



# Securities Bulletin

Ohio Department of Commerce, Division of Securities • 77 South High Street, 22<sup>nd</sup> Floor, Columbus, Ohio 43215



Department  
of Commerce

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## Cover Story

### Registration Section Review of Issuer Advertising

The Ohio Division of Securities protects investors by reviewing and commenting on issuer advertising material prior to its use in Ohio, and by using its resources to prevent unreliable or misleading claims from reaching potential investors. This authority is established in section 1707.09(B)(4) of the Ohio Revised Code (O.R.C.), Ohio Administrative Code (O.A.C.) section 1301:6-3-06(C), and is a requirement of Item 8(j) of Form U-1, or Item 14(e) to the Form 6(A)(1).<sup>1</sup> In addition, we require issuers to confirm they will file advertisements with the Division prior to their use in Ohio as a condition of their registration.

Each piece of advertising material is different. So, it is impossible to exhaustively describe in advance how we would respond to every potential issue. The purpose of this article is to explain both the process and the principles we apply to the review. It is our hope this article provides regulated financial professionals with an expectation of the principles we apply when reviewing their submissions. We also hope this article will heighten investor awareness of issues

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<sup>1</sup> Ohio Admin. Code 1301:6-3-06(C) and Ohio Rev. Code § 1707.09(B)(4) and Ohio Rev. Code § 1707.13.

surrounding investment advertising. As always, the Division encourages investors to rely upon the offering documents and to understand the risks of each investment.

## I. Submission and Review of Advertisements

- a. **Submitting Materials.** Issuers can submit advertisements by mailing or emailing the materials to the Division. Hard copies are typically preferable. Videos may be submitted by mailing a CD/DVD or by providing a website link. We will review the materials and may issue comments to the submitter, asking for clarification, explanation or by requesting changes. Because of this, issuers may want to postpone printing copies of their advertisement until the Division approves it for use in Ohio.

Issuers should adhere to the following best practices:

- **Identify the intended audience for the advertisement.** Issuers should indicate with whom the advertisement will be used. For example, if the material is for broker-dealer or for financial professionals only, be sure to indicate it. Any material identified as being for a specific audience must be accordingly limited in its use and may not be used with the general public.
  - **Indicate how the piece will be disseminated.** It can be helpful to understand how an issuer will use a piece. For example, if the advertisement is a slide show, we may inquire as to the audience of the presentation and ask if there are prepared remarks or a script. In such a case, we will also ask for the prepared remarks corresponding to the presentation and any invitation to the presentation.
  - **Submit materials in the format close to their actual intended use.** Issuers should be mindful certain black and white copies may not accurately display highlighted or enhanced colored text. As a result, we ask issuers to submit materials in the format in which they will be used.
- b. **Receiving and Responding to Comments.** If an issuer receives comments from the Division, it may respond in one of two ways: it may resolve the comments, perhaps by revising the materials, or it may withdraw or limit the materials so they will not be used in Ohio.

Issuers should address the substance of the comment regardless of whether similar material is in use by another issuer or has been approved by the Division in another piece. It is our position that a previous approval or comment resolution does not alter the issuer's duty to respond to a comment, and we will not take previous review into consideration.

When submitting revisions in response to comments, we prefer to receive a line-by-line comparison (e.g., a redline) showing the changes made from any previous version. This can be helpful to understand the changes made and enables us to isolate and review the changed material. In some cases, we may raise issues in the revised submission we did not raise in our initial comment letter.

## II. Advertising Standards.

The Division's standard of review is investor-focused and prohibits material that would tend to deceive investors. This standard is derived from the Division's authority to

suspend offerings pursuant to O.R.C. Section 1707.13.<sup>2</sup> The standard is stated, in part, as follows:

*The Division may suspend a registration if it finds that the proposed offer or disposition is on grossly unfair terms or that the plan of issuance and sale of securities would defraud or deceive, or tend to defraud or deceive, purchasers.*

Stated otherwise, the Division protects investors by prohibiting advertising material that defrauds, deceives, or tends to defraud or deceive. The Division applies the following principles to its review of advertisements to uphold our standard:

- **May not make false, misleading or unreliable claims.** The Division will object when a piece contains misleading information or when the Division believes a piece's effect would be misleading to investors. An issuer should not make or imply a claim that is not true. An advertising piece may be misleading in its overall effect even though every sentence may be technically true.<sup>3</sup>

*Examples:*

- Claiming something to the effect of "every penny goes into our properties" or "all investments go to church loans" when the prospectus discloses the issuer has the discretion to make other investments.
  - Presenting an investment as a savings account or using terms that may confuse investors into thinking they are investing with a bank.
  - Prominently advertising growth and then explaining in a footnote the growth is achieved through borrowing.
  - Advertising that distributions are tax free or they reduce taxes when the distributions are, in fact, merely a return of capital.
  - Referring to an issuer as institutional (or "institutional-quality", etc.). Institutions invest on substantially different negotiated terms and conditions than retail investors, including terms relating to fees and expenses, leverage, and governance.
  - Stating the issuer is "transparent" when the issuer does not make periodic disclosures or has offering documents hundreds of pages in length.
  - Stating its "interests are aligned with shareholders" when the prospectus discloses substantial conflicts of interest, fees and expenses.
- **Must balance its presentation of risk and returns.** The Division considers it grossly unfair to advertise the potential benefit of an investment without also balancing

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<sup>2</sup> Note: Ohio Rev. Code § 1707.13 explicitly applies to registration by description and registration by qualification filings and is extended to registration by coordination filings by Ohio Rev. Code § 1707.01(Q)(3). Other grounds for not registering the securities exist under Ohio Rev. Code § 1707.09. Further, the prohibitions under Ohio Rev. Code § 1707.44 may extend to more serious advertising activities directed at Ohio residents.

<sup>3</sup> e.g., [SEC v. Fitzgerald, 135 F.Supp.2d 992, 1028 \(N.D. Cal. 2001\)](#) (stating "[a]n Issuer cannot assert that its statements are not misleading merely because every sentence used throughout a statement is accurate and truthful in and of itself; see also, *SEC v. C.R. Richmond & Co.*, 565 F.2d 1101, 1106-07 (9th Cir. 1977) (finding advertisements were "deceptive and misleading in their overall effect even though when narrowly and literally read, no single statement of material fact was false").

disclosure of the corresponding risks.<sup>4</sup> Instead, issuers should also present risks in equal prominence in both placement and font size. Issuers sometimes bury disclosures of the risks associated with an investment at the very end of their advertising material, and frequently present it in smaller typeface with tighter spacing, which discourages investors from reading it. In practice, we evaluate the placement of many risk disclosures to the material to present an understanding of the investment and require the risks to be presented in equivalent proximity, font, size, color, and spacing as the rest of the material.

*Example:*

- Using phrases such as “The Road to Income” or the “Path to Prosperity.” These statements imply a level of certainty not commensurate with the risks of many investments. We require such language be removed, revised or be accompanied (in equal prominence) by risk disclosures.
- **Advertisements should be relevant, material, and consistent with the disclosure provided in the prospectus.** So, if information is material, it should be neither buried in the footnotes nor excluded from the piece. Likewise, if information is irrelevant, we will question its inclusion as potentially misleading to investors.

