

## Ohio Supreme Court Narrowly Decides Question of Self-Directed IRA Custodian Liability under R.C. 1707.43<sup>1</sup>

By *Janice Hitzeman, Attorney Inspector*

On Aug. 9, 2018, the Ohio Supreme Court issued an opinion in *Boyd v. Kingdom Tr. Co.*<sup>2</sup> setting new precedent for civil liability for self-directed IRA custodians.<sup>3</sup> The court was asked by the Sixth Circuit Court of Appeals to answer the question of whether R.C. 1707.43, a provision of the Ohio Securities Act, imposes joint and several liability on persons who aid in the purchase of illegal securities but do not participate or aid in the sale of the illegal securities.<sup>4</sup> The court determined, in part, as follows:

The certified question asks whether R.C. 1707.43(A) imposes joint and several liability on the custodian of a self-directed IRA—here, respondents, Kingdom Trust and PENSICO Trust—that purchased illegal securities on behalf and at the direction of the IRA account holders—here, petitioners, Boyd and Flanders. We hold that it does not.<sup>5</sup>

In answering the certified question, the court analyzed the legislative intent and plain language of R.C. 1707.43(A), stating, “The plain language of R.C. 1707.43(A) requires a person to have some nexus with the sale of illegal securities. The statute does not extend liability to persons whose only involvement in a transaction is the purchase of illegal securities.”<sup>6</sup>

The court then delved into the statutory distinction between “purchase” and “sale,” finding the General Assembly demonstrated its intent to treat the sale and purchase of securities as two distinct acts. The court noted, “While there are various provisions in the Ohio Securities Act in which the General Assembly included both purchases and sales within the statute’s ambit, R.C. 1707.43(A) is not one of them.”<sup>7</sup> The court did not find persuasive the plaintiffs’ argument that the statutory language “in any way” indicated the General Assembly’s intent to impose liability on anyone participating in the transaction.

The court gave deference to prior lower court holdings, which affirmed that a financial institution’s mere participation in a transaction, absent any aid or participation in the sale of illegal securities, does not give rise to liability under R.C. 1707.43(A).<sup>8</sup> But the court gave some solace to aggrieved investors in the final paragraph of the opinion, which states, in part:

*Nothing in our holding today would insulate from liability a self-directed IRA custodian who colludes with the seller in an unlawful sale of securities or actively participates or aids in the sale of illegal securities. But the certified question before us is limited to the liability of a self-directed IRA custodian whose only alleged participatory conduct was the purchase of illegal securities on behalf and at the direction of the owner of a self-directed IRA.*<sup>9</sup> (emphasis added)

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<sup>1</sup> For a discussion of the case history and an overview of the arguments presented in briefs filed in this case, see [The Ohio Securities Bulletin 2018 Issue 1](#).  
<sup>2</sup> 2018-Ohio-3156.

<sup>3</sup> For a copy of the slip opinion in this case, see <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-3156.pdf>.

<sup>4</sup> *Id.* at ¶1

<sup>5</sup> *Id.* at ¶9

<sup>6</sup> *Id.* at ¶10

<sup>7</sup> *Id.* at ¶11

<sup>8</sup> *Id.* at ¶14 (citing *Wells Fargo Bank v. Smith*, 12th Dist. Brown No. CA2012-04-006, 2013-Ohio-855, ¶29 (quoting *Hild v. Woodcrest Ass'n*, 59 Ohio Misc. 13, 30, 391 N.E.2d 1047 (C.P.1977)); and *Boomershine v. Lifetime Capital, Inc.*, 2d Dist. Montgomery No. 22179, 2008-Ohio-14, ¶15 (plaintiffs failed to show that bank serving as escrow agent aided in the sale of investments)).

<sup>9</sup> *Id.* at ¶15. The court finalized the opinion with the statement, “We leave it for the Sixth Circuit to decide whether the facts as alleged in petitioners’ complaint are sufficient to survive dismissal at the pleading stage under the legal standard we announce today.” *Id.* at ¶15. As of the date of drafting, the online docket for *Boyd v. Kingdom Tr. Co.*, Case No. 2017cv03026, U.S. Dist. (S.D. Ohio) shows no new filings since the date the Ohio Supreme Court decision was published.

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The Ohio Supreme Court narrowly tailored its decision to the specific question presented, thereby providing an opening for civil liability under R.C. 1707.43 for those self-directed IRA custodians who collude with a seller or actively participate or aid in securities transactions in ways beyond merely assisting the purchaser.



