



Department
of Commerce
Division of Securities

OHIO SECURITIES BULLETIN

ISSUE 2016:1

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SECURITIES BULLETIN

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PITFALLS AND PRECAUTIONS OF SELF-DIRECTED IRAS

By Janice Hitzeman - Attorney Inspector - Enforcement

A self-directed Individual Retirement Account (IRA) is a tax deferred investment account held by a trustee or custodian that permits the account beneficiary to invest in a wider array of investment vehicles than those normally afforded by IRA custodians. Custodians of self-directed IRAs may allow investors to invest in promissory notes, real estate, tax liens certificates and private placement offerings. However, these types of non-traditional investment products are subject to unique risks, including minimal disclosures, liquidity and fraud.

Entities engaged in the trust business in Ohio must comply with licensure requirements administered through the Ohio Division of Financial Institutions, in addition to complying with provisions of the Ohio Securities Act administered through the Ohio Division of Securities.¹ Prior to soliciting or engaging in trust business and at all times while engaging in trust business in Ohio, a trust company shall maintain sufficient capital and fidelity bonds required by Ohio law.² The trustee or custodian must be a bank, a federally-insured credit union, a savings and loan association, or an entity approved by the Internal Revenue Service (IRS) to act as trustee or custodian.³ Trustees and third party custodians that are not banks (nonbank custodians or NBTs) are subject to requirements set forth in [Treasury Regulation Section 1.408-2\(e\)](#). An entity seeking to act as a trustee or custodian for self-directed IRA accounts can request to be an NBT by applying to the IRS and demonstrating that certain requirements

will be met in the management of specified fiduciary accounts. The IRS maintains a [list of Nonbank Trustees](#) publicly available on the IRS website.

The Division has seen a rise in complaints involving fraud related to issuers and solicitors touting the advantages of investing through self-directed IRAs. While self-directed IRAs may provide some benefit to investing retirement funds, investors should be leery of potential fraudulent investment schemes when considering this retirement vehicle. In 2011, the U.S. Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA) issued a joint alert warning investors of fraudulent schemes operated through the use of self-directed IRA programs.⁴ State securities regulators have investigated numerous cases where a self-directed IRA was used in an attempt to lend credibility to a fraudulent scheme. Similarly, the SEC has brought several cases in which promoters of fraudulent schemes steered investors to self-directed IRAs.⁵ The joint alert issued by the SEC and NASAA in 2011 urges investors to take the following steps to avoid fraud related investments through self-directed IRAs:

- Verify information in self-directed IRA statements;
- Avoid unsolicited investment offers;
- Ask questions;
- Be mindful of “guaranteed” returns; and
- Ask a professional before investing.⁶

(Continued on page 2)

¹OHIO REV. CODE ANN. § 1111.02; OHIO REV. CODE CHAPTER 1707.

²OHIO REV. CODE ANN. § 1111.05.

³Department of the Treasury, Internal Revenue Service, Contributions to Individual Retirement Arrangements (IRAs), Publication 590-A (2015), <https://www.irs.gov/>

<pub/irs-pdf/p590a.pdf>.

⁴NASAA, Self-Directed IRAs and the Risk of Fraud (Sept. 28, 2011), <http://www.nasaa.org/5866/self-directed-iras-and-the-risk-of-fraud/>.

⁵Id.

⁶Id.

(Continued from page 1)

Solicitors and issuers of fraudulent investment schemes may tout the tax advantages of investing through a self-directed IRA as an additional selling point to potential victims. Fraudsters who want to engage in Ponzi schemes or other fraudulent conduct may also exploit self-directed IRAs because they permit investors to hold unregistered securities, and the custodians or trustees of these accounts likely have not investigated the securities or the background of the issuer or solicitor. Because IRAs carry a financial penalty for premature withdrawal, self-directed IRA investors are induced to keep funds in fraudulent schemes for long periods of time, hindering timely discovery of this type of scam. Scammers may also overstate the due diligence or verification process that the trustee or custodian undertakes prior to establishing a self-directed IRA account in order to promote the appearance of legitimacy for their investment scam. Investors may be lulled by the appearance of legitimacy when the custodian or trustee issues periodic statements showing values and returns on investments in the self-directed IRA accounts.

Custodians and trustees should become familiar with requirements and prohibitions set forth in the Ohio Securities Act. If the custodian, trustee or their representatives are promoting certain investments or are engaged in activities that would fall within the definition of dealer, salesperson, investment adviser, or investment adviser representative, they must maintain proper licensure through the Division.⁷ Furthermore, the

prohibitions set forth in Ohio Revised Code Section 1707.44 apply to all persons engaged in the purchase or sale of securities. The Ohio Securities Act prohibits the publication or issuance of statements to investors or potential investors that contain false information about material facts,⁸ including false statements involving the value of any security.⁹

Recent criminal and civil cases have highlighted the risks of investing in unregistered securities through self-directed IRAs administered by third party custodians and trustees. A federal grand jury in the U.S. District Court in Dayton, Ohio returned an indictment filed on October 29, 2015 against William M. Apostelos and Connie M. Apostelos, a married couple operating various investment and asset management companies in the Dayton area.¹⁰ The indictment alleges that between 2009 and 2015 the defendants devised a scheme to defraud investors, in part, by indicating that third party trust companies maintained control over and safeguarded investors' funds from misappropriation. The indictment further alleges that the trust companies were merely utilized as pass-through entities through which the investor funds were delivered to the defendants.