*Example:*

- Issuers with no or limited operating history comparing themselves to industry benchmarks and averages in order to imply an investment in their security will yield similar performance. As there is no assurance the issuer’s particular security will perform similarly to historical industry averages, the historical performance of other issuers is irrelevant to how the issuer will perform.
- **Issuers should make full and fair disclosure.** The Division frequently objects to pieces that fail to present an issue fully and fairly. To provide an example, if an issuer’s prospectus discusses the complexity of its fee structure over the course of five pages, the issuer may not be able to capture fully and fairly disclose the issue in a website banner. Such use would fail to fully disclose the features of an investment.

*Examples:*

- Issuers should not discourage a thorough review of the offering circular. The Division objects to statements over simplifying a description of the features of an investment. For example, a piece should not say “Here’s what you need to know” and then attempt to boil an offering circular down to a few bullet points.
- Using charts and graphs to demonstrate the benefit of the issuer’s security in a portfolio, often showing increased returns and decreased risk. We usually object to such claims as there is no assurance the issuer’s particular security will perform similarly to its general asset class, or any investor’s portfolio can be analogized to the model portfolio.

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<sup>4</sup> See, e.g., Securities and Exchange Commission, *Securities Act Industry Guide 5* (2008) at 19A, available at <https://www.sec.gov/about/forms/industryguides.pdf> (stating: “[t]he sales material should present a balanced discussion of both risk and reward. The contents of the sales material or sales meetings or seminars should be consistent with the representations in the prospectus”). See also, Division of Corporate Finance, Securities and Exchange Commission, *Staff Observations in the Review of Promotional and Sales Material* (2011), available at <https://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic3.htm>.

- Advertising one aspect of an offering without including additional relevant disclosure. The mere existence of prospectus disclosure does not guarantee the appropriateness of its inclusion in an advertising piece.
  - Advertising tax benefits using hypotheticals assuming a tax bracket, distribution rate, an investment rate, a certain return or a level of investment. Many issuers fail to present fair and full disclosure on this issue. For example, we ask REITs advertising recent tax law changes to also state, at a minimum:
    - *The tax benefits are not applicable to capital gain dividends or certain qualified dividend income;*
    - *The tax benefit is only available for qualified REITs and whether the issuer is a qualified REIT and if the issuer's board is authorized to revoke its REIT election;*
    - *The tax benefit is set to expire in seven years from adoption;*
    - *There may be adverse legislative or regulatory tax changes;*
    - *Other investments may offer tax advantages without the set expiration;*
    - *An accelerated depreciation schedule does not guarantee a profitable return on investment; and*
    - *Return of capital as a reduction in the basis of the investment.*
- **Advertisements should be appropriate for intended audiences.** We will object to advertisements inappropriate for their intended audience.
 

*Examples:*

    - A retail-use piece using complicated or overly nuanced information.
    - Advertising encouraging a suitability violation, or an investment would exceed concentration limits.
  - **Comparisons present unique obstacles.** We routinely object to comparisons not containing all relevant differences and similarities. Most comparisons fall short of a meaningful comparison. As a result, we typically object to comparisons between Issuers and asset classes.
 

*Example:*

    - The Division will object if an issuer compares its performance to another investment type without disclosing and discussing all the differences between the two. Many products have too many differences to be meaningfully compared. In such cases, the comparison should be removed altogether.
  - **Sources and third-party materials.** If an issuer relies on a source, it should provide a link to the source material. If the information is not publicly available, the advertisement should offer to provide the non-public material upon request. Issuers may be asked to disclose the fact the third-party endorsement or article may not be representative of other opinions, or articles, or literature. The Division will review claims made by third parties as if those claims were made by the issuer. Relatedly, we object to the use of non-public indexes in retail-use material.
  - **Advertisements should adhere to restrictions in NASAA guidelines.** Certain NASAA guidelines have specific applications for advertisements. Issuers should be mindful of these guidelines and restrictions.

*Example:*

- The NASAA REIT guidelines prohibit advertisements from containing a quantitative estimate of a REIT'S anticipated economic performance or anticipated return to participants, in the form cash distributions or tax benefits.<sup>5</sup>
- **Reconcile non-GAAP metrics.** If an issuer advertises non-GAAP financial measures, it should accompany those measures with the closest corresponding GAAP measure and provide a quantitative reconciliation of the two. We wrote more extensively on this in the 2019:4 issue of the Ohio Securities Bulletin.<sup>6</sup>
- **Specific Issuer Types.** Finally, we object to certain claims frequently made by non-traded REITs and discussed these issues in the 2020:1 issue of the Ohio Securities Bulletin.<sup>7</sup> We may write about other specific advertising issues for other issuer types in future bulletin articles.

### III. Conclusion.

One final word for both investors and issuers. Most prospectuses caution investors to rely solely on the offering circular and typically provide subscription agreements requiring purchasers to acknowledge or represent they have done so. These documents do not incorporate advertising and sales material. Investors are therefore put between a rock and a hard place; they can be attracted to an issuer by flashy and simplified advertisements and then defended against by complicated and nuanced disclosure in the prospectus. As a result, we strongly encourage investors to rely solely upon a prospectus and to understand the risks of any investment decision.

Issuers should also remember that the prospectus is and should be the main vehicle of each sale. In other words, securities offered in a registered offering may be sold in Ohio through the prospectus *regardless of whether an issuer produces advertisements*. While marketing material is often more attractive to view than a prospectus, it must be viewed in light of the disclosures in the prospectus and is only appropriate to the extent it does so.

If you have specific questions regarding any of the topics discussed in this article, contact the Registration Section at 614-466-4375.

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<sup>5</sup> North American Securities Administrators Administration, *Statement of Policy Regarding Real Estate Investment Trusts*, (May 7, 2007), available at <https://www.nasaa.org/wp-content/uploads/2011/07/g-REITS.pdf>, at VII.B.3.

<sup>6</sup> Div. Reg. Staff, *Non-GAAP Measures in Advertising*, OHIO SECURITIES BULL. 2019:4 at 15, available at [https://www.com.ohio.gov/documents/secu\\_Bulletin2019FourthQuarter.pdf](https://www.com.ohio.gov/documents/secu_Bulletin2019FourthQuarter.pdf).

<sup>7</sup> Div. Reg. Staff, *Private Indexes in Advertising and Non-Traded REIT Valuations*, OHIO SECURITIES BULL. 2020:1 at 3, available at [https://www.com.ohio.gov/documents/secu\\_Bulletin2020FirstQuarter.pdf](https://www.com.ohio.gov/documents/secu_Bulletin2020FirstQuarter.pdf).

[Visit our Website:](#)

The screenshot shows the Ohio Department of Commerce website. At the top left is the logo for Ohio.gov and the Department of Commerce. To the right are social media icons for YouTube, Twitter, LinkedIn, and Facebook. A dark red navigation bar contains a home icon and the following menu items: SECURITIES, INDUSTRY PROFESSIONALS, INVESTORS & PUBLIC, and CONTACT US. Below the navigation bar is a white announcement box with red text: "Many of our staff are teleworking to stop community spread of the coronavirus (COVID-19). Our office will also not be accepting walk-in customers. The Division is still operational, but we ask for your patience as we work remotely. Please call us at 614-644-7381 or email us at securitiesgeneral.questions@com.state.oh.us with any questions." Below this is a large image of a computer keyboard with a prominent blue "Update" key. To the right of the keyboard are four small article thumbnails: "Keeping Ohio's Seniors Safe, Sound and Financially Secure", "Regulation Best Interest Update", "Investor Alerts", and "Businesses Guidance Under Stay At Home Order". Below the keyboard image is a text block: "Ohio State-Licensed Investment Advisers are not required to complete Form CRS/ADV Part 3. Instructions to Form CRS/ADV Part 3 state that broker-dealers registered under section 15 of the Exchange Act and investment advisers registered under section 203 of the Investment Advisers Act of 1940 (i.e., SEC-registered investment advisers) are required to deliver to retail investors a Form CRS/ADV Part 3. Click here to download the form's instructions." At the bottom left is a portrait of Commissioner Andrea Seidt with her name and title below it. To the right are two white boxes with dark red headers: "FIND FORMS & PUBLICATIONS" and "LOOK IT UP". Each box contains a "Select a category:" dropdown menu, an "- OR -" separator, and a "Search:" input field with a magnifying glass icon.