## Ohio Securities Conference Focuses on Protecting the Main Street Investor

Industry experts, legal scholars, securities practitioners and regulators will meet in Columbus on Friday, Oct. 26 to discuss issues facing investors and the investment industry during the 2018 Ohio Securities Conference. The conference runs from 8 a.m. to 4:15 p.m. at the Westin Columbus Hotel.

The theme of this year's conference, co-sponsored by the Ohio Division of Securities and the University of Toledo College of Law, is "Protecting the Main Street Investor." The sessions cover a variety of topics affecting many Ohio investors and investment professionals.

"This is our 45th annual conference and we have another excellent lineup of industry experts speaking this year, including nationally known consumer advocate Barbara Roper from the Consumer Federation of America," said Ohio Securities Commissioner Andrea Seidt. "Our speakers will cover several important topics, including a look at where we are 10 years after the 2008 financial crisis, and how the SEC's proposed Best Interest Standard may impact financial professionals and their clients."

Seidt said another topic following this year's theme concerns the new Ohio law mandating certain financial professionals to report suspected elder abuse and financial exploitation.

"Ohio's mandated reporters law went into effect September 29th, and requires investment advisers, financial planners and certified public accountants, among others, to make a report to the county job and family services office when they have 'reasonable cause to believe' that an adult is being abused, neglected or exploited," she said. "Mandatory reporting laws are vital to ensure we protect our seniors, who are some of the most vulnerable among our population."

Registration information and additional conference details are available on the division's website. The deadline to register is Oct. 19.

The annual conference is the only continuing legal education program dedicated exclusively to Ohio securities law and practice. Conference attendees represent the Ohio securities bar, broker-dealer and investment adviser firms, compliance professionals and other regulatory and law enforcement agents.

### Ohio Securities Bulletin

#### Issue 2018:3

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Follow us [@OHSecuritesDiv](#) for news and information about the division, as well as tips to help Ohioans become more savvy investors and avoid getting scammed.

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## Conference Topics and Speakers

### The Impact of Revising the Best Interest Standard

- Barbara Roper, Director of Investor Protection, Consumer Federation of America
- Robin Traxler, VP of Regulatory Affairs, Associate General Counsel, Financial Services Institute
- Moderator: Professor Paul Rose, The Ohio State University, Moritz College of Law

### Partnering to Address Senior Financial Exploitation

- Marin Gibson, Managing Director and Associate General Counsel, SIFMA
- Jeanette Wingler, Associate General Counsel, FINRA
- Sylvia Pla-Wraith, Director of the Elder Justice Initiatives, Ohio Attorney General's Office

### Division Updates

The division's annual regulatory updates will take place during lunch. Speakers include Licensing Chief Counsel Anne Followell, Enforcement Chief and Attorney Inspector Janice Hitzeman and Registration Chief Counsel Mark Heuerman.

### The 2008 Financial Crisis – What's Changed in 10 Years?

- Eric Chaffee, Professor, University of Toledo College of Law
- Thomas Geyer, Attorney, Bailey Cavalieri LLC
- Charles Korsmo, Professor, Case Western Reserve University College of Law
- Moderator: Mark Heuerman, Registration Chief Counsel

### The Anatomy of an Enforcement Case

- David Meyer, Founding Principal and Attorney, Meyer Wilson, Co.
- Brent Tabacchi, Assistant United States Attorney for the Southern District of Ohio
- Laurel Vant, Special Agent, Internal Revenue Service



# A to Z with L & E

## **Data Protection Act Signed into Ohio Law**

*Some sections may affect Ohio-licensed investment advisers*

On Aug. 3, 2018, Governor John R. Kasich signed Senate Bill 220 (SB 220), also known as the [Data Protection Act](#) (the “Act”) into law. The Act had two components that may impact the securities industry:

1. the creation of a voluntary cybersecurity affirmative defense, which is available to virtually all businesses in Ohio; and
2. an amendment to the Uniformed Electronic Transactions Act (UETA) that affirms signatures, contracts and records recorded by blockchain technology are valid.

First, the Act created an affirmative defense in Ohio courts for virtually any business or nonprofit organization in a tort action accused of failing to implement reasonable security controls following a data breach of “personal” and/or “restricted information” (as those terms are defined in the Act). To qualify for the affirmative defense, the Act specifies a company must be a “covered entity,” which means it maintains and complies with a written cybersecurity program designed to protect personal and/or restricted information and meets certain national standards.

The affirmative defense is available to virtually every business or nonprofit – regardless of whether it is based in Ohio – which handles personal or restricted information, provided its cybersecurity program meets the design, scale and scope parameters prescribed by the Act, and reasonably conforms to an industry-recognized cybersecurity framework listed in SB 220.

The Act does not create a private right of action for failing to follow its cybersecurity framework. Stated otherwise, a covered entity would not presumptively face liability simply because it did not follow SB 220’s prescribed cybersecurity framework.