On June 16, 2015, the SEC issued an [Order Instituting Cease-and-Desist Proceedings in File No. 3-16594](#) against Equity Trust Company; a trust company operating from a principal office located in Westlake, Ohio. The SEC alleged that Equity Trust Company was a custodian for at least two Ponzi-schemed investments, one promoted

(Continued on page 3)

⁷See OHIO REV. CODE ANN. § 1707.01.

⁸OHIO REV. CODE ANN. § 1707.44(G).

⁹OHIO REV. CODE ANN. §§ 1707.44(J), (K).

¹⁰U.S. v. Apostelos et al., 3:15CR-148 (S.D. Ohio).

CAPITAL FORMATION WORKING GROUP

The Division is currently considering alternative finance and other proposals to give small businesses greater access to capital in Ohio, but we need your help to find the right path.

Please help us move forward by joining the Division's

CAPITAL FORMATION WORKING GROUP

Contact the Working Group Chair

Mark Heurman

Mark.Heurman@com.ohio.gov

for information on how to join.

ELDER FINANCIAL ABUSE WORKING GROUP

Please help us respond to this crisis by joining the Division's

ELDER FINANCIAL ABUSE WORKING GROUP

Contact the Working Group Chair

Brian Peters

Brian.Peters@com.ohio.gov

for information on how to join.

Pitfalls and Precautions for Self-Directed IRAs

(Continued from page 2)

by Ephren Taylor through City Capital Corp. in North Carolina¹¹ and the other by Randy Poulson through Equity Capital Investments, LLC in New Jersey.¹² The SEC alleged that Equity Trust Company was a cause of Taylor's and Poulson's violations of Section 17(a)(2)¹³ and 17(a)(3)¹⁴ of the Securities Act. According to the [SEC's allegation](#), the violations require only a showing of negligence on the part of Equity Trust Company. In response to the allegations filed by the SEC, Equity Trust Company published a statement on their website stating the following, "Equity Trust denies the SEC's allegations and will vigorously defend itself. Equity Trust is an industry leader in fighting fraud, and stopped permitting its self-directed IRA clients to make investments with these sponsors more than two years before the SEC brought actions against them."¹⁵ An administrative hearing was held in December of 2015 in this case, which is pending a final ruling from the Administrative Law Judge.

In a criminal case referred for prosecution by the Indiana Division of Securities and prosecuted in Dearborn and Franklin Counties in Indiana and Hamilton County in Ohio, Jasen Snelling, formerly of Cincinnati, was convicted of multiple criminal counts including securities fraud, theft, wire fraud, and mail fraud in 2012 and 2013 for bilking investors out of more than \$4.5 million in a nearly decade-long Ponzi scheme.¹⁶ The scheme involved promises to investors, some elderly, in Ohio, Kentucky, and Indiana, that Snelling was a talented day trader and could earn up to 20 percent returns. Snelling, through various companies, encouraged investors to roll over their traditional IRAs into self-directed IRAs through a trust

company. Snelling immediately withdrew funds from those accounts for personal living expenses, but investors continued to receive statements from the trust company, as well as bills for custodial fees, even after their money was taken out of the accounts. Snelling was sentenced to more than 50 years in prison.

These recent cases involving fraudulent schemes perpetrated through the use of self-directed IRAs administered by IRA custodians and trustees highlight the risk of investing in unregistered securities through these types of accounts. Ohio investors and the securities industry should be cautious when relying on statements issued by IRA custodians representing the value of the securities. If fraud is suspected, investors should verify IRA account values through third party sources for the value of the underlying securities held in these types of accounts. Due diligence could include requesting audited financial statements for issuers of unregistered securities within the IRA portfolio, reviewing trading records and account statements issued by licensed securities dealers, if applicable, and seeking similar records created and issued by entities not directly involved in referring or creating the self-directed IRA account. If the underlying investment for the self-directed IRA includes real estate, the investor could request copies of deeds, title reports or appraisals for the collateralized real estate. For all investments, including investments initiated through self-directed IRA programs, the Division of Securities encourages potential investors to call the Division's Investor Protection Hotline prior to investing to determine whether the individuals and entities involved are properly licensed and whether the underlying security is registered for sale in Ohio.

¹¹U.S. v. Taylor, 1:14CR-217 (N.D. Ga.).

¹²U.S. v. Poulson, 1:14CR-309 (D. N.J.).