# Licensing & Examinations Update

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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## Question of the Month

*I am a state-licensed Ohio investment adviser. Do I need to prepare and file a Form CRS (aka ADV Part 3)?*

**Answer:** No. The Division's regulations do not require state-licensed Ohio investment advisers to prepare and complete a Form CRS. If a firm wishes to prepare one voluntarily, there is no prohibition on doing so, but it is not required.

If an Ohio-licensed investment adviser entity is also regulated by another state or federal regulator (e.g., is dual-licensed as a FINRA broker-dealer firm), then the firm should contact those regulators to ensure compliance prior to the June 30, 2020 Regulation Best Interest implementation date.

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## Guidance Regarding PPP Loans

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The Ohio Division of Securities has determined that consistent with its approach to all other financial record keeping requirements, state-licensed investment advisers should record details about Paycheck Protection Program (PPP) loans it receives under the CARES Act in the firm's financial books and records (i.e., incoming cash and outgoing payments should be recorded on the firm's statement of cash flows, loan disclosure on firm's balance sheet, etc.).

With respect to inclusion on Form ADV and disclosure to clients, the Division will take an approach consistent with the SEC and require inclusion on Form ADV if the loan creates a material change relating to your advisory relationship. See April 27, 2020, update to SEC COVID-19 FAQs, Question II.4 <https://www.sec.gov/investment/covid-19-response-faq>.

Some examples of how a PPP loan would constitute a material change include: (1) if the adviser is unable to meet its financial obligations as they become due; (2) if the adviser is insolvent; and (3) if some or all of the PPP loan will not be forgiven. Please note, pursuant to its examination authority, the Division may request copies of PPP loan applications and other relevant documentation.

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May Licensing Statistics	2019	2020	+/- change
Salespersons	189,847	193,029	1.68%
Dealers	1,945	1,889	-2.88%
State-registered IAs	861	864	0.35%
SEC-registered IAs	2,022	2,054	1.58%
IARs	19,494	20,370	4.49%
SRSIOs & BWCCIO	92	103	11.96%
<b>Total Licensee Population</b>	<b>214,261</b>	<b>218,309</b>	<b>1.89%</b>

# Enforcement Update

**Please Note:** Due to the impact of COVID-19, some scheduled enforcement hearings and trials will likely be continued to future dates, depending on court directives and hearing officer schedules. This is a rapidly changing situation. If you plan to attend a hearing or trial, please contact the court or the Division prior to travelling.

*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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## Administrative Hearings

**Daniel Rossi, CRD No. 1190774**  
**FEIC Financial, Inc., CRD No. 25545**  
**Business Equity Advisors, Inc. f/k/a FEIC**  
**Business Equity Solutions, Inc.**  
Division Order Nos. 19-024 and 19-034  
Hearing Date: June 23-24, 2020

**Component Sourcing Group, Inc.**  
**Patricia Tzannakos**  
Division Notice Order No. 19-019  
Hearing Date: June 29-July 1, 2020

**Christopher J. Henneforth, CRD No. 3157633**  
**Level Partners Management, Inc., CRD No. 107072**  
Division Notice Order No. 20-014  
Hearing Date: July 22-24, 2020

**Andrew Todd Roseberry, CRD No. 2589166**  
**Consolidated Financial Management Group, LLC, CRD No. 119695**  
Division Order Nos. 19-028 and 19-029  
Hearing Date: TBD

**LA Stephenson and Company, CRD No. 167629**  
**Lucien Austin Stephenson, CRD No. 3084925**  
Division Notice Order No. 19-007  
Hearing held. Report and Recommendation issued recommending revocation. Awaiting final order.

**Steven Arthur Svetlick, CRD No. 2589535**  
Division Order No. 19-022  
Hearing held. Report and Recommendation issued April 7, 2020, recommending revocation. Awaiting final order.

**Dock Douglas Treece, CRD 866947**  
**Treece Investment Advisory Corp., CRD No. 110449**  
**Treece Financial Services Corp., CRD 23296**  
Division Notice Order No. 18-023  
Hearing held. Report and Recommendation issued recommending revocation. Awaiting final order.

# **Enforcement Update**

## **Administrative Appeals**

### **TAP Management, Inc. *et al.***

Case No. 17 CV 006942, Franklin County Court of Common Pleas  
Appeal from Division Final Order No. 17-022  
Filed Aug. 2, 2017  
Awaiting final opinion.

### **Craig Alan Sutherland, CRD No. 2001873**

Case No. 19 CVF 120692, Delaware County Court of Common Pleas  
Appeal from Division Order No. 19-040  
Filed Dec. 10, 2019

On May 12, 2020, the Delaware County Court of Common Pleas issued a Judgment Entry in the appeal finding, with limited exceptions, that the Division's Final Order in this case was supported by reliable, probative, and substantial evidence. The court found the six-month suspension was an appropriate remedy and affirmed the suspension, which was reinstated as of June 1, 2020.

## **Administrative Orders**

### **Division Order No. 20-008**

First Merchant Network  
Henderson, Nevada

On March 18, 2020, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Issue Cease and Desist Order based on allegations First Merchant Network cold-called an elderly Ohio resident to invest in business leads, loans and credit card processing services to small businesses for returns between 2% and 25% of revenue. The Notice Order further alleges the \$41,800 invested by the Ohio resident was laundered through another elderly victim in Nevada before being withdrawn from ATMs located in Jamaica.

### **Division Order No. 20-009**

Christopher R. Barone, CRD No. 2032268  
Cleveland, Ohio

On March 19, 2020, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Issue Cease and Desist Order based on allegations Barone – while acting in the capacity of President and Chief Compliance Officer of America Northcoast Securities, Inc., CRD No. 16076 – executed trades, including trades in leveraged ETFs, in client accounts at the direction of Dominic Tropiano, an unlicensed individual, without reasonable inquiry to determine whether the transactions were suitable. On Jan. 23, 2020, Barone entered into an Acceptance, Waiver and Consent (“AWC”) with FINRA and agreed to a permanent bar based on findings he made misrepresentations to FINRA about the frequency of his supervision of his firm's trade reporting and altered documents provided to FINRA.

# **Enforcement** Update

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## **Division Order Nos. 20-010 and 20-018**

Dominic A. Tropiano, CRD No. 4761462  
Shaker Heights, Ohio

On May 20, 2020, the Division issued a Final Order to Cease and Desist based on findings Tropiano acted as a securities dealer, salesperson, investment adviser or investment adviser representative in at least four client accounts without proper licensure. The Division further found Tropiano initiated trades in leveraged ETFs that were unsuitable for those clients. Tropiano entered into an Acceptance, Waiver and Consent (AWC) with FINRA in Matter No. 2016051098501 and agreed to a bar based on findings he recommended over 800 transactions involving non-traditional exchange-traded funds to at least 47 customers without a reasonable basis to determine suitability and, in some cases, without authorization from the clients. A hearing was not requested in this matter.

