

Securities Bulletin

Ohio Department of Commerce, Division of Securities

The Relationship Between Investment Advisers and Solicitors in Ohio

By *Kelly Igoe, Licensing Compliance Counsel*

If your investment adviser (IA) firm or investment adviser representatives (IAR) are working with a solicitor, make sure you know the applicable laws and rules. The role of a solicitor varies greatly, as does the treatment of solicitors among different states. One consistent aspect is that there is work to be accomplished on both sides of the agreement before engaging the services of a solicitor; the IA and IAR as the solicitor receiving compensation, and your IA firm entering into an agreement with a solicitor to pay referral compensation.

The Division of Securities often fields inquiries from Ohio and federally licensed IAs asking if there is a requirement for a solicitor working in Ohio to be licensed as an IAR. The easy answer is that there is no requirement for a solicitor to be a licensed IAR in Ohio. However, the lack of licensure requirement comes with a number of tasks that must be considered or accomplished before and after the IA engages in an agreement to compensate a solicitor for referrals.

Ohio defines a solicitor as “any person who, directly or indirectly solicits any client for, or refers any client to, an investment adviser or investment adviser representative.” See: [OAC 1301:6-3-44\(C\)\(4\)\(c\)](#).¹ The solicitor shall not provide any investment advice as described in the Ohio Securities Act.

This article will cover the before, during and after requirements for IA firms to consider when entering into a solicitor arrangement, the issue of compensation of a solicitor and disqualifying actions, and other items that should be considered.

Before The Written Solicitor Disclosure Document Is Drafted

Initially, the IA who is considering employing the services of a solicitor should consult the assistance of a securities attorney. An IA should be very careful that the duties performed by the solicitor do not rise to the level of acting within the guidelines of an IA or IAR activity.²

The IA is responsible for ensuring that the person or persons being considered for the role of a solicitor meet the background requirements set forth within the Ohio Administrative Code. (OAC 1301:6-3-44(C)(1)(c)). There are a number of disqualifying situations that may keep the solicitor from being able to work with an IA.

The Division’s rule falls in line with the Securities Exchange Commission’s (SEC) prohibition of working with a solicitor if the solicitor has a felony or a misdemeanor conviction involving conduct described within sections 203(e)(2)(A) through 203(e)(2)(D) of the Investment Advisers Act of 1940. Additionally, a potential solicitor cannot work with an IA if the person has been barred by order, either temporarily or permanently, from acting as a securities licensee.³ Also, the Ohio rule was recently amended to prohibit a person

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¹ For federally-covered advisers, the Investment Advisers Act of 1940 Rule 206(4)-3 generally prohibits an SEC registered IA from paying fees to a third party for referring clients to the adviser, unless the third party (solicitor) complies with certain conditions. See: [17 CFR 275.206\(4\)-3](#).

² See: [The Ohio Investment Adviser and Investment Adviser Representative Handbook, at page 32](#).

³ See: OAC 1301:6-3-44(C)(1)(iv) and 17 CFR 203(e)(4).

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from acting as a solicitor if they have been the subject of a final order issued by a state securities regulatory authority.

A good rule to remember when considering employing the expertise of a solicitor, or acting as a solicitor, is to do the work before, during and after the agreement is entered, the solicitation is made, and the cash payment accepted. The SEC's Rule 206(4) – 3, is concerned with the inherent conflicts of interest that can be presented within an arrangement of an IA compensating another person for recommending clients to the IA.⁴ The SEC, when proposing the rules for solicitors, prohibited the IA from employing indirectly (as a solicitor) someone whom it might not be able to hire as an employee, and further the SEC and the Division do not allow for referral fees to be paid to someone who is the subject of a commission order barring or suspending the rights of such person to be associated with an IA or who has engaged in conduct.⁵

The SEC staff, through No Action letters, has allowed for exceptions to the disqualifying rule in certain circumstances. One such example is JPMorgan Chase & Co., SEC No-Action Letter dated May 20, 2015.⁶ In that matter, JPMorgan Chase (“JPMC”) sought affirmation that no enforcement action would be taken against it for continuing to act as a solicitor for advisory clients. The facts that brought this question before the SEC were that JPMC had entered into a guilty plea agreement with the U.S. Department of Justice for various securities violations.⁷ Absent an exception, the guilty plea would have prohibited JPMC from acting as a solicitor in accordance with section 203(e)(2)(A)-(D) of the Advisers Act.

The SEC afforded JPMC an exception from the prohibition from acting as a solicitor, provided:

- (1) JPMC complied with all terms of Rule 206(4)-3;
- (2) the Plea Agreement did not bar or suspend JPMC or any person currently associated with JPMC from acting in any capacity;
- (3) JPMC would comply with the terms of the Plea Agreement; and
- (4) for a period of 10 years from entry of the guilty plea, JPMC would disclose the plea agreement and guilty plea to all clients being referred.