¹³15 U.S.C.A. § 77q (Lexis 2015).

¹⁴Id.

¹⁵Statement from Equity Trust Company (June, 16, 2015).

¹⁶State v. Snelling, 15D01-1106-FC-00055, Dearborn Cnty. Super. Ct. (Ind. 2011); State v. Snelling, 24CO2-1102-FB-000046, Franklin Cnty. Cir. Ct. (Ind. 2011); U.S. v. Snelling, 1:12CR-58 (S.D. Ohio).

SAVE THE DATE
Friday, October 21st, 2016

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and the

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Registration FAQs

Q: *Is there an exemption available under Ohio law for issuers selling securities to employees?*

A: Ohio securities law offers many exemptions from registration under the Ohio Securities Act. One common exemption is the compensatory benefit exemption. The compensatory benefit exemption available under Rule 1301:6-3-03(E)(5) of the Ohio Administrative Code (O.A.C.) exempts most forms of compensatory employee benefit plans provided certain conditions are met. O.A.C. Rule 1301:6-3-03(E)(5) exempts the sale of any security pursuant to a pension, stock, profit sharing, compensatory benefit, welfare or similar plan pursuant to Section 1707.03(V) of the Ohio Revised Code if:

- The security is sold pursuant to a qualified plan under sections 401 to 425 of the Internal Revenue Code;
- The sale of the security is exempt under rule 701 of the Securities Act of 1933;
- The security is effectively registered under sections 6 to 8 of the Securities Act of 1933; or
- The security is sold pursuant to a plan qualified under 501(c)(9) of the Internal Revenue Code.

It is important to note however, that this exemption is not available if the offering by a company is simply an invitation to employees to purchase securities. The compensatory benefit must be part of the employee's total compensation package in order to qualify for the exemption. This exemption applies not only to employees but also to independent contractors, consultants, or any other person that can participate in a company's compensatory benefit plan.

Q: *What are the Division's requirements for Regulation A ("Reg A") Tier 2 offerings?*

A: Section 18(c)(2)(A) of the Securities Act of 1933 expressly preserves the Division's right to require notice filings and fees for Reg A Tier 2 offerings. Pursuant to such authority, under Section 1707.092 of the Ohio Revised Code, the Division currently requires the issuer to submit the following:

- Consent to service of process on Form U-2/U-2A or Division Form 11;
- Filing fee ranging from \$200 to \$1,100, depending on the aggregate price at which the securities are to be sold in Ohio;
- Copies of any documents filed with the U.S. Securities and Exchange Commission, including the final offering circular, Form 1-A, and any testing the waters materials; and
- A statement of the value of the securities sold or offered to be sold to persons in Ohio, which information may be provided in a cover letter or on Form U-1 (available at <http://www.com.ohio.gov/documents/U-1.pdf>).

Q: *Does an issuer selling securities under Rule 506 of Regulation D and in reliance on Revised Code section 1707.03(X) ever have to renew the Form D that it is required to be filed in connection with the first sale of such securities and, if so, how and when?*

A: For purposes of Regulation D, a renewal is considered an amendment to the filing. Such renewals, along with any other amendment, should be filed with the Division any time one is filed with the SEC. No additional filing fee is required to file amendments. For further information, see Ohio Revised Code section 1707.03(X)(3).

WELCOME REGISTRATION ATTORNEYS

JESSICA BROWN

Jessica joined the Registration section of the Ohio Division of Securities as Corporation Finance Counsel in September of 2015. As Corporation Finance Counsel, Jessica reviews registration applications and exemption filings, and responds to inquiries on all securities registration and exemption matters. After graduating from law school in 2010, Jessica worked as an Assistant Attorney General in the Antitrust section of the Ohio Attorney General's Office. Prior to joining the division, Jessica worked in the corporate group of Ice Miller LLP. Jessica earned her law degree at Capital University Law School and her undergraduate degree at Miami University.

JEFF COLEMAN

Jeff also joined the Registration Section of the Division of Securities in the fall of 2015 as Corporation Finance Counsel. In that capacity, Jeff reviews and approves securities registration and exemption filings for securities being sold to Ohioans, and handles other general securities inquiries from the general public. Before joining the Division, Jeff was an associate in the corporate and securities practice group at Squire Patton Boggs (US) LLP. Jeff graduated from The Ohio State University for his undergraduate studies, majoring in English, and from the University of Michigan Law School. For anyone wondering, when it comes to sports, Jeff prefers his undergraduate school.



A to Z with L & E

THE "NEW" BROCHURE RULES

By Joyce Cleary and Anne Followell

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This section of the Bulletin, the Licensing and Examination Section of the Division ("L & E"), discusses timely and important topics impacting our licensees. The goal is to cover a wide-range of issues – from "A to Z" – that are of greatest interest to you!

We welcome your suggestions for future topics.

