing pursuant to Ohio Revised Code Chapter 119. A hearing was granted and the Hearing Officer found in the Respondent's favor. The Division confirmed and approved the Hearing Officer's Report and Recommendation, thereby granting to Respondent a license as securities salesman, Order No. 99-002.

## **GERARD ROBERT CELMER**

On January 7, 1999, the Division issued Order No. 99-007, a Final Order to Deny Application for Securities Salesman License, against Gerard Robert Celmer. The Respondent's business residence is in New Jersey.

On November 23, 1998, the Division issued to Gerard Robert Celmer Division Order No. 98-507, a Notice of Intent to Deny Application for Securities Salesman License and Notice of Opportunity for Hearing. The Division alleged that the Respondent was not of "good business repute" as the term is used in Administrative Code Rule 1301:6-3-19(D)(9) and Revised Code section 1707.19(A). The Division notified Respondent of its intent to deny his application for a securities salesman license. The Order also stated that the Respondent had the right to request an adjudicative hearing on the

matter pursuant to Chapter 119 of the Revised Code. Respondent did not request an adjudicative hearing. Therefore, the Division issued an Order to deny the application of Gerard Robert Celmer for an Ohio securities salesman license, Order No. 99-007.

## **JOSHUA MONDSCHHEIN**

On January 12, 1999, the Division issued Order No. 99-018, a Final Order, to Joshua Mondschein. The Respondent's business residence is in New York.

On August 13, 1998, the Division issued Division Order No. 98-329, Notice of Intent to Deny Securities Salesman License and Notice of Opportunity for Hearing, to Joshua Mondschein. The Division alleged that the Respondent 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)(7) and (9). Pursuant to Ohio Revised Code Chapter 119, the Respondent timely requested an adjudicative hearing. Whereas, pursuant to Ohio Revised Code section 119.09, a hearing was granted and the Hearing Officer found in the Respondent's favor. The Division confirmed and approved the report and recommendation of the Hearing Officer. Therefore, it was ordered that the Respondent, upon compliance with all other applicable requirements of the Ohio Securities Act and related administrative rules, be granted a license as a salesman of securities.

## **MARCUS JAMES SCHRENKER**

On January 12, 1999, the Division issued Order No. 99-019, a Final Order, to Marcus James Schrenker. The Respondent's business residence is in Indiana. The Order granted the Respondent a securities salesman license.

On August 4, 1998, the Division issued Division Order No. 98-304, Notice of Intent to Deny Securities Salesman License and Notice of Opportunity for Hearing, to Marcus James Schrenker. The Division alleged that the Respondent 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)(3), (6), (7) and (9). Pursuant to Ohio Revised Code Chapter 119, the Respondent timely requested an adjudicative

hearing. Whereas, pursuant to Ohio Revised Code Chapter 119, a hearing was granted and the Hearing Officer found in the Respondent's favor. The Division confirmed and approved the report and recommendation of the Hearing Officer. Therefore, it was ordered that the Respondent, upon compliance with all other applicable requirements of the Ohio Securities Act and related administrative rules, be granted a license as a salesman of securities.

## **RICHARD LEE BUSHEY**

On January 13, 1999, the Division issued Order No. 99-020, a Final Order of Suspension, against Richard Lee Bushey, an Ohio resident.

On August 5, 1998, the Division issued Division Order No. 98-318, a Notice of Intent to Revoke Securities Salesman License/Notice of Opportunity for Hearing against Richard Lee Bushey. The Division alleged that the Respondent violated Ohio Revised Code sections 1707.44(B)(4) and 1707.44(C)(1), as well as Ohio Administrative Code rule 1301:6-3-19(A)(19) and thereby violated R.C. sections 1707.19(D) and 1707.19(I). The Respondent requested an adjudicative hearing pursuant to R.C. Chapter 119. The Hearing Officer concluded that the Respondent violated R.C. 1707.44(C)(1) and further violated O.A.C. rule 1301:6-3-19(A)(19), thereby violating R.C. 1707.19(D) and R.C. 1707.19(I). The Division confirmed and adopted the Report and Recommendation of the Hearing Officer. With the issuance of Order No. 99-020, it was ordered that the Ohio securities salesman license of the Respondent, and all rights and privileges appertaining thereto be suspended for a period of ten full business days. The suspension was to be served within the first thirty days of the Respondent's relicensure by the Division as a securities salesman, provided the Respondent could be relicensed by the Division.

## **PAUL C. JARED**

On January 22, 1999, the Division issued Division Order No. 99-022, Final Order of Suspension, against Paul C. Jared, an Ohio resident.