The SEC has been active in supplying more responses to firms on a case-by-case basis when a potential solicitor is facing disqualification.⁸ In 2003, the SEC stated that it would no longer respond to requests for no-action relief under Section 206(4)-3 with respect to any cash solicitation arrangement to a third party, unless the requests “present novel or unusual issues.”⁹

Interactions with the Client

There are situations that limit the use of a solicitor by an Ohio licensed IA. These are broadly found in OAC 1301:6-3-44(C) (“Rule 44”) in its entirety. Rule 44(C) provides that it is a fraudulent, deceptive and manipulative act for IAs and IARs to enter a solicitation practice without following the rules or failing to provide full disclosure to all clients and prospective clients.

⁴ SEC, Release No. 615, Requirements Governing Payments of Cash Referral Fees by Investment Advisers (February 2, 1978).

⁵ SEC, Release No. 615, Requirements Governing Payments of Cash Referral Fees by Investment Advisers (February 2, 1978).

⁶ JPMorgan Chase & Co., SEC No-Action Letter, IM Ref. No. 20155211238, File No. 801-210011 (May 20, 2015).

⁷ See: *United States of America v. JPMorgan Chase & Co.*, Case No. 3:15-cr-79 (SRU) (D. Conn. May 20, 2015).

⁸ See: *Fahnestock & Company Inc.*, SEC No Action Letter, IM Ref. No. 20032201016, File No. 008-04077 (April 21, 2003).

⁹ See: *Dougherty & Company, LLC, Mr. Thomas Abood*, SEC No-Action Letter, dated July 3, 2003.

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In all advisory relationships, an investment advisory contract entered between the IA and client or prospective client is required and sets forth the terms of the advisory relationship. However, when the IA wants to add the services of a solicitor, an additional written disclosure document is required to be shared with the client.¹⁰ The solicitor and IA in turn must execute a written solicitor's agreement and they must perform a few specific tasks:

1. The written solicitor's agreement between the IA and the solicitor must include the list of items in Rule 44(C)(4)(d), namely:
 - the nature of the business relationship, including affiliations;
 - a statement that the solicitor will be compensated, who will pay, the terms of the payment, and any amount that the client will be charged, if any, for the solicitor's services if this amount is in addition to the IA's compensation already disclosed in the agreement between the client and IA; and
 - an agreement by the solicitor to undertake or perform their duties in a manner consistent with the IA's instructions and in accordance with Ohio law.
2. The solicitor is then required to provide to the client with:
 - the IA's current brochure document; and
 - the solicitor's written disclosure agreement
3. The IA is required to obtain a signed and dated acknowledgment that the client received the IA's brochure and the solicitor's written disclosure document.

The IA's Ongoing Duties Following the Referral

In furtherance of continued compliance, the Ohio-licensed IA who entered into the solicitor arrangement has an ongoing duty of good faith to ascertain if the solicitor has followed the contractual parameters. In addition, the IA must have a reasonable belief that the terms have been carried out and the firm and the solicitor comply. The IA must also maintain accurate books and records relating to the solicitor arrangement and make all necessary Form ADV disclosures.¹¹ Finally, IAs are reminded of their statutory obligation to maintain all client agreements, including solicitor agreements and client acknowledgments for a period of five (5) years.¹²

The Division suggests that an IA's responsibilities before, during and after engagement of a solicitor be a part of the firm's comprehensive compliance manual, which is regularly updated.

What is Allowable Compensation to a Solicitor?

The compensation to solicitors contemplated in the Investment Advisers Act of 1940 and the Ohio Administrative Code is "cash payments." Over the years, the Division's examiners have seen different types of payments made for referrals, including gift cards or trailing fees. The Division has found that compensation of these types are permissible so long as the solicitor does not act outside the scope of the solicitor definition, and all appropriate client safeguards are in place.

¹⁰ See: OAC 1301:6-3-44(C)(1)(d).

¹¹ OAC 1301:6-3-15.1

¹² OAC 1301:6-3-44(C)(5).

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Specifically, when an adviser uses a solicitor, the Division and the SEC are most interested in full disclosure of all aspects of the relationship to the potential client. The method of compensation must be fully disclosed to the client within the solicitor's written disclosure statement and the IA brochure.