## **Division Order Nos. 20-011 and 20-019**

Robert T. Dames  
Fatwood, LLC  
Cincinnati, Ohio

On May 27, 2020, the Division issued a Cease and Desist Order with Consent to Robert T. Dames and Fatwood, LLC, operating the website [www.flipdaddys.com](http://www.flipdaddys.com), based on findings they engaged in the sale of unregistered securities through crowdfunding. The Division found, between Jan. 2 and March 27, 2018, Dames and Fatwood received investments or commitments to invest from 24 investors, but failed to comply with specific federal regulations and appropriate disclosures, which are required to claim the crowdfunding exemption from registration under federal law, including requirements to provide to investors financial statements with information regarding balance sheets, changes to stockholder equity, and notes. The Notice Order was issued in Order No. 20-011.

## **Division Order Nos. 20-012 and 20-020**

David A. Gollner, CRD No. 224763 (inactive)  
Hermitage, Pennsylvania

On May 27, 2020, the Division issued a Cease and Desist Order with Consent Agreement to David Gollner based on findings Gollner acted as an unlicensed securities salesperson and engaged in the sale of unregistered securities in a total amount exceeding \$143,000 to two elderly Ohio residents. Gollner received commissions from the issuer, 1 Global Capital, LLC, based on the total amount of investments made by the Ohio residents. At least one of the investments was maintained in a self-directed IRA account with a third-party custodian. The SEC initiated civil injunctive action against 1 Global Capital, LLC and other related persons in Case No. 18-CV-61991 in the U.S. District Court for the Southern District of Florida, alleging, in part, the company utilized unlicensed investment advisers to raise at least \$287 million from 3,400 investors, including at least 100 Ohio investors. The SEC complaint further alleged the CEO of 1 Global Capital, LLC misappropriated at least \$28 million of investor funds for personal expenses, including a family trip to Greece, a Mercedes-Benz lease, and payments to his personal chef and housekeeper. The Court issued a permanent injunction in that case on Nov. 28, 2018.

# Enforcement Update

## **Division Order No. 20-013 and 20-023**

Ronald U. Schulze, CRD No. 2458738 (inactive)  
Fort Laramie, Ohio

On April 29, 2020, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Issue Cease and Desist Order based on allegations Schulze acted as an unlicensed securities dealer or salesperson in the sale unregistered securities issued by Woodbridge Mortgage Investment Fund 4, LLC and 1 Global Capital, LLC respectively to six elderly Ohio residents in a total amount exceeding \$1 million in exchange for transaction-based compensation. Schulze's CRD record notes he was terminated from World Securities Group, Inc., CRD No. 114473, in 2008 for "solicitation of business through a provider that [WSG] did not have a selling agreement with." Schulze entered into an Acceptance, Waiver and Consent (AWC) with FINRA in FINRA Case No. 2008015277401, which included findings Schulze sold fixed annuities to 33 individuals in violation of his employing firm policies regarding outside business activities. On Dec. 20, 2017, the SEC filed a Complaint for Injunctive and Other Relief in the U.S. District Court for the Southern District of Florida naming Woodbridge Mortgage Investment Fund 4, LLC and related entities and persons, alleging Woodbridge utilized internal and external selling agents (some unlicensed) to conduct a Ponzi scheme raising more than \$1.22 billion from over 8,400 investors nationwide. The SEC also filed a complaint against 1 Global Capital, LLC, which is described above. See *In Re: David Gollner*, Division Order Nos. 20-012 and 20-020. An administrative hearing was not requested in this matter and a final order to cease and desist was issued June 11, 2020.

## **Division Order No. 20-014**

Christopher J. Henneforth, CRD No. 3157633  
Level Partners Management, Inc., CRD No. 107072  
Gahanna, Ohio

On April 29, 2020, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Issue Cease and Desist Order and to Suspend or Revoke the Ohio Investment Adviser Representative License of Christopher J. Henneforth and the Ohio Investment Adviser License of Level Partners Management, Inc. based, in part, on allegations Henneforth solicited 25% of his investment advisory clients to invest in Hadsell Chemical Processing, LLC in Waverly, Ohio ("Hadsell"). The Notice Order alleges Henneforth did not disclose to his clients he was acting as the CFO for Hadsell in exchange for a salary, and his agreement with Hadsell included a "finder's fee" of ownership interests in Hadsell and related companies, as well as a commission between 5%-10% of new investor monies raised over the \$2.25 million required in the contract terms. The Notice Order further alleges Henneforth deposited client-investor monies into a bank account for which he was the sole signer, and only \$195,000 of a total of \$925,000 in investor funds was transferred to Hadsell from the account, while over \$243,800 was paid to Henneforth and Level, and over \$583,600 was paid to previous investors for interest payments. The Notice Order further alleges Henneforth and Level failed to maintain complete and accurate disclosures in the CRD system related to business affiliations and related activities. The Notice Order alleges, in part, unlicensed activity in the sale of unregistered securities, securities fraud, fraudulent, manipulative, or deceptive conduct as an investment adviser representative, violation of rules related to custody of client funds or securities, lack of good business repute, and breach of fiduciary duty. On May 17, 2017, the SEC filed a complaint in the U.S. District Court for the Southern District of Ohio naming Hadsell and the former president of Hadsell, alleging they made material misrepresentations to investors, sold unregistered securities, and

# **Enforcement Update**

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misappropriated investor funds. An administrative hearing in the Division matter is scheduled for July 22, 2020.

## **Division Order No. 20-015**

Leonard John Kuczynski, CRD No. 863341 (inactive)  
Independence, Ohio

On April 30, 2020, the Division issued a Cease and Desist Order with Consent Agreement to Leonard John Kuczynski based on findings he engaged in the sale of unregistered securities to two Ohio residents in a total amount exceeding \$140,000 in exchange for a 4% commission paid by the issuer, Future Income Payments, LLC ("FIP"). The FIP investments were sold as "structured cash flow" investments in pensions, which were sold by retirees at a discount to FIP. FIP advertised investors would yield returns between 6%-7%. Both Ohio investors invested through self-directed IRA accounts held with Goldstar Trust Company, at the direction of Kuczynski. On Sept. 13, 2018, the Bureau of Consumer Financial Protection filed a complaint in Case No. 8:18-cv001654 in the U.S. District Court in the Central District of Florida naming FIP and related entities. In November 2019, the owner of FIP, Scott Kohn, was indicted by a federal grand jury in U.S. District Court for the District of South Carolina on charges of conspiracy to engage in mail and wire fraud for his alleged role in FIP, which the FBI states was a Ponzi scheme that actively recruited pension holders who were desperate for money, including many veterans of the United States Armed Forces and defrauded 2,600 investors out of approximately \$300 million. The U.S. Marshals Service apprehended Kohn on a beach in San Diego as he tried to escape. Kohn was using the identity of a deceased man when he was apprehended. Federal authorities say Kohn, a Michigan native, spent the investors' money on artwork, high-end automobiles and real estate, included a \$4.8 million home in California and a \$1.7 million Las Vegas estate.