This will have implications for Ohio-licensed investment advisers, as they are required to maintain a comprehensive information security program by the Federal Trade Commission’s Privacy of Consumer Financial Information Rule.

That rule requires firms to “develop, implement and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to your size and complexity, and the nature and scope of your activities, and the sensitivity of any customer information at issue.”<sup>1</sup> Further, the Ohio Administrative Code requires investment advisers to maintain cybersecurity policies and procedures as part of their overall compliance and supervision mandates. (O.A.C. 1301:6-3-15.1(D) and (E)(1)(s) and (t); and O.A.C. 1301:6-3-44(H)).

Consequently, Ohio-licensed investment advisers would have the Act’s affirmative defense available to them in a tort action, provided they maintain a compliant cybersecurity program.

Second, the Act also alters the UETA by ensuring records, contracts and signatures are “secured through blockchain technology” are legally considered to be in electronic form and therefore, valid. This may add clarity to parties in a blockchain-related transaction.

This appears to be the first mention of the term “blockchain” in the Ohio Revised Code. While the Act does not have direct implications for the securities industry, it does continue the trend of blockchain-related legal developments in the state of Ohio, which the Ohio Securities Bulletin has written about before: first in the [2014:2 Issue](#) in an article entitled “A Primer on Bitcoins” and again in [2015:1](#), in an article entitled “Bitcoin Regulation.”

The law goes into effect on Nov. 2, 2018.

<sup>1</sup> <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying>

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## Quarterly Question

***I heard the law changed for investment advisers and financial planners regarding reporting suspected elder abuse. Can you tell me what I need to know to comply?***

[RC 5101.63](#) was amended, effective Sept. 29, 2018, to include “investment adviser[s] as defined in ORC section 1707,” and “financial planner[s] accredited by a national accreditation agency” as mandatory reporters of known or suspected elder abuse. Persons subject to this law are required to make a report to Ohio county departments of job and family services offices when they have “reasonable cause to believe” an adult is being abused, neglected, or exploited. The Ohio Department of Job and Family Services (ODJFS) has developed and made educational materials available, as required by [RC 5101.62](#), to help educate mandatory reporters on their role in reporting abuse, neglect, or exploitation. Two dedicated educational booklets prepared by ODJFS are available online:

### **Understanding Elder Abuse: A Guide for Ohioans:**

<http://www.odjfs.state.oh.us/forms/num/JFS08098/pdf/>

### **Understanding Elder Abuse: A Guide for Financial Services Professionals:**

<http://www.odjfs.state.oh.us/forms/num/JFS08095/pdf/>

Those who are mandatory reporters are encouraged to read this information to ensure they are fully informed of their responsibilities under the new law.

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

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## **FINRA Examination Restructure Effective October 1, 2018**

FINRA Regulatory Notice 17-30 announced a restructure to the representative-level examination program. Effective Oct. 1, the representative-level qualification exam program will consist of a two-part examination structure: (1) a general knowledge examination known as the “Securities Industry Essentials” (SIE) exam; and (2) a tailored, specialized knowledge examination based on the type of activity the individual will be engaging in (known as a “top off” examination). The individual would then be able to take additional specialized examinations as their business roles expand or change, without having to take the SIE exam again. FINRA indicates this examination restructure will eliminate duplicative testing of general securities knowledge, since the general knowledge questions contained in the SIE would not be repeated on the specialized knowledge examinations.

Individuals holding certain active registrations on Oct. 1 (e.g., General Securities Representative), will receive credit for the SIE examination in their CRD records. The new examination restructure will also allow individuals who are not associated with a FINRA member firm to sit for the SIE exam (i.e., eliminating the sponsorship requirement), and a passing score will remain valid for four years. However, full registration could not be obtained without successfully passing one of the specialized top-off examinations, and an individual would not be eligible to take a specialized top-off exam without a sponsoring FINRA-member firm. For additional information on FINRA Exam Restructuring, visit their dedicated page at: <http://www.finra.org/industry/exam-restructuring>.