Although the Division does not craft the language in an IA's brochure, it is language that our examination staff reviews for accuracy and inclusion of all required elements. By way of an example, a brochure may include the following disclosure for referrals and other compensation:

We may directly compensate non-employee (outside) individuals, and/or entities (Solicitors) for client referrals. In order to receive a cash referral fee from our firm, Solicitors must comply with the requirements of the jurisdictions in which they operate. If you were referred to our firm by a Solicitor, you should have received a copy of this Disclosure Brochure along with the Solicitor's disclosure statement at the time of the referral. If you become a client, the Solicitor that referred you to our firm will receive a percentage of the advisory fee you pay our firm for as long as you are a client with our firm, or until such time as our agreement with the Solicitor expires. You will not pay additional fees because of this referral arrangement. Referral fees paid to a Solicitor are contingent upon your entering into an advisory agreement with our firm. Therefore, a Solicitor has a financial incentive to recommend our firm to you for advisory services. This creates a conflict of interest; however, you are not obligated to retain our firm for advisory services. Comparable services and/or lower fees may be available through other firms. Solicitors that refer business to more than one investment adviser may have a financial incentive to recommend advisers with more favorable compensation arrangements. You should request that our Solicitors disclose to you whether multiple referral relationships exist and whether comparable services may be available from other advisers for lower fees and/or where the Solicitor's compensation is less favorable.

Attorneys and Referral Fees

The Ohio Supreme Court has made this issue easy for Ohio lawyers, by the Commissioners' finding that it is ethically improper for lawyers to accept a fee from a financial services group for referring clients in need of financial services. [See: Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio](#), Opinion 2000-1, issued February 11, 2000. However, the rule does not prohibit the mere referral of a client to a financial professional (i.e., without the fee). One item to keep in mind when considering a referral is that lawyers have a fiduciary responsibility to their clients, and a referral to a financial services agency that was not in the client's best interest would be a potential violation of that fiduciary duty.

Although this scenario may seem elementary, because the attorney is prohibited from accepting referral fees from a financial services entity, the IA is not allowed to pay the attorney secretly.¹³

Accountants Acting as Solicitors

Like attorneys, accountants have their own ethical standards to follow, and referral fees or commissions are not allowed for certain client relations, but allowable in other instances. In some circumstances, the rule does allow a referral fee paid to accountants licensed in Ohio if the payment is fully disclosed to the client. Before entering into a solicitor's agreement with an accountant, the accountant should research the matter with the Ohio Accountancy Board.¹⁴

Cautionary Conclusion

An IA or an IAR who is found to not be in compliance with all relevant rules for solicitor cash payments, written in the Ohio Securities Act, may be subject to sanctions from the Division. All advisers should discuss these issues with a securities attorney and contact the Division if they have questions in advance of employing a solicitor or acting as a solicitor to ensure correct compliance.

¹³ See: [SEC Press Release 2017-3 \(Jan. 9, 2017\)](#) regarding non-disclosure of referral fees to an attorney.

¹⁴ See: [Accountancy Fees \(OAC 4701-11-04\)](#).

Record crowd attends the 2017 Ohio Securities Conference

A record crowd of 165 people attended this year's Ohio Securities Conference, held October 27 at the Westin Hotel in downtown Columbus. Attendees represented the Ohio securities bar, broker-dealer and investment adviser firms, securities compliance professionals, and other regulatory and law enforcement agents.

"We had an excellent mix of experts speaking at this year's conference, many who work in the securities industry and others who focus on internet security for their organizations," said Ohio Securities Commissioner Andrea Seidt. "Several important topics were covered including cybersecurity and risk-management tools, fighting internet fraud, FINRA guidelines for using social media, and a debate about the regulation versus deregulation of internet offerings."



Co-sponsored by the Division of Securities and the University of Toledo College of Law, the annual conference is the only continuing legal education program dedicated exclusively to Ohio securities law and practice.

Planning for the 2018 conference is already underway, so look for an announcement in a future edition of The Ohio Securities Bulletin for the date and conference details.

Division Updates from the Securities Conference

Representatives from the Enforcement, Licensing and Corporate Finance sections held separate Advisory Group sessions and reported on activities from the previous fiscal year. Here are the minutes from each section:

Enforcement

The Enforcement Advisory Group meeting was attended by 55 individuals from industry, private practice and government.

Members of the division's Enforcement Section provided an update on the criminal and administrative cases initiated and resolved during the previous year. There was a discussion about the types of products and schemes the division encountered frequently in the prior year, including internet fraud, Ponzi schemes, affinity fraud, unregistered/unlicensed sales activity, and exchange traded funds, non-traded REITs and complex products, as well as a discussion of new and pending legislation.

Licensing

Approximately 24 participants attended the meeting. During the meeting, Licensing Chief Anne Followell provided an update on Licensing section staff members as well as fiscal year-end licensee and examination statistics. She also addressed examination initiatives conducted in 2017 and Division Orders involving licensee non-compliance.

Followell then discussed the changes to Form ADV Part 1A, effective October 1, 2017. See this issue's Quarterly Question on page 7.

The next topic addressed at the meeting was FINRA's Regulatory Notice 17-30. Important details impacting broker-dealers and their licensed salespersons were discussed, including:

- **FINRA Qualification Exam Restructuring (SEC approved 10/5/17), creating a two-part examination structure:**

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1) the Securities Industry Examination (SIE) testing fundamental securities-related knowledge (basic products, structure & function of industry, regulatory agencies, and prohibited practices); plus

2) revised Representative Level Qualification exams, testing day-to-day activities, responsibilities, and job junctions.