## **Division Order No. 20-016**

Bannerbit.com  
Limassol Cyprus

On May 12, 2020, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Issue Cease and Desist Order based on allegations Bannerbit.com is engaged in the sale of unregistered securities through material misrepresentations and is acting as an unlicensed securities dealer. The Notice Order alleges a Bannerbit.com representative cold-called an Ohio resident and solicited her to invest in their platform operating through the website, [www.bannerbit.com](http://www.bannerbit.com), which purports to be an ad-flipping platform that provides returns on investments. The Notice Order further alleges the website includes misrepresentations related to affiliations with companies such as Amazon and eBay.

## **Division Order No. 20-017**

Cannon Operating Company, LLC  
Garland, Texas  
William G. Baker  
Royse City, Texas  
John F. Griffin  
Dallas, Texas

On May 20, 2020, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Issue Cease and Desist Order based on allegations the named respondents engaged in

# Enforcement Update

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securities fraud and acted as unlicensed securities dealers or salespersons in the sale of investments in Shawnee Field No. 2, issued by Cannon Operating Company, LLC, a purported oil and gas producer located in Texas. The Notice Order alleges Baker, the Executive Officer, President and Director of Cannon, was convicted on multiple misdemeanor and felony charges in Texas, including a conviction for unlawful carry of a weapon and a conviction for manufacturing/delivering a controlled substance, for which he was sentenced to 10 years' incarceration in the Texas Department of Corrections. The Notice Order further alleges Cannon was named as a respondent in two Final Orders issued by the Railroad Commission of Texas and filed in the Texas Oil and Gas Docket, as well as orders issued by the Securities Commissioner of South Carolina and the Indiana Securities Division. The Notice order alleges respondents engaged in securities fraud in the sale of the Shawnee Field Investment to an Ohio resident for \$16,750 by not disclosing material information about prior administrative orders and criminal convictions. The Notice Order further alleges the securities were sold through an unlicensed dealer or salesperson and on terms at material variance with the Form D filed with the Division.

## **Division Order No. 20-021**

Wesleyan Investment Foundation, Inc.  
Craig Dunn  
Fishers, Indiana

On June 8, 2020, the Division issued a Cease and Desist Order with Consent by Wesleyan Investment Foundation ("WIF") based on the findings WIF engaged in unregistered sales through unlicensed agents by utilizing a pastor of a regional church, Crossroads, to solicit investments in savings accounts issued by WIF. The Order included further findings WIF marketed and sold the investments through advertisements and marketing materials which contained material variances from statements and documents filed with the Division, specifically, in part, by comparing the WIF Investments to savings accounts at financial institutions, when the WIF Offering Circulars state WIF is not a bank, the investments are not issued by, and are not obligations of a bank, are not insured by FDIC or SIPC, and do not have the insurance protection afforded to demand deposit accounts at a bank.

## **Division Order No. 20-022**

Corona Billionaire  
Corona Millionaire  
Austin, TX

On June 11, 2020, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Issue Cease and Desist Order based on allegations Corona Billionaire and Corona Millionaire engaged in the sale securities through material misrepresentations and fraud and is acting as an unlicensed securities dealer. The Notice Order alleges the websites, <https://coronamillionaire.com> and <https://coronabillionaire.com> contain false and inflated facts, including statements such as, "There is no other trading app in the world that performs at the 99.4% level of accuracy that The Corona Millionaire is able to hit. That's why our members from around the world trust us to double triple and quadruple their hard-earned money," and "The Corona Millionaire software has been created using the most advanced programming the trading world has ever seen. The software is ahead of the markets by 0.01 seconds. This 'time leap' makes the software the most consistent trading app on the planet." This investigation stemmed from the work of the Ohio Coronavirus Fraud Task Force with members from the Division Enforcement Section, in conjunction with the NASAA COVID-19 Sweep.

# **Enforcement Update**

## **Division Order No. 20-024**

Mark Baxter aka  
Mark Morrow  
Springfield, PA

On June 11, 2020, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Issue Cease and Desist Order based on allegations Mark Baxter, aka Mark Morrow, offered to act as an unlicensed securities dealer through a Craigslist ad containing material misrepresentations and fraudulent omissions. The Division alleges the Craigslist ad, which was specifically targeting residents of seven cities in Ohio, contains statements such as, “P E N N Y STOCKS MAKE 6000\$ A WEEK CORONA VIRUS STOCKS UP 800% PANIC\$” and “I LL TRADE YOUR ACCOUNT FOR YOU AND WE SPLIT THE PROFITS, OR I LL TEACH YOU WHAT I KNOW THRU MY TRAINING FOR 200\$ OR BOTH” and “...THESE 1000 PERCENT RUNNERS ACTUALLY HAPPEN EVERY WEEK THE TRICK IS BEING IN THE RIGHT PLACE AT THE RIGHT TIME, I VE ALSO FORMED A TECHNIQUE FOR FINDING THESE...” This investigation stemmed from the work of the Ohio Coronavirus Fraud Task Force with members from the Division Enforcement Section, in conjunction with the NASAA COVID-19 Sweep.

## **Division Order No. 20-025**

Corona Fever  
Charlestown, Saint Kitts and Nevis

On June 25, 2020, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Issue Cease and Desist Order based on allegations Corona Fever engaged in the sale securities through material misrepresentations and fraud and is acting as an unlicensed securities dealer. The Notice Order alleges the website, <https://coronafeverinvest.com> contains false and inflated facts, including statements such as, “The Corona Fever was developed to counter the effects of the coronavirus outbreak in the financial markets and to allow people to make money trading Bitcoin and other cryptocurrencies. The algorithm of Corona Fever gives it a trading advantage over the other apps in the same category” and “The sophisticated algorithm allows Corona Fever to stay ahead of the market by 0.01 seconds” and “When you register and start using the Corona Fever software with real cash, you stand to make upwards of \$1,300 per day in pure profits,” and “There is no set profit cap when using the Corona Fever software to trade Bitcoin and other cryptocurrencies. Some of our members earned their first million within a few months of registering and using our software.” The Notice order further alleges the website contains a testimonial from “Selena H.” a Columbus, Ohio resident, who is identified using a stock photo found on multiple other websites. This investigation stemmed from the work of the Ohio Coronavirus Fraud Task Force with members from the Division Enforcement Section, in conjunction with the NASAA COVID-19 Sweep.

## **Criminal Cases**

### **State v. Kenneth M. Brugh**

Case No. 19 CR 001382  
Lake County Court of Common Pleas  
Pre-trial Hearing: TBD (motions pending)

# **Enforcement Update**

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## **State v. John Case**

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

## **State v. Brian Keith Decker CRD 4565524 (inactive)**

Case No. 18 CR 395  
Wood County Court of Common Pleas  
Sentencing Date: March 30, 2020

On March 30, 2020, Brian K. Decker was sentenced to five years of community control plus 60 additional days in jail and ordered to pay \$300,000 in restitution to his victim. If Decker violates conditions of community control, he can be sentenced up to 25½ years in prison and three years community control upon release.

Decker pleaded guilty in January to several fraud-related charges for scamming an elderly Ohio resident out of \$376,000. He was convicted of two counts of unlawful securities practices, one count of theft from a protected class, and one count of telecommunications fraud, all second-degree felonies; and failure to appear, a fourth-degree felony, which was a result of Decker failing to appear for his jury trial in July 2019.