OHIO DIVISION OF SECURITIES

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The Division's "brochure rules"¹ were amended in August 2015 to require Ohio-licensed investment advisers to follow all current Instructions to Form ADV Parts 2A (Brochure Statements), Appendix 1 (Wrap Fee Brochure), and 2B (Brochure Supplements) issued by the U.S. Securities and Exchange Commission ("SEC"). This article highlights some of these changes with respect to the completion, filing, delivery, and updating of Brochure Statements.² Please keep in mind that this article should not replace a careful reading of the Form ADV Part 2 Instructions.³ Further, because the Division's rules reference the "current Instructions" to Form ADV, advisers should be on alert for any revisions made to the Form or its Instructions.

1. INITIAL DELIVERY OF THE BROCHURE STATEMENT TO POTENTIAL OR NEW CLIENTS:

Old rule: Required the adviser to deliver the Brochure Statement to a client or prospective client: (a) not less than 48 hours prior to entering into any advisory contact; or (b) at the time of entering into an advisory contract, if the client had a right to terminate the contract without penalty within five business days after entering into the contract.

New rule: As set forth in the Instructions to the Form ADV Part 2, the new rule requires the adviser to give a Brochure Statement to each client,⁴ or potential client, before or at the time they enter into an advisory agreement. Evidence of providing such is required, and may be accomplished by including this obligation in the advisory contract.

¹See OHIO ADMIN. CODE 1301:6-3-15.1 (B)(6) and OHIO ADMIN. CODE 1301:6-3-15.1(G).

²This article does not address changes made to Division rules regarding the completion, filing, delivery, and updating of Form ADV Part 2A Appendix 1, wrap fee program brochures, or Form ADV Part 2B, brochure supplements.

³The current [Instructions and Glossary to Form ADV](#) expire on February 28,

2018; however, amendments may be made in the interim. Any amendments or updates made to Form ADV will be posted to the SEC's website at www.sec.gov.

⁴The term "client" is defined for purposes of Form ADV as "Any of your firm's investment advisory clients. This term includes clients from which your firm receives no compensation, such as family members of your supervised persons.

If your firm also provides other services (e.g., accounting services), this term does not include clients that are not investment advisory clients." See [SEC Form ADV, Glossary of Terms](#).

⁵The term "promptly" is defined as not later than 30 calendar days after learning of the facts and circumstances giving rise to the amendment or update. See [OHIO ADMIN. CODE 1301:6-3-01\(N\)](#).

2. UPDATING THE BROCHURE STATEMENT ON IARD:

Old rule: Required the adviser to use the IARD to promptly file with the Division updates and amendments to the Brochure Statement.

New rule: As set forth in [OAC 1301:6-3-15.1\(B\)\(6\)](#) and the Instructions to Form ADV Part 2A, the rule was amended as follows:

Interim Updates: Requires the adviser to use the IARD to promptly⁵ file with the Division updates and amendments to the Form ADV Parts 1 and 2, and more frequently if required by the current Instructions to the Form ADV.

As a matter of policy, the Division requires prompt interim updates only for items which are material to the adviser's business. For instance, the adviser is not required to update its Brochure Statement between annual updating amendments because of a change in the amount of client assets it manages or because its fee schedule has changed. What is "material" is not defined under the Ohio Securities Act and there is no bright line test. Rather, the Division, like the SEC, has described the standard for materiality as: based on the facts and circumstances, is there a substantial likelihood that a reasonable client or investor would consider the information to be important? A few examples of changes in the following information, which may rise to the level of being material depending on the facts and circumstances, are:

(Continued on page 6)

Brochure Rules

(Continued from page 5)

- Change of address/location or contact information;
- New ownership of the advisory business;
- Significant change in advisory services offered;
- New potential conflict of interest;
- An entirely new fee schedule;
- Changes in disciplinary history;
- Changes in custodian or broker;
- Changes in licensure status with the SEC or state(s).

Annual Updating Amendments: Requires the adviser to use the IARD to file an "Annual Updating Amendment" to the Form ADV Parts 1 and 2 on an annual basis, within 90 days of the end of the investment adviser's fiscal year. This annual update should be used to update all parts of the Form ADV, including non-material changes (e.g., changes in its assets under management, slight adjustments to the fee schedule). In Item 2 (Material Changes) of the Brochure Statement, the adviser must state clearly that it is discussing only material changes since the last annual update of its Brochure Statement, and must provide the date of the last annual update of its Brochure Statement. If there are no material changes since the adviser's last update, the adviser should state that there are no material changes, and provide the date of the last annual update. The adviser must maintain a copy of each update in their files, in accordance with the Division's record retention rules.

3. INTERIM AND ANNUAL DELIVERY OF YOUR UPDATED FIRM BROCHURE TO YOUR CLIENTS:

Old rule: Required the adviser to annually, without charge, deliver or

offer (in writing) to deliver to each of its clients a copy of its Brochure Statement. The adviser was not required to deliver or offer to deliver a copy of its Brochure Statement to clients receiving only impersonal investment advice requiring payment of less than two hundred dollars. If the client requested a copy of the Brochure Statement, the adviser had to mail or deliver the brochure statement within seven days of receiving the request.