On August 24, 1998, the Division issued Division Order No. 98-349, a Notice

of Intent to Revoke Securities Salesman License/Notice for Opportunity for Hearing against Paul C. Jared. The Division alleged that Respondent had violated Revised Code section 1707.44(C)(1), as well as Ohio Administrative Code rule 1301:6-3-19(A)(19) and thereby violated R.C. sections 1707.19(D) and 1707.19(I). The Order also gave notice of the Respondent's right to an adjudicative hearing pursuant to R.C. Chapter 119. The Respondent timely requested an administrative hearing. A hearing was held and the Hearing Officer found in the Division's favor. The Division confirmed and approved the Report and Recommendation of the Hearing Examiner. With the issuance of Order No. 99-022 it was ordered that the securities salesman license of the Respondent and all rights and privileges appertaining thereto be suspended for a period of ten full business days. The suspension was to be served within the first thirty days of Respondent's re-licensure, provided the Division was able to grant him a re-licensure.

### **FRANK KUFROVICH**

On January 21, 1999, the Division issued Order No. 99-024, a Revocation of Ohio Securities Salesman License, to Frank Kufrovich. The Respondent's business residence is in North Carolina.

On September 17, 1998, the Division issued against the Respondent, Division Order No. 98-401, a Notice of Intent to Revoke Ohio Securities Salesman License and Notice of Opportunity for Hearing. The Division alleged that the Respondent is not of "good business repute" as that term is used in Administrative Code Rule 1301:6-3-19(D)(3) and (9) and Revised Code section 1707.19(A). Service was made by publication in accordance with Ohio Revised Code Chapter 119. Respondent failed to timely request an adjudicative hearing. Therefore, the Ohio Securities Salesman License of Frank Fufrovich was revoked through Order No. 99-024.

### **BRET LEE SANDER**

On February 3, 1999, the Division issued Order No. 99-038, a Cease and Desist Order, against Bret Lee Sander, an Ohio resident.

On or about December 30, 1998, pursuant to Ohio Revised Code Chapter 119, the Division issued to Bret Lee Sander a Notice of Opportunity for Hearing, Order No. 98-548. The Division alleged that Respondent had violated the provisions of Ohio Administrative Code Rule 1301:6-3-19(A)(19), thereby violating Revised Code section 1707.19(I). Upon receiving the Order, the Respondent and the Division entered into discussions which resulted in a Consent Agreement. The agreement was issued in conjunction with Order No. 99-038, and states that the Respondent stipulates to the findings regarding the allegations outlined above and waives his appeal rights.

### **LAWRENCE CLIFFORD SCHMELZER**

On February 9, 1999, the Division issued Order No. 99-049, a Final Order, to Lawrence Clifford Schmelzer, an Ohio resident. The Order granted the Respondent a securities salesman license.

On October 29, 1998, the Division issued Division Order No. 98-460 to Lawrence Clifford Schmelzer. The Respondent was given notice of the Division's intent to deny application for licensure as a salesman of securities. The Division alleged that the Respondent 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)(7) and (9). The Order also notified the Respondent of his right to an adjudicative hearing pursuant to Ohio Revised Code Chapter 119. The Respondent timely requested an adjudicative hearing. The Hearing Officer found in the Respondent's favor. The Division confirmed and approved the report and recommendation of the hearing officer. With the issuance of Order No. 99-049, it was ordered that the Respondent be granted a securities salesman license.

### **D.H. BLAIR & CO., INC.**

On February 23, 1999, the Division issued Order No. 99-073, a Final Order and Consent Agreement/Restitution Fund Participation for Eligible Investors, to D.H. Blair & Co., Inc. The Respondent's business residence is in New York.

An investigation was conducted by the Division into the activities of D.H. Blair &

Co., Inc. The Division alleged that the Respondent had violated Ohio Administrative Code Rule 1301:6-3-19(A)(6), thereby violating R.C. 1707.19. The Division and the Respondent entered into a Consent Agreement. The Respondent was ordered to make available to former clients a fund in the amount of two million two hundred fifty thousand dollars (\$2,250,000.00) plus accrued interest, less escrow cost, for resolution of claims against Respondent. It was also ordered that the Respondent voluntarily allow its dealer license to expire in Ohio. The Respondent, through the Consent Agreement, neither admitted nor denied the allegations which are set forth above and were incorporated in Order No. 99-073.

### **STEPHEN GRIVAS**

On February 26, 1999, the Division issued Order No. 99-084, a Final Order, to Stephen Grivas. The Respondent's business residence is in New York. The Order granted the Respondent a securities salesman license.

On August 5, 1998, the Division issued Division Order No. 98-316, a Notice of Intent to Deny Application for Securities Salesman License and Notice of Opportunity for Hearing, to the Respondent. The Division alleged that the Respondent was not of good "business repute" as that phrase is used in Ohio Revised Code sections 1070.16 and 1707.19 and Ohio Administrative Code Rule 1311:6-3-19(D)(7) and (9). The Order also gave the Respondent notice of the right to an adjudicative hearing pursuant to R.C. Chapter 119. The Respondent timely requested a hearing and the Hearing Officer found in his favor. The Division confirmed and approved the report and recommendation of the Hearing Officer. With the issuance of Order No. 99-084, it was ordered that the Respondent be granted a license as a salesman of securities.