Decker was indicted August 16, 2018, following a criminal referral and a joint investigation by the Ohio Department of Commerce's Division of Securities and the Wood County Sheriff's Office. From Jan. 1, 2016, to March 1, 2017, Decker received the money from an elderly Ohio resident and World War II veteran who invested with Decker for construction projects, based on promises of returns between 12-20 percent. Instead of using the investments for construction projects, the funds were misappropriated by Decker.

He accepted a permanent bar from the Financial Industry Regulatory Authority (FINRA) on May 8, 2018 and is not licensed by the Division to act as a securities salesperson in Ohio. The case was presented by Assistant Prosecutor David Romaker Jr. in the office of Wood County Prosecutor Paul Dobson.

## **State v. Jeffrey B. Hall CRD No. 1871653 (inactive)**

Case Nos. 17 CR 004124/18 CR 001232  
Franklin County Court of Common Pleas  
Sentencing Date: July 6, 2020

## **State v. Judith O. Nagy**

Case No. CR18631581-A  
Cuyahoga County Court of Common Pleas  
Pretrial Hearing Date: TBD (motions pending)

# **Enforcement** Update

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## **State v. Michael Neubig**

Case No. 18 CR 004998

Franklin County Court of Common Pleas

Sentencing Date: August 21, 2020

On June 24, 2020, Michael Neubig, 52, pleaded guilty in the Franklin County Court of Common Pleas to four counts of theft, all third-degree felonies, and one count of unauthorized use of property, a fourth-degree felony. Neubig was indicted in October 2018 by a Franklin County grand jury after a joint investigation and criminal referral by the Ohio Attorney General's Bureau of Criminal Investigation and the Ohio Department of Commerce's Division of Securities.

The conviction stems from the sale of investments in Capture Educational Consulting Services, Inc., a company formed by Neubig and based in New Albany. Capture Educational provided software solutions to school systems enabling them to use data analytics to improve the efficiency and effectiveness of administrative and instructional tasks. The conviction is based on numerous false and misleading statements to investors located in Ohio and California, including several angel fund investment groups, about the financial wellbeing and the number of students using the company's scheduling platform. Neubig failed to disclose to investors material information about the financial condition of the company, including cash flow shortages, negative bank balances, customer base, and payroll issues. He pled guilty to charges involving three additional victims who were not included in the original indictment. This case is being prosecuted by the Office of the Franklin County Prosecutor Ron O'Brien, presented by Jeff Blake and Robert Lang, assistant county prosecutors.

## **State v. Shaneal Yogesh Patel**

Case No. B1901113

Hamilton County Court of Common Pleas

Pre-Trial Date: July 22, 2020

On May 1, 2020, Patel appeared (through extradition from Florida) in the Hamilton County Court of Common Pleas and was arraigned. Bond was set at \$200,000.

## **State v. Aaron S. Pitman**

Case Nos. 19CR139

Meigs County Court of Common Pleas

Trial Date: July 20, 2020

## **State v. Nicholas J. Pupino**

Case No. 2019 CR 01086

Mahoning County Court of Common Pleas

On June 23, 2020, Nicolas Pupino, 83, pleaded no contest to securities fraud, a fifth-degree felony, and forgery, a third-degree felony, in the Mahoning County Court of Common Pleas. Judge Anthony Donofrio sentenced Pupino to six months of electronically monitored house arrest. At sentencing, Pupino paid \$55,474.14, the amount of the theft, minus amounts previously repaid, for restitution to his victim. Pupino was indicted by a Mahoning County grand jury in December 2019 following a criminal referral by the Ohio Department of Commerce's Division of Securities. The indictment alleged Pupino solicited an elderly person to invest more than \$99,000 by telling her the funds would be invested into accounts with known insurance companies, which would generate funds to pay future nursing-home expenses or to pass to her

# **Enforcement Update**

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beneficiaries upon her death. Instead of forwarding the investment funds to the insurance companies, Pupino deposited the funds into his personal bank account. Pupino also added his own name to the payee line of investment checks after they were signed by the victim so he could deposit them into his own account. This case was prosecuted by the Office of the Mahoning County Prosecutor Paul J. Gains, and presented by Assistant Prosecuting Attorney Martin S. Hume.

**State v. Raymond D. Sarrocco**

Case No. 19 CR I 04 0257  
Delaware County Court of Common Pleas  
Trial Date: Aug. 20, 2020

**State v. Jeffery Luke Westerman**

Case No. 18 CR 006309  
Franklin County Court of Common Pleas  
Pre-trial Date: July 13, 2020

**State v. Robert White**

Case No. 2019 CR 000149  
Clermont County Court of Common Pleas  
Sentencing Date: July 1, 2020

On July 1, 2020, Robert White, 73, was sentenced by Clermont County Court of Common Pleas Judge Victor Haddad to nine years in prison and ordered to pay restitution in excess of \$1.2 million to over 80 victims. White was also ordered to pay court costs and could serve three years of post-release control after released from prison. He was taken into custody after sentencing. White pleaded guilty in January 2020 to six third-degree felony counts of making false representations in the sale of securities. He was indicted by a Clermont County grand jury in February 2019 after an investigation by the Ohio Department of Commerce's Division of Securities and the Union Township Police Department. This case was prosecuted by the Office of the Clermont County Prosecutor D. Vincent Faris and presented by Assistant Prosecuting Attorney Darren Miller.

**State v. Michael D. Wood**

Case No. 19 CR I 11 0776  
Delaware County Court of Common Pleas  
Jury Trial: July 7, 2020

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

[https://www.com.ohio.gov/documents/secu\\_Bulletin2020FirstQuarter.pdf](https://www.com.ohio.gov/documents/secu_Bulletin2020FirstQuarter.pdf)  
[https://www.com.ohio.gov/documents/secu\\_Bulletin2019FourthQuarter.pdf](https://www.com.ohio.gov/documents/secu_Bulletin2019FourthQuarter.pdf)  
[https://www.com.ohio.gov/documents/secu\\_Bulletin2019ThirdQuarter.pdf](https://www.com.ohio.gov/documents/secu_Bulletin2019ThirdQuarter.pdf)  
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[https://www.com.ohio.gov/documents/secu\\_Bulletin2018FourthQuarter.pdf](https://www.com.ohio.gov/documents/secu_Bulletin2018FourthQuarter.pdf)

# Corporate Finance Registration Update

*The Division's Corporate Finance/Registration Section registers securities offered for sale to Ohioans.*

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## Reg BI Now In Effect

The landscape of securities regulation continued to shift this quarter when Regulation Best Interest (“Reg BI”) became effective. Reg BI enhances the standard of care imposed on broker-dealers in relation to their retail customers and will require them to:

(1) act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interests of the retail customer; and

(2) address conflicts of interest by establishing, maintaining, and enforcing policies and procedures reasonably designed to identify and fully and fairly disclose material facts about conflicts of interest, and in instances where we have determined disclosure is insufficient to reasonably address the conflict, to mitigate or, in certain instances, eliminate the conflict.<sup>1</sup>

In addition to Reg BI, several jurisdictions have proposed conduct standards for broker-dealers. For example, New Jersey,<sup>2</sup> Massachusetts,<sup>3</sup> and Nevada<sup>4</sup> have proposed rules that would impose fiduciary standards on broker-dealers. Other conduct standards for broker-dealers are possible from state securities agencies or the U.S. Department of Labor.