New rule: As set forth in the Instructions to the Form ADV Part 2, the rule was amended as follows:

Interim Delivery: Requires the adviser to deliver an interim amended Brochure Statement to clients if the amendments include information in response to Item 9 of Part 2A (Disciplinary Information). An interim amendment can be in the form of a document describing the material facts relating to the amended disciplinary event.

As a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect their advisory relationship. As a result, between annual updating amendments, an adviser must disclose material changes to clients, even if those amendments do not relate to disciplinary information. See OAC 1301:6-3-15.1(G)(3).

The Division will expect the adviser to maintain evidence of any and all interim deliveries of Form ADV Part 2, in accordance with the record retention rules.

Annual Delivery: Requires the adviser, within 120 days of its fiscal year end, to either: (1) deliver an updated Brochure Statement to each client that includes or is ac-

companied by a summary of material changes (Item 2); or (2) deliver to each client a summary of material changes that includes an offer to provide a copy of the updated Brochure Statement and information on how a client may obtain the Brochure.

If an adviser does not have any material changes since its last annual updating amendment, it does not have to deliver a summary of material changes or a Brochure to its existing clients that year.

The Division will expect the adviser to maintain evidence of any and all annual deliveries of Form ADV Part 2, in accordance with the record retention rules.

4. PREPARING SEPARATE BROCHURE STATEMENTS WHEN THE ADVISER RENDERS DIFFERENT ADVISORY SERVICES TO DIFFERENT CLIENTS:

Old rule: If the adviser offers substantially different types of advisory services, the adviser may opt to prepare separate Brochure Statements so long as each client receives all information about the advisory services and fees applicable to them. Each Brochure Statement may omit information that does not apply to the advisory services and fees it describes. If the adviser prepares separate Brochure Statements, it must file each Brochure Statement and any amendments through the IARD.

New rule: No change.

Should you have any questions regarding the rule changes discussed in this article, please do not hesitate to contact the Division's licensing section.

LICENSING SPOTLIGHT

Kelly Igoe is Compliance Counsel for the Ohio Division of Securities licensing section. In this role, Kelly provides legal counsel and review over the pending licensing applications and the current disclosures for Investment Advisers, Broker Dealers, Investment Adviser Representatives, and Registered Representatives for Ohio, to ensure they meet the state's licensing requirements.

Her experience at the Division runs broad as she has acted as an Enforcement Attorney, Licensing Counsel, and the Director of Outreach and Community Education. Currently, Kelly is a member of the North American Securities Administrators Association (NASAA) Investor Education Project Group, focusing on education for investors in various life stages.

In addition to her time at the Division, Kelly worked as a registered representative in Institutional Sales for Lehman Brothers and in Legal and Regulatory Compliance for JP Morgan Chase. Kelly received her BA from Saint Mary's College and law degree from Capital University.

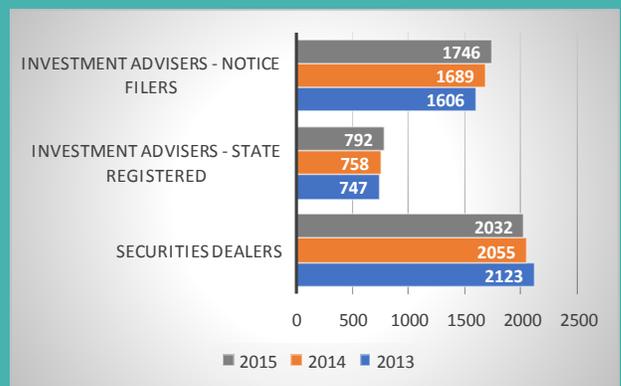
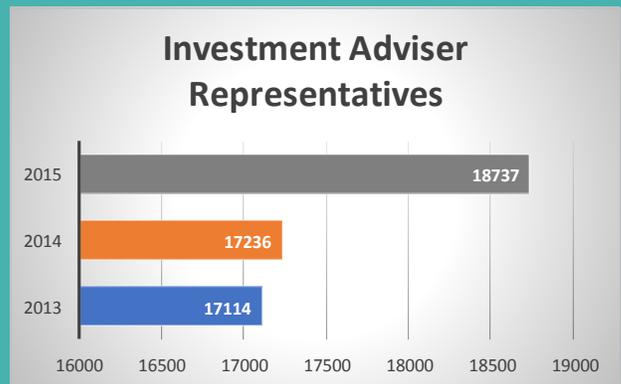
Q&A

Q: *Does Ohio allow for dual registration of salespeople with two FINRA licensed Broker Dealers? Can a salesperson also be licensed as an investment adviser representative?*

A: Effective August 24, 2015, Ohio amended its Administrative Code § 1301:6-3-16.1 to allow for salesperson licensure with two affiliated dealers. In the past, Ohio did not allow for dual licensure for salespeople under any circumstance. The Division recognized that the industry was calling for this allowance, as firm business models sometimes require representatives to be licensed with more than one affiliated dealer. Thus, the Division was able to make this change in our rules as we continue to work with our stakeholders to address changes in the industry while still ensuring investor protection measures are in place.