- **Changes to the Financial Services Affiliate Waiver Program and expansion of Permissive Registrations.**
- **Creation of new Principal Registration Categories.**
- **New qualification requirements for Research Analyst, Research Principal & Supervisory Analyst registrations.**

Attendees next discussed recent legislation introduced or adopted in Ohio regarding senior exploitation (e.g., Ohio Am. Sub. HB 49 and Ohio SB 158). Followell discussed changes to the Adult Protective Services laws that were included in the state's Biennium Budget Bill (Ohio Am. Sub. HB 49). This legislation expanded the list of mandatory reporters – where there is “reasonable cause to believe” that an adult is being abused, neglected, or exploited, to include **“an investment adviser, as defined in section 1707.01 of the Revised Code;” and “a financial planner accredited by a national accreditation agency”** among other professionals.

The changes to Ohio law take effect in September 2018, and the division will provide important updates to its licensees throughout the coming year. Attendees then discussed aspects of Ohio SB 158, which remains pending.

The meeting then shifted to a reminder about upcoming 2018 renewal filing and fee deadlines. Followell then opened the meeting for new business, and attendees asked questions. At the conclusion of the hour, the meeting was adjourned so attendees could return to the conference. Advisory committee materials are available on the [Division's Conference webpage](#).

Corporation Finance

The division update focused on small and intrastate offering developments. Rule 506 of Regulation D is the most common federal provision of reliance by small issuers with thousands of filings per year as compared to the handful of filings for Rules 504 or 505, federal crowdfunding and Regulation A. The division noted the developments in less common Regulation D offerings. Attendees were informed of the change to Rule 504, which increased the offering amount from \$1 million to \$5 million and excludes issuers with bad-actor disqualifications. Rule 505 was deleted from Regulation D and attendees were informed that the Form 3-W would no longer be accepted as the companion exemption at the federal level is not available. The division hopes to propose changes to the Ohio Securities Act to remove this outdated exemption under R.C. section 1707.03(W). Offerings solely to Ohio residents may find assistance in changes to Rule 147 and new Rule 147A. New Rule 147A will measure solely where purchasers reside and will coordinate with section 28 of the Securities Act of 1933. Offers that extend beyond Ohio's boundaries would not be able to rely on the intrastate offering exemption under section 3(a)(11) and Rule 147, but may now look to Rule 147A for compliance if all purchasers are residents of Ohio. Both Rules 147 and 147A require the issuer to be a resident and doing business in the state. The “doing business” within Ohio is satisfied if the issuer meets only one characteristics in Ohio: 80 percent revenues, 80 percent assets, 80 percent of net proceeds, or a majority of the employees are based in Ohio.

The division commented that federal crowdfunding saw an increase in the number of filings with the SEC in 2017. However, the division noted that of the hundreds of Form C filers, only 56 issuers had filed the annual report as of September 27, 2017. Approximately 50 of those issuers reported net losses and many are insolvent with liabilities exceeding assets. Many issuers are offering a convertible note. The SEC issued investor cautionary guidance on this type of security. Enforcement actions in the crowdfunding space included division action on an issuer and a FINRA revocation of a portal.

Attorney Thomas Geyer provided an update on Ohio crowdfunding developments. He specifically noted the pending legislation. He mentioned that issuers should be very careful before proceeding down this unchartered method of fundraising in securities.

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Donation-based fundraising does not have the securities law implications. A comment was offered that in some circumstances, where investors may be customers of the entity, crowdfunding could have some utility. Attendees were cautioned about triggering '34 Exchange Act reporting requirements due to the numbers of investors and the size of the offering. The likelihood of an immediate impact will not be possible, as the offering must be through an Ohio licensed funding portal. Licensed funding portals currently only exist at the federal level. Finally, it was noted that the legislation was still in the works and that division rulemaking will be required if it becomes final.

A to Z with L & E

Quarterly Question

I've heard there were changes to Form ADV this past fall. Will I have to do anything different when I file my Annual Updating Amendment due March 31, 2018?

Yes. The Form ADV Part 1A was changed, effective October 1, to collect data either in response to new questions or to questions presented in a different format. All firms are required to fill out the new Form ADV questions when they go into the IARD system to file their Annual Updating Amendment.

Some of the changes to Form ADV Part 1A include:

- Additional reporting requirement regarding an adviser's institutional and retail **Separately Managed Account (SMA)** clients; Schedule D revised; Level of detail required to be reported & frequency depends on Regulatory Assets Under Management (RAUM)
- **Social Media Disclosures** (e.g., Twitter, Facebook, LinkedIn) where the adviser controls the content
- Additional details about the adviser's 25 largest branch offices
- **Outsourced Chief Compliance Officers (CCOs)** – details about third-party compensation to the CCO
- **Wrap Fee Programs** – total RAUM attributable to adviser acting as sponsor to wrap fee program
- **Compensation for Client Referrals** – A two-part question now asks for employee client referrals vs. non-employee client referrals
- **Umbrella Registrations** – allows for the filing of one Form ADV for multiple private fund adviser entities operating a “single advisory business”

A red-lined version of the Form ADV, illustrating most of the Form ADV Part 1A changes is available on the SEC's website at <https://www.sec.gov/rules/final/2016/ia-4509-form-adv-summary-of-changes.pdf>. Filers should be aware that responding to the new questions or providing responses in a different format will take some time.