While Reg BI and the other standards impose compliance obligations directly on broker-dealers and their firms, issuers of securities should also be mindful of how these standards should be disclosed in their offering materials. This is especially true for issuers of high-cost, high-risk, and complex products that have retained (or reserved the right to retain) broker-dealers.<sup>5</sup> As a result, the Division is asking such issuers to incorporate at least the following changes:

1. **Cover Page/Legend Disclosure.** We are concerned issuers or broker-dealers may believe the mere fact an offering is registered in a particular jurisdiction means it can be sold in compliance with Reg BI or other conduct standards. As a result, we are asking issuers to include a legend on the cover page stating:

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<sup>1</sup> SEC releases, i.e. *Final Rule; Regulation Best Interest: The Broker-Dealer Standard of Conduct*, 84 Fed Reg. 33,381 (July 12, 2019) (the “Regulation BI Adopting Release”) (codified at 17 C.F.R. 240.151–1).

<sup>2</sup> *Fiduciary Duty of Broker-Dealers, Agents, Investment Advisors and Investment Adviser Representatives*, 51 N.J.R. 493(a) (proposed April 15, 2019) (to be codified at N.J.A.C. 13:46A-6.4).

<sup>3</sup> *Adoption of Amendments to Fiduciary Conduct Standard Regulations*, William Francis Galvin, Secretary of the Commonwealth of Massachusetts (Feb. 21, 2020), <http://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/fiduciaryrule-adoption.htm>.

<sup>4</sup> *Fiduciary Duty Regulations*, NRS 90.575 (2017).

<sup>5</sup> Item 508 of Regulation S-K requires issuers to disclose arrangements with underwriters and broker-dealers.

# Corporate Finance

## Registration Update

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**Securities regulators have not passed upon whether this offering can be sold in compliance with existing or future suitability or conduct standards including the ‘Regulation Best Interest’ standard to any or all purchasers.**

2. **Suitability Section Updates.** Both the SEC and FINRA have referred to Reg BI as an enhancement of existing suitability standards.<sup>6</sup> Issuers should disclose appropriate Reg BI and other conduct standard disclosures into suitability sections or in close proximity to the suitability section as a stand-alone section. This disclosure should include at least the following:
  - i. Regulation Best Interest adoption date;
  - ii. Regulation Best Interest may be interpreted as a higher standard than suitability;
  - iii. Regulation Best Interest may be more restrictive than the quantitative standards currently described in the suitability section;
  - iv. The basic requirements of Regulation Best Interest include the general obligation and four component parts (the disclosure obligation, the care obligation, the conflict of interest obligation and the compliance obligation); and
  - v. No administrative or case law exists under Regulation Best Interest and the full scope of its applicability is uncertain.
3. **Subscription Agreement Changes.** Similarly, if an issuer addresses suitability in its subscription agreement, it should now make corresponding adjustments to the subscription agreement where suitability is referenced.
4. **Additional Risk Factors.** Many offering circulars disclose the risk of not reaching the minimum offering amount or raising substantial funds. For example, one real estate issuer disclosed if it were to “raise substantially less than the maximum offering, [it] may not be able to invest in a diverse portfolio of income-producing commercial properties and other real estate-related assets.”

The Division asserts the interpretation and/or application of conduct standards by broker-dealers may affect whether some broker-dealers decide to recommend these offerings to customers. High-cost, high-risk, and complex products should disclose the risks of being subject to greater scrutiny by broker-dealers, that broker-dealers are under a duty of care to evaluate other alternatives in the purchaser’s best interest and other alternatives are likely to exist.

Brokers should note this is not purely a matter of federal law; Ohio Revised Code section 1707.44(L) prohibits dealers from engaging in any conduct “that violates the provisions of section 15(c) or 15(g) of the ‘Securities Exchange Act of 1934,’ 48 Stat. 881, 15 U.S.C.A. 78o(c) or (g), or any rule or regulation promulgated by the securities and exchange commission

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<sup>6</sup> See Regulation BI Adopting Release at 33318-33319 (stating that Reg BI will improve investor protection by “[e]nhancing the obligations that apply when a broker-dealer makes a recommendation to a retail customer... and reducing the potential harm to retail customers from conflicts of interest that may affect the recommendation.”); Notice of Filing of a Proposed Rule Change to FINRA’s Suitability, Non-Cash Compensation and Capital Acquisition Broker (CAB) Rules in Response to Regulation Best Interest, 85 Fed. Reg. 16,974 (Mar. 25, 2020) (stating that “[t]wo key enhancements are that Reg BI explicitly imposes a best interest standard and explicitly requires a consideration of costs.”)

# Corporate Finance

## Registration Update

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thereunder.”<sup>7</sup> The Division requires issuers to provide the names and CRD numbers of broker-dealers that have agreed to offer the securities of the issuers and may also evaluate the compliance of broker-dealers selling high risk and complex products.

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<sup>7</sup> Ohio Rev. Code. Ann. §1707.44(L).

## IMPORTANT UPDATE - 2020 Ohio Securities Conference



This year's Ohio Securities Conference will take place Oct. 16, but with an online format instead of the planned live event due to the impact of the COVID-19 pandemic. We have already booked the Sheraton hotel in downtown Columbus for 2021 and anticipate returning to an in-person format then.

Although this year's conference will be different, we are sticking with our focus on "change." With Election Day happening a little more than two weeks later, the theme this year will revolve around potential changes in federal and state politics that could affect the financial services industry. Other topics will reflect the changes our industry has seen and will continue to see in response to the coronavirus, both from an operational as well as legal standpoint.

Rick Fleming, director of the SEC's Office of the Investor Advocate, will be one of the keynote speakers. Additional topics and presenters are being developed, so be sure to watch for updates in the next issue of the *Ohio Securities Bulletin* and in emails.

### Securities Division Recognizes Staff for Service Milestones and PEER Awards

Ohio Department of Commerce Director Sherry Maxfield recently honored Division employees who reached significant service milestones. They include:

- Terri Beardsley – 30 years
- Will Pultinas – 30 years
- Alex Brown – 10 years
- Kevin Armstrong – 10 years
- John Crist – 5 years

Division employees nominate their co-workers for the annual PEER Awards while Andrea Seidt decides the Commissioner's Award. This year's award categories took into account most of the staff are working from home every day.

- **ROCK STAR AWARD** – To recognize the employee in each section on whom everyone relies, the fuel that allows his or her colleagues and the Division to shine brighter. Epitomizes customer service excellence, always professional, empathetic, efficient, and resolution-driven. Demonstrates the ability to achieve excellence through collaboration while inspiring, challenging and supporting others to achieve a common goal.
- **DISTANCING DYNAMO** – To recognize the one person at the Division who has been the most helpful to others during the COVID-19 crisis. Examples of award-worthy work may include, but is not limited to, coverage of essential functions in the office, technical help utilizing new technologies, sharing resources, working from home tips, developing and implementing telework processes, etc.

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- **WILD CARD** – Staff can nominate an employee for the award of their choosing with an explanation why the employee deserves it.
- **FACE MASK AWARD** – Employees were asked to submit a picture of themselves or family members (including pets) wearing a face mask.