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## 2019 Renewal Program Deadlines

The Ohio Division of Securities participates in FINRA's annual CRD/IARD renewal program. Dealers and investment advisers who fail to renew according to the schedule below will result in a firm and all of its associated representatives losing their Ohio licenses effective Dec. 31, 2018. This year's filing and payment deadlines are as follows:

- Oct. 22 – Firms may begin to submit post-dated Forms U5 and BR Closing/Withdrawal (must be dated 12/31/18)
- Nov. 1 – Firms may begin to submit post-dated Forms BDW and ADV-W (must be dated 12/31/18)
- **Nov. 12 – Preliminary renewal statements will be available through E-Bill.**
- **Dec. 17 – Deadline for receipt of Preliminary Renewal payments.**
- Dec. 27 – Last Day to submit form filings prior to year-end.
- Dec. 28 through Jan. 1 – CRD and IARD systems are unavailable for any payments or filings due to renewal processing. Late payments and filings cannot be submitted during this time.
- Jan. 2 – Web CRD and IARD are fully operational. Firms that “Failed to Renew” on time and were systematically termed on 12/31/18, may begin the process of re-applying in Ohio.
- Jan. 21 – Deadline for receipt of Final Statement Payments

Please take note of these important dates and fund your renewal accounts in advance of the payment deadline.

## Division News

### Kevin Armstrong Earns CFE Designation

Licensing team member Kevin Armstrong recently earned his Certified Fraud Examiner (CFE) designation from the Association of Certified Fraud Examiners. In addition to the many hours spent studying for the exam, Kevin attended a week-long CFE exam prep course. He has been with the division since October 2009.



Kevin joins several division staff members who have earned this significant achievement, including Licensing examiners Will Pultinas, David Melito and Donald Taylor Jr., and Enforcement attorneys Janice Hitzeman, Roger Patrick and Mark Ballenger.

The CFE 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.

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. They must also complete 20 hours of continuing professional education annually to maintain their CFE credential.

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**Read the 2018 Department of Commerce Annual Report**

All state of Ohio agencies are required to publish an annual report highlighting the work of the departments and each division within an agency. [This year's Commerce report](#) theme – “Safe, Sound and Secure” – shows the many ways our agencies help businesses operate safely while helping Ohioans protect what’s important to them.

The report also was an opportunity to look back at what the Commerce staff has accomplished throughout the past eight years, which demonstrated our priority to keep Ohioans safe, sound and secure and establishes the foundation for the work of the organization going forward. A timeline of key events and milestones are highlighted in the report, along with several narratives that and infographics.

**Commerce Launches Consumer Protection Website**

The Ohio Department of Commerce recently launched a new website designed to host all the consumer-focused information provided by each division – including Securities – in one location. The site does not replace the existing divisions’ websites, but rather reinforces the depth and breadth covered by the department, and connects people with information they might not have known they needed.

“The idea was to collect Commerce’s top consumer protection information and resources and organize it in a way that makes sense to consumers, and house the information on one website that is easy to navigate,” said Commerce Director Jacqueline T. Williams. “Consumers will have one source of information about how to protect what’s most important to them so they can prevent fraud and other issues, and know who to contact if there is an issue.”

Visit the site at: <https://www.com.ohio.gov/ConsumerProtection.aspx>

**Outreach and Education Update**



Presentations at community senior centers and an event at the Ohio State Fair highlighted outreach efforts since the last issue of this newsletter.

In July, the division presented to approximately 100 seniors combined at two separate events, one at the Bluffton Senior Center and the other in Beaver Township (Youngstown area). Both events were held to educate seniors on how to be smart investors avoid scams.

**Educating Seniors at the Ohio State Fair**

Division representatives helped educate Ohioans during the annual Senior Expo, sponsored by the Ohio Department of Aging, as part of Seniors Day at the Ohio State Fair. The Expo provides an opportunity for organizations to connect with seniors, from conducting health checks to educating them on programs to enhance their lives.

This year, we partnered with the Division of Financial Institutions and the State Fire Marshal’s office. The collaborative effort focused on keeping seniors safe, sound and secure by providing information and literature on how to avoid becoming a victim of financial fraud and how to keep their families safe from fire.



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## Industry News

### NASAA Comments on SEC's Regulation Best Interest and Related Rule Proposals



In late August, the North American Securities Administrators Association submitted a comment letter to the U.S. Securities and Exchange Commission expressing support for the agency's work to raise the standard of care for broker-dealers. NASAA encouraged the SEC to make significant revisions to its April 18 Regulation Best Interest and related proposals (Reg BI) before adopting them.

"NASAA especially appreciates Chairman Clayton's leadership in advancing this important regulatory priority," said NASAA President and Alabama Securities Commission Director Joseph Borg. "Given our members' shared responsibility with the SEC for oversight of the firms and individuals that will be impacted by the proposals, NASAA is anxious to work closely with the Commission on further refinements to the proposals and we hope our constructive comments are well received and considered fully."

Reg BI is intended to establish a standard of conduct for broker-dealers and their agents similar to the fiduciary duties owed by investment advisers and investment adviser representatives. The SEC's rulemaking proposals also include new potential disclosure obligations, restrictions on the use of certain names or titles, and an expression of the SEC's views on the scope of advisers' fiduciary duties.