Don't put off reviewing these Form amendments and give yourself plenty of time before March 31 to complete the entire filing online.

The Division's Licensing and Examination Section (L & E) provides timely and important information covering a wide-range of topics from "A to Z" that affects licensees.

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Staff Announcements



Welcome Keisha Trott

Keisha Trott joined the division's Licensing section in early December as our new Administrative Professional. She is responsible for providing secretarial and administrative support for the licensing chief, legal counsel, program administrators and field examiners. Before joining Securities, Keisha worked with the Division of Real Estate & Professional Licensing for two years, providing customer service and operational help to salespeople, brokers and companies. She earned her undergraduate degree from The Ohio State University.

Two Field Examiners Earn CFE Designation

David Melito and Donald Taylor Jr. recently earned their Certified Fraud Examiner (CFE) designation from the Association of Certified Fraud Examiners. In addition to the many hours they spent studying for the exam, they also attended a week-long CFE exam prep course in New York City. David has been with the division since 1987, and Don joined the team in 2010.

To become a CFE, a person must pass a rigorous test on the four major disciplines that comprise the fraud examination body of knowledge: Fraud Prevention and Deterrence, Financial Transactions and Fraud Schemes, Investigation, and Law.

The Certified Fraud Examiner credential denotes proven expertise in fraud prevention, detection and deterrence. CFEs are trained to identify the warning signs and red flags that indicate evidence of fraud and fraud risk, as well as uncover fraud and implement processes to prevent fraud from occurring in the first place.

Division News

Outreach and Education Update

Our outreach efforts reached thousands of Ohioans again this year through attending events such as the Ohio State Fair, exhibiting at many events and conferences and presenting to area high schools and other organizations. What follows are a few examples of events we attended since the last issue of this newsletter:



Anti-Fraud Forum Focuses on Protecting Seniors

Representatives from the division helped educate seniors from the Springfield area in October during the Anti-Fraud and Senior Exploitation Forum, sponsored by the Ohio Attorney General's Elder Abuse Commission. The event provided an opportunity for organizations to connect with seniors, from conducting health checks to educating them on programs to enhance their lives and protect them from abuse. We promoted our efforts to keep seniors protected from fraud and scams that specifically target them. Approximately 200 people attended the event.

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Connecting with Law Enforcement

We participated in the annual Ohio Law Enforcement Conference Oct. 11-12. The event, sponsored by the Ohio Attorney General’s Office, drew approximately 800 officials to Columbus for several days of training and educational programs. We promoted our efforts to combat financial fraud, with a specific focus on how we work with law enforcement to investigate potential violations of the Ohio Securities Act.

Just the FAX

We have a new fax number: 614-728-2846. This will be our only fax number, so be sure to update your systems to the new number.

Follow Us on Twitter



We launched our own Twitter page this past summer, so please follow us @OHSecuritesDiv. We’ll post news and information about the division, as well as tips to help Ohioans become more savvy investors and avoid getting scammed.

Better Business Bureau Staff Trained on Licensing Rules

Anne Followell, chief licensing attorney, conducted several training sessions for the staff at Better Business Bureau (BBB) affiliates from central Ohio, Cincinnati and Cleveland. The BBB staff manage both consumer inquiries seeking information about financial services-related individuals and businesses, as well as industry professionals seeking accreditation from the bureaus. It was important to train the staff on what licensing rules apply in Ohio and federally, so that they could ask the right questions of the professionals and provide the most current information to consumers.



Central Ohio Boomers Learn How to Avoid Scams

We participated in the Better Business Bureau’s “No Scam Zone” Oct. 14-15 as part of the first-ever Central Ohio Boomers+ Life Expo. We joined representatives from the BBB, the Columbus Police Economic Crime Unit, the Federal Trade Commission, the Franklin County Guardianship Service Board, and the Ohio Attorney General’s Office. A one-hour panel discussion was held with our partners providing information about how the public can protect themselves from all types of fraud. An estimated 1,500 people attended the Expo.



Advocates for Seniors Attend o4a Conference

The Ohio Association of Area Agencies on Aging (o4a) is a statewide network of non-profit agencies that provide services for the elderly, as well as advocate on behalf of older Ohioans. Because we know that seniors tend to be regular targets for investment fraud, we participate each year to ensure we connect with those who advocate for senior protection. Over 500 professionals, advocates and volunteers representing organizations in the Ohio aging network attended this annual conference in November.