This year's winners are:

- Enforcement Rock Star – Terri Beardsley
- Licensing Rock Star – Anne Followell
- Registration Rock Star – Tanez Jackson
- Administration Rock Star – Jen Coit & Dan Orzano
- Distancing Dynamo – Ray Glenn
- Wild Card Award – Alex Brown and Harvey McCleskey
- Best Face Mask – Glen Sgobbo
- Commissioner's Award – Ray Glenn, Jen Coit, Terri Beardsley, Ryan Rodgers, Tanez Jackson, Ron Richards, and Pam Saunders for going the extra mile by coming into the office on a rotating basis to ensure critical division operations continue while the majority of the staff continue to work from home.

## Outreach and Education Update

In February, the Division shared tips on how to avoid fraud with seniors at the Sneh Community Center in Columbus. In early March, staff partnered with the Ohio Attorney General's office to provide information about the Division as part of Consumer Protection Week.

## 2020 Outreach Calendar (as of June 30)

**PLEASE NOTE** – The Division of Securities continues to follow state guidelines to keep our staff and our stakeholders as safe as possible due to COVID-19. Outreach presentations are postponed for the time being, with the goal of reschedule all previously scheduled presentations and participate in other planned events when the time is right to do so. Outreach Manager Dan Orzano is pursuing opportunities to host virtual presentations with community organizations using available platforms such as Webex, Zoom, Microsoft Teams and other available platforms. Updates will be posted on the Division's Twitter page, so be sure to follow us.



## Follow Us On Twitter

Be sure to follow us [@OHSecuritieDiv](https://twitter.com/OHSecuritieDiv). We post news and information about the Division, plus tips to help Ohioans become more savvy investors and avoid getting scammed.

## **NASAA News**

### **NASAA Releases Annual Report on State-Registered Investment Advisers**

The North American Securities Administrators Association (NASAA) released in late April its [annual report](#) on the state-registered investment adviser industry and the related regulatory activities of state securities regulators. These regulators have oversight responsibility for more than 17,500 investment advisers with assets under management of \$100 million or less.

The report highlights the important regulatory policy work, education and training, and coordination efforts of NASAA's Investment Adviser Section Committee and Project Groups. Major undertakings discussed in the report include the 2019 Coordinated Exams overseen by the Section's Operations Project Group and the information security model rule package developed by the Section's Regulatory Review and Policy Project Group and adopted last year by NASAA's membership.

Alex Glass, Indiana Securities Commissioner and Chair of NASAA's Investment Adviser Section, said the report indicates the cybersecurity preparation and practices among state-registered investment advisers continues to concern state securities regulators.

"Our coordinated examinations show overall deficiencies in just about every category except cybersecurity have decreased since 2015," Glass said. "NASAA's new model rule requires investment advisers to adopt policies and procedures regarding information security and to deliver its privacy policy annually to clients. This represents a significant step toward enhancing the cybersecurity and privacy practices of state-registered investment advisers."

Other highlights of the report include an updated profile of state-registered investment advisers; a discussion of updates to NASAA's cybersecurity checklist, including the development of detailed guidance on each area of the checklist and a separate data inventory checklist. The report also showcases proactive outreach initiatives to state-registered investment advisers by NASAA member agencies.

### **NASAA Forms COVID-19 Enforcement Task Force**

In late April, the North American Securities Administrators Association announced the formation of the COVID-19 Enforcement Task Force, consisting of state and provincial securities regulators, to identify and stop potential threats to investors stemming from the COVID-19 pandemic.

The Ohio Division of Securities is participating in the task force, and four of the division's enforcement staff members are assigned to investigate any potential COVID-19-related fraud reported to the division. [Read the division's news release.](#)

"The objective of the task force is to proactively identify COVID-19-related threats to investors, including but not limited to fraudulent offerings, investment frauds, and unregistered regulated activities, within the jurisdiction of NASAA member states and provinces, and to disrupt,

discourage and deter those activities,” said Christopher W. Gerold, NASAA president and chief of the New Jersey Bureau of Securities.

Modeled after NASAA’s successful [Operation Cryptosweep](#), the new initiative is being led by NASAA’s Enforcement Section and its Enforcement Technology Project Group. The Task Force is using online investigative techniques to identify websites and social media posts that may be offering or promoting fraudulent offerings, investment frauds, and unregistered regulated activities.

“Just as state and provincial securities led the way in protecting investors from fraudulent cryptocurrency-based schemes in 2018, we stand ready to protect investors from COVID-19-related schemes during this unprecedented time,” Gerold said.

The task force hosted its first meeting in late April. Individual jurisdictions working as part of the task force are responsible for taking regulatory action to address identified threats. [Read the latest update](#).

As part of its work, the task force will examine a recent spike in internet domain names linked to the pandemic. As of April 20, the task force identified as many as 200,000 coronavirus-related domains. Most of these domain names appear to have been created within the past three months. Through the task force, state and provincial securities regulators will be analyzing these domains to identify those offering securities or investment advice, and will pursue those appearing to pose a viable threat to investors.

## **NASAA Outlines Strong State Response to COVID-19 Fraud in House Testimony**

In mid-June, NASAA told Congress state securities regulators are undertaking decisive action aimed at rooting out and shutting down frauds related to the COVID-19 pandemic. Many of these schemes are targeting vulnerable senior investors who are experiencing unprecedented quarantines to protect against the spread of the novel coronavirus. You can read the testimony by Amanda Senn of the Alabama Securities Commission [here](#) and also [watch the recorded hearing](#) of the House Financial Services Committee.

## **NASAA’s Electronic Filing Depository Functionality Expanded**

NASAA announced in late May its [Electronic Filing Depository \(EFD\) System](#) was expanded to accept additional corporation finance materials.

The system’s expanded functionality allows the electronic submission of various corporation finance filings and associated state fees. The new functionality is particularly important as regulators and industry rely more heavily on remote working arrangements due to COVID-19. Many of these filings were previously paper based.

Through its EFD Steering Committee, NASAA built and launched the new functionality, referred to as “Universal Filing Type,” to submit electronic filings with states for a variety of corporation finance offerings not previously available through EFD. These offerings include, among others:

- registrations by coordination and qualification,

# Division News

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- Regulation A (Tier 1 and Tier 2),
- crowdfunding, (federal and state) and
- franchise filings.

The expanded functionality also facilitates the filing of materials such as issuer-agent registrations.

Developed by NASAA, the EFD System was launched in 2014 and was initially used for the electronic filing of Form D for Regulation D, Rule 506 offerings with state securities regulators. The system was expanded last year to accommodate the electronic filing of Form NF-UIT notice filings for unit investment trusts (UITs) with state securities regulators. Future system enhancements are being considered to accommodate the electronic filing of Form NF-Mutual Funds.

## Industry News

### **FINRA Releases Report Highlighting Its Helpline for Seniors and Other Initiatives** *Helpline Celebrates Five-Year Anniversary*

FINRA recently released a [new report](#) illustrating the FINRA Securities Helpline for Seniors' efforts to provide support, resources and education to senior investors during the last five years. The report also provides insight into FINRA's ongoing work to protect senior investors beyond the helpline – including rulemaking, disciplinary actions, and collaboration with other regulators and organizations – and shares effective practices from member firm senior investor protection programs.

FINRA launched the helpline April 20, 2015 to assist senior and vulnerable investors with questions or concerns about their brokerage accounts and investments. As of Dec. 31, 2019, the helpline has: received more than 18,000 calls from all 50 states and several countries; made more than 1,400 referrals to state, federal and international regulators; and assisted with the return of more than \$7 million to investors.