"We believe the commission's approach of raising the standard for broker-dealers, while not weakening the current standard applicable to investment advisers, is the correct one," Borg wrote in NASAA's comment letter.

Borg said NASAA supports the proposal's effort to address conflicts of interest, improve fee transparency, restrict the use of potentially misleading professional titles, and clarify investment adviser conflict of interest obligations. While the SEC's proposals represent a good initial step, "significant improvements are needed in order

to promulgate final rules that will serve the best interest of investors as the Commission intends." For instance, broker-dealers should be required to consider a broad array of products when making recommendations and take into consideration factors such as product cost, liquidity, and risk as part of their recommendation.

Given the proposals' importance to investors, NASAA cautioned the SEC to be deliberate as it proceeds through the rulemaking process. "It is more important that the proposals be implemented appropriately than that this be done quickly," Borg said.

### NASAA Updates Coordinated Crypto Crackdown

#### *More than 200 Active Investigations by State and Provincial Securities Regulators*

The North American Securities Administrators Association (NASAA) announced in late August that more than 200 active investigations of Initial Coin Offerings (ICOs) and cryptocurrency-related investment products are currently underway by state and provincial securities regulators in the United States and Canada as part of NASAA's ongoing initiative "Operation Cryptosweep."

Since its launch in May, this ongoing coordinated regulatory focus has resulted in 47 enforcement actions involving ICOs or cryptocurrency-related investment products. The Ohio Division of Securities participated in the sweep, issuing a Notice of Opportunity for Hearing and a Notice of Intent to Issue a Cease and Desist Order to Dubai-based USI-TECH Limited. [See the article on page 4 in the second-quarter 2018 issue of the Ohio Securities Bulletin.](#)



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“State and provincial securities regulators are committing significant regulatory resources to protect investors from financial harm involving fraudulent ICOs and cryptocurrency-related investment products and also are raising awareness among industry participants of their regulatory responsibilities,” said NASAA President and Alabama Securities Commission Director Joseph P. Borg.

Borg noted while some of the enforcement investigations initiated as part of Operation Cryptosweep involve suspected securities fraud, regulators are finding many other potential violations of state and provincial securities laws, including failure to properly register a product before it was offered to investors.

“While not every ICO or cryptocurrency-related investment is a fraud, it is important for individuals and firms selling these products to be mindful that they are not doing so in a vacuum; state and provincial laws or regulations may apply, especially securities laws. Sponsors of these products should seek the advice of knowledgeable legal counsel to ensure they do not run afoul of the law. Furthermore, a strong culture of compliance should be in place before, not after, these products are marketed to investors.”

If these products qualify as securities, they should be registered with the appropriate regulatory agencies or qualify for an exemption from registration. The registration process provides some protection for investors by subjecting the offering to regulatory review. But even registered offerings can be fraudulent. Investors therefore should perform their own thorough due diligence before investing in any ICO or cryptocurrency-related product.

“Be cautious when dealing with promoters who claim their ICO offering is exempt from securities registration but do not ask about your income, net worth or level of investing sophistication,” Borg said. “Do your homework and contact your state or provincial securities regulator with any concerns before parting with your hard-earned money – afterwards may be too late.”



### **FINRA Publishes Industry Snapshot**

In late August, FINRA published the FINRA Industry Snapshot 2018, its first-ever statistical report on the brokerage firms, registered individuals and market activity that FINRA regulates.

The publication includes data ranging from the size and geographic distribution of the firms FINRA regulates to the number of individuals in the industry; from trading activity to how firms market their products and services. All of the data appear in aggregate form to respect the confidentiality of regulatory information.

The Snapshot is designed to increase awareness and understanding about the broad range of firms, individuals and trading activity FINRA oversees. Consistent with the transparency goals of the FINRA360 organizational-improvement initiative, for the first time FINRA is sharing a statistical overview based on the data it collects in the course of its work.

### **SEC Adopts Amendments to Simplify and Update Disclosure Requirements**

The U.S. Securities and Exchange Commission announced in August it voted to adopt amendments to certain disclosure requirements that have become duplicative, overlapping, or outdated in light of other Commission disclosure requirements, U.S. Generally Accepted Accounting Principles (GAAP), or changes in the information environment.

According to an SEC news release, the amendments are intended to simplify and update the disclosure of information to investors, including long-term Main Street investors, and reduce compliance burdens for companies without significantly altering the total mix of information available to investors.

These amendments apply primarily to public reporting companies, including foreign private issuers. Some of the amendments also apply to other entities the Commission regulates, including Regulation A issuers, investment advisers, investment companies, broker-dealers and nationally recognized statistical rating organizations.