Industry News

Waiver Continues for IARD System Fee for Investment Adviser Firms; Modest Increases Set for Exam Enrollment and Form D Filing Fees

In November, the North American Securities Administrators Association (NASAA) announced the continued waiver of Investment Adviser Registration Depository (IARD) system fees for state-registered investment adviser firms, and modest increases to the enrollment fees of the NASAA Series 63, 65 and 66 exams, and the EFD system fee for Form D, Rule 506. NASAA also announced the continuation of substantially reduced initial set-up and annual system fees paid by investment adviser representatives (IARs).

For 2018, the IARD system fees for state-registered investment adviser firms will be waived and the initial IARD set-up and renewal fee will continue to be \$10 for investment adviser representatives, an amount reduced significantly from the \$45 charged when the IARD system became operational in 2001.

Effective January 1, 2018, the enrollment fees for the NASAA Series 63, 65 and 66 examinations will increase by \$10. Candidates enrolling for the Series 63, 65 or 66 on or after January 1, 2018, will be charged the following: Series 63 = \$135, Series 65 = \$175, and Series 66 = \$165. The last exam fee increase was in 2016.

Also effective January 1, 2018, the one-time system-use fee for each Form D Rule 506 offering making its filings through NASAA's Electronic Filing Depository (EFD), will increase by \$5 to \$155. The one-time system fee covers initial, amendment and renewal filings made through EFD. The increase is the first since the online filing system launched in December 2014.

In addition to funding increased system administration, maintenance and oversight costs, the revenue generated both from examination and EFD fees helps support NASAA's continuing efforts to expand and enhance the training and education of its membership.

Federal Elder Abuse Prevention and Prosecution Act Signed into Law

On Oct. 18, President Trump signed S. 178, the [Elder Abuse Prevention and Prosecution Act](#) into law, which cracks down on elder abuse and fraud, specifically the use of telemarketing and email fraud designed to induce investment or financial profit.

The bill amends the federal criminal code to expand prohibited telemarketing fraud to include "telemarketing or email marketing" fraud. It expands the definition of telemarketing or email marketing to include measures to induce investment for financial profit, participation in a business opportunity or commitment to a loan.

The new law mandates certain requirements for the Department of Justice to investigate and prosecute elder abuse crimes. It also adds health care fraud to the list of fraud offenses subject to enhanced penalties. If convicted of telemarketing or email marketing fraud that targets or victimizes a person over age 55, the defendant is subject to an enhanced criminal penalty and mandatory forfeiture.



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SEC Issues Report on FY2017 Enforcement Actions and 2018 Priorities

In its ongoing efforts to protect Main Street investors, the Securities and Exchange Commission's Enforcement Division issued a report on Nov. 15 highlighting its priorities for the coming year, as well as a review of enforcement actions that took place during fiscal year 2017.

In the report, Co-Directors Stephanie Avakian and Steven Peikin stated their overall enforcement approach: "Vigorous enforcement of the federal securities laws is critical to combat wrongdoing, compensate harmed investors, and maintain confidence in the integrity and fairness of our markets."

They also stated five core principles that will guide their enforcement decision-making:

- *focus on the Main Street investor*
- *focus on individual accountability*
- *keep pace with technological change*
- *impose sanctions that most effectively further enforcement goals, and*
- *constantly assess the allocation of resources.*

According to the report, fiscal year 2017 was a successful and impactful year for the Enforcement Division.

The Commission brought a diverse mix of 754 enforcement actions, including 446 standalone actions and returned a record \$1.07 billion to harmed investors. A significant number of the Commission's 446 standalone cases concerned investment advisory issues, securities offerings, and issuer reporting/accounting and auditing, each comprising approximately 20 percent of the overall number of standalone actions.

The Commission also continued to bring actions relating to market manipulation, insider trading, and broker-dealers, with each comprising approximately 10 percent of the overall number of standalone actions, as well as other areas. It obtained judgments and orders totaling more than \$3.789 billion in disgorgement and penalties.

You can view the entire report at: <https://www.sec.gov/files/enforcement-annual-report-2017.pdf>

Enforcement Section Update

Administrative Hearings

Craig Alan Sutherland, CRD 2001873

Division Notice Order No. 17-018
February 6-9, 2018 (cont.)

Jeffrey Allan Mohlman, CRD 4431845 (inactive)

Division Notice Order No. 17-024
January 29-30, 2018

Thomas P. Gilmartin, Jr. and Capital Finance Group, LLC

Division Notice Order No. 16-021
Pending Final Order

Administrative Appeals

TAP Management, Inc. et al.