Ohio continues to allow salespeople to hold an Investment Adviser Representative (IAR) license with two nonaffiliated Investment Advisers (IA), as long as the dual registered IAR notifies each IA of the dual affiliation. (OAC 1301:6-3-16.1(E)).

LICENSES ISSUED 2013-2015



NASAA ANNOUNCES EXAM FEE INCREASE

The North American Securities Administrators Association ("NASAA") has announced that effective January 1, 2016, the enrollment fees for the Series 63, 65, and 66 examinations increased by \$10 each. Candidates enrolling for the Series 63, 65, or 66 on or after January 1, 2016, will be charged the following fees:

Examination	Enrollment Fee
Series 63	\$125
Series 65	\$165
Series 66	\$155



Department of Commerce
Division of Securities

Enforcement Section Update

ADMINISTRATIVE ACTIONS

ENFORCEMENT SECTION UPDATE

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The Division’s Enforcement Section is a criminal justice agency authorized to investigate and report on all complaints and alleged violations of the Ohio Securities Act and related rules.

The Enforcement Section attorneys represent the Division in prosecutions and other matters arising from such complaints and alleged violations.

OHIO DIVISION OF SECURITIES

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DIVISION ORDER NO. 15-012

THOMAS ROULSTON III

CRD No. 1038010

THOMAS ROULSTON III

INVESTMENT PARTNERS, INC.

CRD No. 118822

ROULSTON BUYSIDE RESEARCH, LLC

CLEVELAND, OHIO

On September 1, 2015, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Suspend or Revoke the Ohio Investment Adviser and Investment Adviser Representative Licenses of Thomas Roulston III Investment Partners, Inc. and Thomas Roulston III, and a Notice of Intent to Issue a Cease and Desist Order against Thomas Roulston III and his companies, Thomas Roulston III Investment Partners, Inc. and Roulston Buyside Research, LLC. The Order is based on allegations that the firm is insolvent. The Order further alleges that Roulston defrauded his clients by selling securities issued by Roulston Buyside Research, LLC without informing them that the funds would be funneled to Thomas Roulston III Investment Partners, Inc. to buttress his insolvent investment advisory business. An administrative hearing was requested in this case. The new continued date for hearing has not yet been set.

DIVISION ORDER NO. 15-018

CITIGROUP GLOBAL MARKETS, INC.

CRD No. 7059

NEW YORK, NEW YORK

On October 7, 2015, as part of a global settlement negotiated through a task force appointed by the North American Securities Administrators Association (NASAA), the Division issued Administrative Consent Order No. 15-020 against Citigroup Global Markets, Inc., (“CGMI”) a broker-dealer registered in Ohio with principal offices in New York, New York. The Order included findings that CGMI employed sales assistants to initiate securities transactions, provide market quotes, follow-ups, and perform other tasks for clients, without proper securities licensure in Ohio. The Division

further found that CGMI failed to establish an adequate system to monitor the registration status of sales assistants accepting client orders. As part of the Consent Order, CGMI agreed to terms of an undertaking to establish and maintain policies and procedures to insure that client orders will be processed only through sales assistants with appropriate state licensure.

DIVISION ORDER NO. 15-021

HORIZON ENERGY, LLC;

HARRISON OWENS

COLORADO SPRINGS, COLORADO

On October 14, 2015, the Division issued a Notice of Opportunity for Hearing and a Notice of Intent to Issue a Cease and Desist Order against Horizon Energy, LLC and Harrison Owens. The Order is based on allegations that Respondents engaged in fraud in the sale of securities issued by Fairfield Energy, Inc. by not disclosing that Owens was no longer affiliated with Fairfield Energy, Inc. and by not disclosing that the offering documents mailed to the potential investor were obtained from Fairfield Energy, Inc. without authorization.

DIVISION ORDER NO. 15-022

TAP MANAGEMENT, INC.;

TRIBBEY B JOINT VENTURE;

CODY DAVIS;

TANNER REYES

AUSTIN, TEXAS

On October 16, 2015, the Division issued a Notice of Opportunity for Hearing and a Notice of Intent to Issue a Cease and Desist Order against TAP Management, Inc., Tribbey B Joint Venture, Cody Davis, and Tanner Reyes. The Order is based on allegations that the Respondents cold-called an Ohio investor and solicited three investments totaling \$57,500 by misrepresenting the use of funds and by providing fraudulent and misleading projections without a reasonable basis in fact. The Respondents have requested an administrative hearing currently scheduled to begin February 3, 2016, with a continuance pending.