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The amendments would eliminate certain:

- Redundant and duplicative requirements, which require substantially similar disclosures as GAAP, International Financial Reporting Standards (IFRS), or other Commission disclosure requirements.
- Overlapping requirements, which are related to, but not the same as GAAP, IFRS or other Commission disclosure requirements.
- Outdated requirements, which have become obsolete as a result of the passage of time or changes in the regulatory, business, or technological environment.
- Superseded requirements, which are inconsistent with recent legislation, more recently updated Commission disclosure requirements, or more recently updated GAAP.

The amendments will be effective 30 days from publication in the Federal Register.

## Enforcement Section

### Administrative Hearings

**Craig Alan Sutherland, CRD 2001873**

Division Notice Order No. 17-018  
Oct. 22-26, 2018 (cont.)

**Jeffrey Allan Mohlman, CRD 4431845 (inactive)**

Division Notice Order No. 17-024  
The administrative hearing took place June 28, 2018. The case is pending a report and recommendation.

**Katrina Farmer a/k/a Katrina Seiter**

**A Voice 4 U, LLC**  
Division Notice Order Nos. 17-037 and 18-013  
The administrative hearing began Sept. 24, 2018. It is continued to Oct. 17 for the admission of a division exhibit and the presentation of Respondents' case.

**Dock Douglas Treece, CRD 866947**  
**Treece Investment Advisory Corp., CRD 110449**  
**Treece Financial Services Corp., CRD 23296**  
Division Notice Order No. 18-023  
Jan. 28, 2019

**Garry N. Savage, Sr., CRD No. 1195330**  
**Advanced Strategies Agency, Inc., CRD No. 121343**  
Division Notice Order No. 18-011; Amended NOH 18-021  
Jan. 16-18, 2019 (cont.)

**Garry N. Savage, Jr., CRD No. 2338013**  
Division Notice Order No. 18-012  
Jan. 23, 2018 (cont.)

*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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**D.L. Yoho Investment Advisors, LLC, CRD No. 285214****Daniel Yoho, CRD No. 1353988**

Division Notice Order No. 18-010

A Goldman hearing took place Aug. 28, 2018.

The case is pending a report and recommendation.

**Fairhope Advisors, LLC. CRD 281085****Robert Riccardi, CRD 1356543**

Division Notice Order 18-022

Jan. 15, 2019

**Administrative Appeals****TAP Management, Inc. et al.**

Case No. 17 CV 006942

Appeal from Division Final Order No. 17-022

Filed Aug. 2, 2017

**Administrative Orders****Division Order No. 18-022**

Fairhope Advisors, LLC. CRD No. 281085

Robert Riccardi, CRD No. 1356543

Colerain Township, Ohio

Cincinnati, Ohio

On July 3, 2018, the division issued a Notice of Opportunity for Hearing and Notice of Intent to Suspend or Revoke the Ohio Investment Adviser License of Fairhope Advisors, LLC, and the Ohio Investment Adviser Representative License of Robert Riccardi based on allegations the licensees failed to file annual updating amendments to their IARD record and failed to respond to repeated division inquiries. An administrative hearing is scheduled for Jan. 15, 2019.

**Division Order No. 18-023**

Dock Douglas Treece CRD No. 866947

Treece Investment Advisory Corp. CRD No. 110449

Treece Financial Services Corp. CRD No. 23296

Toledo, Ohio

On July 3, 2018, the division issued a Notice of Opportunity for Hearing and Notice of Intent to Suspend or Revoke the Ohio Dealer License of Treece Financial Services Corp., the Ohio Salesperson License and the Ohio Investment Adviser Representative License of Dock Douglas Treece, and the Ohio Investment Adviser License of Treece Investment Advisory Corp. based, in part, on allegations the licensees failed to disclose customer complaints to the division examiner, failed to inform investor clients using Treece Financial to purchase Class A shares could result in substantially higher fees, and failing to conduct reasonable inquiry as to suitability while placing substantially all of their clients into the same asset allocation while receiving investment advisory fees and sales commissions. An administrative hearing is scheduled for Jan. 28, 2019.

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**Division Order No. 18-024**

Ronald D. Broadstone CRD No. 1043159 (inactive)  
Columbus, Ohio

On July 19, 2018, the division issued a Cease and Desist Order with Consent Agreement naming Ronald D. Broadstone, based on findings Broadstone, while registered as an Ohio investment adviser representative with UBS Financial Services, Inc., engaged in deceptive or manipulative acts and breached his fiduciary duty. The Order included findings Broadstone, while acting as a trustee for his deceased brother's trust for the benefit of his nieces, personally borrowed \$379,580.84 through a line of credit secured in the name of the trust to fund, in part, remodeling Broadstone's kitchen, purchasing a home for his son, and purchasing a truck.