Case No. 17 CV 006942
Appeal from Division Final Order No. 17-022
Filed August 2, 2017

Criminal Trials

State v. Jeffrey W. Johnson

Case No. 17 CR 020
Holmes County Court of Common Pleas
Outstanding Bench Warrant
Trial Date TBD

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State v. Philip Curtis; Lovell Jones

Case No. 16 CR 004770/16 CR 004772
Franklin County Court of Common Pleas
Trial Date TBD

State v. Catherine Schaper (North Shore Energy, LLC et al.)

Case No. CR2015-03-0495
Butler County Court of Common Pleas
February 13, 2018 (sentencing)

State v. Keith Elsesser

Case No. 2017 CR 04 0102
Tuscarawas County Court of Common Pleas
January 29, 2018 (trial)

State v. Jeffrey B. Hall

Case No. 17 CR 004124
Franklin County Court of Common Pleas
December 14, 2017 (pre-trial)

State v. Ronald Lee Jennings

Case No. CR2017-12-1975
Butler County Court of Common Pleas
January 8, 2018 (arraignment)

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.

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For further information on these cases, visit:

http://com.ohio.gov/documents/secu_Bulletin2017ThirdQuarter.pdf
http://com.ohio.gov/documents/secu_Bulletin2017SecondQuarter.pdf

Criminal Appeals

State v. Peter A. Beck

Case No. 2017-0410
Supreme Court of Ohio
Appeal from Hamilton App.No. C-150539, 2016-Ohio-8122

On December 6, 2017, the Ohio Supreme Court declined jurisdiction for an appeal filed by Peter A. Beck from an opinion issued by the First District Court of Appeals based on a criminal case tried in Hamilton County. The Ohio Supreme Court also declined jurisdiction for the cross-appeal filed by the Ohio Attorney General in this case. The docket can be found at: <http://sc.ohio.gov/Clerk/ecms/#/caseinfo/2017/0410>.

State v. Michael David Mathew

Case No. CT2017-0051
Fifth District Court of Appeals

On August 3, 2017, counsel for Michael Mathew filed a Notice of Appeal from his criminal case filed in Case No. CR2016-0415 in Muskingum County, Ohio. An overview of the case can be found at: http://com.ohio.gov/documents/secu_Bulletin2017ThirdQuarter.pdf.

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Criminal Cases *continued from page 12***State v. Ronald Lee Jennings**

Case No. CR2017-12-1975

Butler County Court of Common Pleas

On December 4, 2017, Ronald Lee Jennings, age 75, of West Chester, Ohio, was indicted in Butler County, Ohio, for misrepresentation in the sale of a security, securities fraud, selling an unregistered security and two counts of theft from an elderly person. All five counts are felonies of the second degree. The indictment stems from allegations that Jennings received \$91,000 from an elderly Ohio resident in exchange for a note of corporation issued by Jennings' business, Mature Planning Personal Services, Inc., formerly known as Mature Planning Financial Services, Inc. The indictment alleges that Jennings solicited the investor using false representations and material omissions about the nature of the businesses and the nature of the transaction. The indictment further alleges that the note was not properly registered for sale in or from Ohio. The case is being prosecuted by the Office of the Butler County Prosecutor, Michael T. Gmoser.

Administrative Actions**Division Order No. 17-029**

Rick St. George

Matthew P. Andrea

Cleveland Financial Group, Inc.

Brecksville, Ohio

On October 4, 2017, the Division issued a Cease and Desist Order with Consent Agreement naming Rick St. George, Matthew P. Andrea and Cleveland Financial Group, Inc., based, in part, on findings that they sold unregistered promissory notes issued by Flava Puff, LLC, through the use of free dinner seminars to at least five Ohio residents in exchange for commissions of 10 percent. The promissory notes provided for returns between 9 percent-12 percent annually. Neither Andrea nor St. George held securities licensure in Ohio. The Division Order includes findings that the Respondents engaged in securities fraud by failing to provide material information to investors at the time of sale.

Division Order No. 17-030

Texas Energy Mutual, LLC

Rodney L. Pope

Chet Inglis

Matthew J. Manley-Leaverton

Corey J. Rothwell

Grapevine, Texas

On November 1, 2017, the Division issued a Cease and Desist Order naming Texas Energy Mutual, LLC, Rodney L. Pope, Chet Inglis, Mathew J. Manley-Leaverton, and Corey J. Rothwell (collectively "Respondents") based on findings that the Respondents engaged in the sale of unregistered securities through cold calls to at least one Ohio investor. The Order included findings that the Respondents misrepresented material facts in the sale of securities and engaged in securities fraud. Prior administrative orders were filed against one or more of the Respondents by the Financial and Consumer Services Tribunal in New Brunswick, Canada; the Arkansas Securities Commission and the California Department of Business Oversight. The Order further found that an Ohio investor was induced to retire and invest \$230,000 in offerings by Texas Energy Mutual, LLC, based on statements that the investor would earn between \$3,500 and \$8,000 per month on the investments, that the investor proceeds were not used for the purposes stated, and that up to 30 percent of the investment was used to pay commissions to unlicensed individuals. An administrative hearing was not requested.