(Continued on page 10)

Criminal Cases

**RUSSELL L. BOWERMASTER
CASE NO. CR 2015 04 0578**

BUTLER COUNTY COURT OF COMMON PLEAS, OHIO

On October 22, 2015, following a criminal referral by the Ohio Department of Commerce Division of Securities and a plea and conviction, Russell L. Bowermaster was sentenced to one year of community control based on a reduced plea and ordered to pay a fine of \$1,000. Judge Spaeth considered the full repayment of the victims' investment in imposing the sentence. Bowermaster appeared for sentencing with \$125,000 for repayment to the victims. The conviction stemmed from the sale of securities by Bowermaster through his company, Biodontos, LLC, located in Dublin, Ohio. Four Ohio residents invested \$125,000 with Bowermaster and Biodontos, LLC in order to help develop technology related to the storage and use of stem cells. The investor funds were used for gambling at several casinos, credit card payments, and other personal expenses.

**THOMAS H. CANIFORD
CASE NO. 2015CR1243**

STARK COUNTY COURT OF COMMON PLEAS, OHIO

On September 23, 2015, following a criminal referral by the Ohio Department of Commerce Division of Securities in conjunction with the Canton Police Department and the Ohio Attorney General Bureau of Criminal Investigation, Thomas Caniford of North Canton, Ohio was indicted in the Stark County Court of Common Pleas on 135 criminal counts including securities fraud, theft from the elderly, misrepresentations in the sale of a security, selling unregistered securities, and publishing false investment statements to investors. Caniford owned and operated Caniford and Company Capital Management, Inc. and was a general partner in Fundcap Growth Portfolio Limited Partnership, both operating from the same office located in North Canton, Ohio. Caniford allegedly convinced his clients to invest in his hedge fund, Fundcap Growth Portfolio, by promising them that the hedge fund would provide a more stable portfolio which would offset market losses. Instead of investing their money, Caniford is alleged to have used the investor funds for personal use and to pay back previous investors. The indictment includes charges related to 34 victims. The trial is scheduled to begin April 25, 2016.

**FRANK N. KAUTZMANN
CASE NO. 15CR31465**

WARREN COUNTY COMMON PLEAS COURT, OHIO

On November 16, 2015, following a criminal referral by the Ohio Department of Commerce Division of Securities, Frank N. Kautzmann, formerly of Springboro,

Ohio, was indicted in the Warren County Common Pleas Court on one count of securities fraud, a felony of the third degree, one count of misrepresentations in the sale of a security, a felony of the third degree, and two counts of grand theft, both felonies of the fourth degree. If convicted on all charges, Kautzmann could face a sentence of up to nine years in prison. The indictment is based on allegations that Kautzmann, who refers to himself as Dr. Frank Kautzmann III, solicited and sold investments in the amount of \$30,000 in relation to a merger and formation of a new company, ANTS Software, Texas. It also alleges that Kautzmann misrepresented the investment and used investor funds for personal expenses. The next pre-trial conference is scheduled for February 16, 2016. A trial date has not been set.

BERNARD MINNEYFIELD

**CASE NO. 14 CR 006460 AND 15 CR 005844
FRANKLIN COUNTY COURT OF COMMON PLEAS,
OHIO**

On January 12, 2016, following a criminal referral by the Ohio Department of Commerce Division of Securities and a guilty plea to two counts of misrepresentations in the sale of a security, both third degree felonies, and one count of tampering with evidence, a fourth degree felony, Bernard Minneyfield was sentenced to five years of community control and ordered to pay \$98,500 in restitution to victims. Minneyfield solicited investments from investors he met through a local church in M&M Capital Partners, LLC, located in Gahanna, by claiming that he would be able to provide large returns on their investments through day trading. Instead of using their investment funds for day trading, Minneyfield converted the money for his personal use.

STEVEN P. MOORE

**CASE NO. 14 CR I 10 0455
DELAWARE COUNTY COURT OF COMMON PLEAS,
OHIO**

On October 13, 2015, following a criminal referral by the Ohio Department of Commerce Division of Securities, Steven P. Moore of New York City, a former Columbus, Ohio hedge fund manager for Moore & Company Capital Management, LLC, pleaded guilty to one count of securities fraud. Moore was sentenced to three years community control and 200 hours of community service by Judge Everett Krueger in the Delaware County Court of Common Pleas. Additionally, Moore was ordered to pay restitution in the amount of \$25,000 to his elderly victim within 60 days and a fine of \$5,000. Moore paid restitution in full on December 14, 2015.

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Criminal Cases

(Continued from page 9)

Moore also consented to an administrative order issued by the Division which includes a lifetime ban on selling securities in or from Ohio. Moore sold limited partnership interests in the Opportunity Fund II, a hedge fund for which Moore & Company Capital Management, LLC was the general partner. The investment in the hedge fund was supposed to be used in the financial markets. The funds were instead used to pay back a previous investor and for purposes other than those presented to the elderly investor.