**Division Order No. 18-025/18-029**

Jeffrey A. Ahern CRD No. 4354967 (application only)  
Oak Hill, Ohio

On July 30, 2018, the division issued a Notice of Intent to Issue a Cease and Desist Order naming Jeffrey A. Ahern. A hearing was not timely requested, and on Sept. 19, 2018, the Division issued a final Cease and Desist Order No. 18-029 based on findings that Ahern acted as an unlicensed securities dealer in selling unregistered securities. The Order included findings that, between Dec. 9, 2013, and Sept. 26, 2016, Ahern sold at least five promissory notes issued by Woodbridge Mortgage Investment Fund 1, LLC, or Woodbridge Mortgage Investment Fund 3A, LLC, to three Ohio investors. On Dec. 20, 2017, the Securities and Exchange Commission filed a complaint for Injunctive and Other Relief against Woodbridge Group of Companies, LLC, including Fund 1 and Fund 3A, in the U.S. District Court for the Southern District of Florida based, in part, on allegations Woodbridge used internal and external unlicensed sales agents to conduct a Ponzi scheme that raised over \$1.22 billion from over 8,400 investors nationwide. On May 21, 2018, the District Court issued a permanent injunction in the SEC case.

**Division Order No. 18-026**

Kentucky-Tennessee 50 Wells 500BBLPD Block, LP  
Sahara Wealth Advisors  
HP Operations, LLC  
Cheyenne, Wyoming

On Aug. 1, 2018, the division issued a Notice of Intent to Issue a Cease and Desist Order against Kentucky-Tennessee 50 Wells 500BBLPD Block, LP, Sahara Wealth Advisors, HP Operations, LLC, based on allegations the Respondents sold unregistered securities to two Ohio investors in the aggregate amount of \$100,000 through misrepresentations of material facts and fraud. The Notice Order alleges Respondents informed investors their funds would be used for drilling efforts, lease acquisition, drilling fees and other operational costs when the investors' funds were actually used, in part, to pay previous investors and commissions to salespersons. The Notice Order further alleges Respondents provided false information in their notice filing with the division.

**Division Order No. 18-027**

USI-Tech Limited  
Dubai, UAE

On Aug. 23, 2018, the division issued a Cease and Desist Order against USI-Tech, Limited, a Dubai-based company that maintains a website at [www.usitech-int.com](http://www.usitech-int.com). The Order includes findings USI engaged in the sale of bitcoin packages for investment through their website, which published statements such as "Our automated trading system provides access to the most liquid market in the world with excellent profits for anyone," and "When you join USI Tech, you'll gain our entire team's highly skilled expertise and decades of experience. Through our unique, highly complex algorithms the risk is effectively minimized, while the chances of profits are maximized." The website also offered referral commissions of 35 percent over 12 levels for every new investor referred. The Order finds an Ohio resident invested \$22,000 in bitcoins with USI. North Carolina and Texas issued previous cease and desist orders against USI-Tech, Limited.

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**Division Order No. 18-028**

Raymond A. Erker CRD No. 2166800  
Sageguard Wealth Management, Inc. CRD No. 158748  
Westlake, Ohio

On Aug. 31, 2018, the division issued a Notice of Opportunity for Hearing and Notice of Intent to Suspend or Revoke the Ohio Investment Adviser Representative License of Raymond A. Erker and the Ohio Investment Adviser License of Sageguard Wealth Management, Inc. based, in part, on allegations they failed to timely file amendments to their U4 and ADV to disclose civil and criminal cases and various liens. The Notice Order further alleges on or about April 19, 2018, Erker pleaded guilty to a charge of criminal trespass, a fourth-degree misdemeanor, was sentenced to 30 days in jail, suspended, and ordered to serve one-year probation. Erker was subsequently convicted of burglary, menacing by stalking, and telecommunications harassment on or about Aug. 17, 2018, and was sentenced to two years' community control. The Notice Order further alleges Erker and his firm are not of good business repute and they failed to comply with exam demands.