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Administrative Actions *continued from page 13***Division Order No. 17-031**

Kevin Hinton
Massillon, Ohio

On November 16, 2017, the Division issued a Cease and Desist Order with Consent Agreement naming Kevin Hinton based, in part, on findings that he solicited and received \$50,000 from an Ohio investor in exchange for a membership unit in Utica Shale Housing Group, LLC. The Order included findings that, while the investor was told that his investment would be used to purchase housing units, the bank records reveal that the investment was used to pay back previous investors in another defunct business, DDK Property Group II, LLC, which was owned and operated by Hinton and his business associate, Dan Coen.

Division Order No. 17-032

Utica Shale Housing Group, LLC
Dan Coen
Massillon, Ohio

On November 16, 2017, the Division issued a Cease and Desist Order naming Utica Shale Housing Group, LLC, and Dan Coen based, in part, on findings that they solicited and received \$50,000 from an Ohio investor in exchange for a membership unit in Utica Shale Housing Group, LLC. The Order further found that, while the investor was told that his investment would be used to purchase housing units, the bank records reveal that the investment was used to pay back previous investors in another defunct business, DDK Property Group II, LLC, which was owned and operated by Coen and his business associate, Kevin Hinton. An administrative hearing was not requested by Coen or Utica Shale Housing Group, LLC.

Division Order No. 17-033

Cleobrothers & Company, Inc.
Innocent A. Nweze
Columbus, Ohio

On November 17, 2017, the Division issued a Cease and Desist Order naming Cleobrothers & Company, Inc. and Innocent A. Nweze based, in part, on findings that they solicited and received \$150,000 from an elderly investor in exchange for a 1 percent equity share in Cleobrothers & Company. The Order included findings that the investment contract provided to the investor stated that the 1 percent equity interest was valued at \$1 million, and that the Respondents engaged in the sale of unregistered securities through misrepresentations of material facts and through fraud. The Order also included findings that Respondents sold the investment contracts without disclosing the insolvency of the issuer and further provided false or inflated financial statements to the investor. An administrative hearing was not requested.

Division Order No. 17-034

Gregg Alan Beemer CRD 2248923
Dayton, Ohio

On November 17, 2017, the Division issued an Order to Cease and Desist naming Gregg Alan Beemer based on findings that, while he was licensed as a securities salesperson with Lincoln Investment, he engaged in the sale of unregistered promissory notes issued by WMA Enterprises, LLC. The owners and operators of WMA Enterprises, LLC, William and Connie Apostelos, were indicted, convicted and sentenced in the U.S. District Court for the Southern District of Ohio, in part, for fraudulently inducing hundreds of individuals from around the country to invest over \$70 million in their companies. An administrative hearing was not requested.

Division Order No. 17-035

WRK Investments CRD 156457
Ryan Lee Kitson CRD 5312687
Solon, Ohio

On November 29, 2017, The Division issued an Order with Consent Agreement suspending the Ohio investment adviser license of WRK Investments and the Ohio investment adviser representative license of Ryan Lee Kitson based, in part, on findings that they

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Administrative Actions *continued from page 14*

failed to comply with the books and records requirements and failed to properly update their ADV disclosures to reflect two judgement liens. The Division further found that Respondents failed to comply with the terms of a previous Consent Order issued on April 7, 2016, under Division Order 16-011. The Ohio licenses of both Respondents were suspended for 14 days.

Division Order No. 17-036

Michael Jeffrey Vitantonio CRD No. 6685398
Cleveland, Ohio

On December 5, 2017, the Division issued a Final Order with Consent naming Michael Jeffrey Vitantonio based, in part, on findings that he failed to provide material disclosures to clients he had solicited for his investment adviser business prior to obtaining proper licensure. The clients solicited were former clients of Thomas Roulston III Investment Partners, LLC, and Thomas Roulston III, both having agreed to a lifetime ban from acting in the capacity of an investment adviser, investment adviser representative, securities dealer or securities salesperson pursuant to Division Order No. 16-013. The Division issued Vitantonio an Ohio investment adviser license under heightened supervision terms and additional restrictions set forth in the Consent Order.

Division Order No. 17-037

Katrina Farmer, aka Katrina Seiter
A Voice 4 U, LLC
Bellbrook, Ohio

On December 6, 2017, the Division issued a Notice of Opportunity and Notice to Issue Cease and Desist Order naming Katrina Farmer, aka Katrina Seiter, and A Voice 4 U, LLC based, in part, on allegations that they sold promissory notes and equity shares issued by A Voice 4 U, LLC to 17 Ohio investors for an aggregate amount over \$693,000 that were not properly registered for sale in Ohio. The Notice Order further alleges that investor funds were used for purchases at retail stores, including Victoria's Secret, Kings Island, and tanning and nail spas, as well as significant payments to Keen.com for e-mail, chat and telephone psychic readings.