### **JOHN HENRY CIERSKI**

On February 26, 1999, the Division issued Order No. 99-085, a Final Order to Deny Application for License against John Henry Cierski. The Respondent's business residence is in New York.

On August 4, 1998, the Division issued Division Order No., 98-305, a Notice

*Continued on page 16*

## Capital Formation Statistics\*

Amounts in Thousands (rounded up)

Filing Type	First Quarter 1999	YTD 1999
<b>Exemptions</b>		
Form 3(Q)	\$370,419	\$370,419
Form 3(W)	33,820	33,820
Form 3(X)	1,060,631	1,060,631
Form 3(Y)	1,000	1,000
<b>Registrations</b>		
Form .06	152,896	152,896
Form .09	58,550	58,550
Form .091	410,841	410,841
Form .092(C)	0	0
<b>Investment Companies</b>		
Definite	146,363	146,363
Indefinite**	677 filings = 677,000	677 filings = 677,000
<b>TOTAL</b>	<b>\$2,911,520</b>	<b>\$2,911,520</b>

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

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

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

## Registration Statistics

The following table sets forth the number of registration and exemption filings received by the Division during the first quarter of 1999, compared to the number of filings received during the first quarter of 1998. Likewise, the table compares the year-to-date filings for 1998 and 1999.

Filings pursuant to RC 1707.03(X) and 1707.03(Y) became available March 18, 1999 with the effectiveness of Am. Sub. H.B. 695. The 3(X) filing is for Rule 506 offerings (the 3(Q) exemption is now exclusively for Section 4(2) claims of exemption.) The 3(Y) filing is an accredited investor exemption.

Filing Type	1st Qtr '99	YTD 1999	1st Qtr '98	YTD 1998
1707.03(Q)*	321	321	372	372
1707.03(W)	15	15	18	18
1707.03(X)	52	52	NA	NA
1707.03(Y)	1	1	NA	NA
1707.04	0	0	0	0
1707.041	1	1	1	1
1707.06	48	48	39	39
1707.09	14	14	10	10
1707.091	26	26	101	101
1707.092(A)**	1117	1117	1056	1056
1707.092(C)***	0	0	NA	NA
1707.39	1	1	1	1
1707.391	27	27	26	26
<b>Total</b>	<b>1623</b>	<b>1623</b>	<b>1624</b>	<b>1624</b>

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

\*\*Investment company notice filings. Note that the new reference, R.C. 1707.092(A) became effective on March 18, 1999.

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

## Licensing Statistics

The table below sets out the number of Salespersons and Dealers licensed by the Division at the end of the first quarter of 1999 compared to the corresponding quarter of 1998 as well as the second, third and fourth quarter of 1998 compared to the corresponding quarter of 1997.

	End of Q1 1999	End of Q1 1998	End of Q4 1998	End of Q4 1997	End of Q3 1998	End of Q3 1997	End of Q2 1998	End of Q2 1997
Number of Salespersons Licensed:	88,727	81,210	89,152	83,238	88,796	83,545	85,526	82,135
Number of Dealers Licensed:	2,223	2,082	2,137	2,170	2,151	2,154	2,106	2,113

## *Administrative Orders*

*Continued from page 13*

of Intent to Deny Application for Securities Salesman License, to John Henry Cierski. The Division 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)(9). The Order also notified the Respondent of the right to request an adjudicatory hearing regarding this matter pursuant to Revised Code Chapter 119. The Respondent timely requested an adjudicative hearing. A Hearing was held and the Hearing Officer found in the Division's favor. The Division confirmed and approved the Report and Recommendation of the Hearing Officer. With the issuance of Order No. 99-085, it was ordered that Respondent be denied a license as a salesman of securities.

## *Criminal Actions*

### **Jackson Melvin Johnson**

The Montgomery County Prosecutor's Office issued a Bill of Information on October 8th against Jackson Melvin Johnson, charging him with 18 counts of selling unregistered securities to Ohio investors. Johnson allegedly sold promissory notes to investors to finance Canyon Investment Association, a company that purchased and rehabilitated rental property in Dayton. Johnson entered a plea of not guilty in the Montgomery County Common Pleas Court. A pretrial status conference is set for September 15, 1999.

### **Joseph Roy**

On December 11, 1998, Joseph Roy was sentenced in Franklin County Common Pleas Court to one year's probation and ordered to pay restitution in connection with his involvement in a non-existent company called Broadcast Activity Partners. Roy was arrested in July 1998 and charged with theft, selling unregistered securities, making misrepresentations in connection with the sale of securities, and engaging in fraudulent practices.

*Editor's Note: Enforcement Section Reports of Division Orders issued or finalized in March, 1999, will be reported in the next Ohio Securities Bulletin. Those wishing further information regarding any of the above enforcement actions may contact the Division and review the Orders summarized above.*

# OHIO SECURITIES BULLETIN

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