**Criminal Trials and Hearings****State v. Lovell Jones**

Case No. 16 CR 004770/16 CR 004772  
Franklin County Court of Common Pleas  
Nov. 6, 2018 (plea deadline/pre-trial)

**State v. Jeffrey B. Hall**

Case Nos. 17 CR 004124/18 CR 001232  
Franklin County Court of Common Pleas  
Nov. 15, 2018 (pre-trial)

**State v. Ronald Lee Jennings**

Case No. CR 2017 12 1975  
Butler County Court of Common Pleas  
Oct. 8, 2018 (sentencing)

**State v. Wayne C. Moore, Jr. and Jarrich K. Fowlkes**

Case No. 18 CR 000989  
Franklin County Court of Common Pleas  
Oct. 4, 2018 (cont. new date TBD)

**State v. John Case**

Case No. 18 CR 000991  
Franklin County Court of Common Pleas  
TBD (warrant outstanding)

**State v. Kimm Hannan**

Case No. 2018CR0520  
Stark County Court of Common Pleas  
Dec. 10, 2018 (trial)

**For further information on these cases, visit:**

[http://com.ohio.gov/documents/secu\\_Bulletin2018FirstQuarter.pdf](http://com.ohio.gov/documents/secu_Bulletin2018FirstQuarter.pdf)

[http://com.ohio.gov/documents/secu\\_Bulletin2017FourthQuarter.pdf](http://com.ohio.gov/documents/secu_Bulletin2017FourthQuarter.pdf)

[http://com.ohio.gov/documents/secu\\_Bulletin2017ThirdQuarter.pdf](http://com.ohio.gov/documents/secu_Bulletin2017ThirdQuarter.pdf)

[http://com.ohio.gov/documents/secu\\_Bulletin2017SecondQuarter.pdf](http://com.ohio.gov/documents/secu_Bulletin2017SecondQuarter.pdf)

[http://com.ohio.gov/documents/secu\\_Bulletin2017FirstQuarter.pdf](http://com.ohio.gov/documents/secu_Bulletin2017FirstQuarter.pdf)

[http://com.ohio.gov/documents/secu\\_Bulletin2016ThirdQuarter.pdf](http://com.ohio.gov/documents/secu_Bulletin2016ThirdQuarter.pdf)

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## Criminal Cases and Appeals

### **State v. Benson Jean-Louis**

Case No. 18 CR 004814

Franklin County Court of Common Pleas

On Sept. 27, 2018, following a criminal referral by the Ohio Division of Securities, Benson Jean-Louis, 34, was indicted by a Franklin County grand jury on one count of misrepresentation in the sale of securities, a felony of the first degree, one count of securities fraud, a felony of the first degree, and one count of theft, a felony of the fourth degree. The indictment alleges that from November 2015 through Dec. 31, 2015, Jean-Louis solicited an individual to invest \$250,000 with him in a trading platform based on false information about Jean-Louis' experience and securities licensure. The indictment further alleges that Jean-Louis misappropriated investment funds for his own use. Jean-Louis does not hold any securities licensure in Ohio. This case is being prosecuted by the Office of the Franklin County Prosecutor, Ron O'Brien, by Robert Lang, assistant prosecuting attorney.

### **State v. Brian Keith Decker**

Case No. 18 CR 395

Wood County Court of Common Pleas

On Aug. 16, 2018, following a criminal referral by the division, Brian Decker was indicted for multiple counts of securities fraud, theft from the elderly, and telecommunications fraud. Decker, a New York/New Jersey resident, allegedly defrauded an elderly resident of Wood County, Ohio, out of approximately \$376,000 by cold-calling him and soliciting him to invest in construction projects. The indictment alleges his investments were misappropriated by Decker. Decker was a licensed securities salesperson in New York when the alleged acts occurred. He was subsequently barred by FINRA and no longer maintains an active license. Decker was arrested at John F. Kennedy airport, was extradited to Wood County, Ohio, and is awaiting trial.

### **State v. Ronald Lee Jennings**

Case No. CR 2017 12 1975

Butler County Court of Common Pleas

Date: May 14, 2018

On Aug. 27, 2018, Jennings pleaded guilty to securities fraud, a felony of the second degree, and agreed to pay \$40,000 in restitution to his victim. Sentencing is scheduled for Oct. 8, 2018.

### **State v. Jeffrey W. Johnson**

Case No. 17 CR 020

Holmes County Court of Common Pleas

On May 17, 2018, Jeffrey W. Johnson entered a plea of guilty to two counts of theft, both felonies of the fourth degree. On Aug. 9, 2018, he was sentenced to 14 months in prison. He was also ordered to pay restitution in the amount of \$37,700 to his two victims, pay court costs and expenses of his court-appointed attorney.

### **State v. Michael David Mathew**

Case No. CT2017-0051

Fifth District Court of Appeals

On Aug. 23, 2018, the Fifth District Court of Appeals affirmed the conviction and sentence of Michael Mathew in the Muskingum County Court of Common Pleas. An overview of the case can be found at: [http://com.ohio.gov/documents/secu\\_Bulletin2017ThirdQuarter.pdf](http://com.ohio.gov/documents/secu_Bulletin2017ThirdQuarter.pdf)