**GEOFFREY W. NEHRENZ
CASE NO. 1:15-CR-00017-CAB
U.S. DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO**

On January 19, 2016, following an indictment filed in the U.S. District Court for the Northern District of Ohio, Geoffrey W. Nehrenz pleaded guilty to one count of wire fraud, two counts of money laundering, and agreed to pay restitution to the victims of his fraud. On June 13, 2013, prior to the federal indictment, the Division obtained a preliminary and permanent injunction against Nehrenz and his companies, Keystone Capital Management, LLC and Keystone Active Trader, LLC, all of Uniontown, Ohio, enjoining them from the sale of securities in or from Ohio. The Court appointed James Kandel of Canton to act as a receiver for the assets and issued an Order of Restitution requiring Nehrenz and his related businesses to make full restitution to any and all purchasers or investors. The State's complaint alleged that Nehrenz, through Keystone Capital Management, LLC, fraudulently solicited individuals to invest in Keystone Active Trader, LLC, a hedge fund which operated as a Ponzi scheme. Nineteen investors from Northeast Ohio and Pennsylvania invested nearly \$7.9 million between May 2009 and September 2012. The sentencing hearing is scheduled for June 7, 2016.

(Continued from page 8)

**DIVISION ORDER NO. 15-023
TIMOTHY J. BRADEN;
BRADEN ENTERPRISES, LLC
ORIENT, OHIO**

On December 30, 2015, the Division issued a Consent Cease and Desist Order against Timothy J. Braden and Braden Enterprises, LLC. The Order is based on findings that Respondents sold unregistered securities totaling \$175,000 to four Ohio residents by making misrepresentations that their investment would be used to purchase additional Verizon Wireless stores and by further misrepresenting that he owned a Verizon Wireless store in Fairborn, Ohio.

**DIVISION ORDER NO. 16-001
PRIMESOLUTIONS SECURITIES, INC.
CRD 46017
CLEVELAND, OHIO**

On January 6, 2016, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Suspend or Revoke the Ohio Investment Adviser and Broker Dealer Licenses of Primesolutions Securities, Inc. The Order is based on allegations that the firm conducts business in violation of rules and regulations prescribed for the protection of investors and clients. The Order further alleges that Primesolutions Securities, Inc. is not of good business repute based on FINRA's revocation of their broker-dealer license for failure to pay \$32,948.71 in fee sanctions, and two arbitration awards totaling \$203,997.72 in compensatory damages, costs and fees.

Administrative Actions



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WELCOME

DAVID BIEMEL

David Biemel is an Enforcement Attorney within the Ohio Division of Securities, which he joined in February 2015. In this role, he investigates alleged violations of the Ohio Securities Act, gathers evidence, and, when necessary, assists local prosecutors. Prior to joining the Division, David worked as a lobbyist primarily focusing on tax and environmental matters representing Ohio small businesses before a variety of state and federal agencies and legislatures. David received his law degree from Case Western Reserve University in 2010 and his undergraduate degree from The Ohio State University in 2005.

ANALIESE HINCHCLIFFE

Analiese Hinchcliffe joined the Ohio Division of Securities in October 2015. As an enforcement attorney, she investigates alleged violations of the Ohio securities laws. Prior to her employment at the Division, she assisted in Baker Hostetler's representation of the SIPC trustee in litigation related to Bernard L. Madoff Investment Securities LLC. Analiese graduated *magna cum laude* from the Cleveland-Marshall College of Law in 2009. While in law school, she interned with the Enforcement Division of the U.S. Securities and Exchange Commission in Atlanta and served as Business Editor of the Journal of Law and Health. She graduated from Loyola University-Chicago with a Bachelors of Business Administration in Accounting and Finance in 2006.

STEVE DEFRANK

Steve Defrank has held the position of Enforcement Attorney in the Division of Securities since August 2015. His duties include investigating and enforcing the Ohio Securities Act. Steve began his legal career at a law firm in Cleveland that focused on insurance defense work. He then held the position of Assistant Attorney General in several different sections of the Ohio Attorney General's Office. Prior to joining the Division of Securities, Steve was General Counsel for the Ohio Division of Financial Institutions. Steve majored in Economics at the University of Florida and graduated with a Bachelor of Science degree in Business Administration. Steve earned his law degree from the Cleveland-Marshall College of Law.

ENFORCEMENT ATTORNEYS

THE OHIO SECURITIES BULLETIN

is a quarterly publication of the
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DIVISION OF SECURITIES.**

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-in-Chief

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Kyle.Evans@com.state.oh.us

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OHIO DEPARTMENT OF COMMERCE SUPPORTS OHIO VETERANS IN WORKFORCE INITIATIVE

The Ohio Department of Commerce is committed to honoring the service of the men and women of the U.S. Armed Forces by assisting veterans.

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This page contains links and resources for veterans from across all of the divisions of Commerce.