



180 East Broad Street
Columbus, Ohio 43215

ohio securities bulletin

JAMES A. RHODES
Governor

J. GORDON PELTIER
Director of Commerce

JAMES S. REECE
Commissioner of Securities

September 30, 1976

COMMISSIONER'S COMMENTS

The preliminary draft of amendments to the Ohio Securities Act has been completed. The draft is being reviewed on a department level at this time. Once this study has been completed, the draft will be made available to the securities industry and its lawyers.

The plans of the Division to proceed with the promulgation of rules governing the registration of securities have been delayed by reason of Amended House Bill 317. This Bill provides that all rules promulgated by every state agency under the Administrative Procedures Act must be filed with the Legislative Service Commission by December 31, 1976 under a uniform numbering system to be devised by the Commission prior to that date. For very practical reasons, therefore, the Division will not proceed with its rulemaking until after the first of the year.

The North American Securities Administrators Association meeting in Chicago was very productive. Amended Guidelines for the Registration of Oil and Gas Programs were adopted by the Association and an analysis of the State Uniform Real Estate Securities Act, proposed by the Real Estate Securities and Syndication Institute, was presented to the membership. Ohio was a center of interest by reason of the "take-over" statute activity that has occurred since September, 1975. Approximately 24 states now have statutes similar to Ohio's R. C. 1707.041.

James S. Reece
Commissioner of Securities

THE SECTIONS

BROKER-DEALER

LICENSED SECURITIES SALESMAN COMPLIANCE

The Ohio statute clearly states every salesman of securities must be licensed by the Division of Securities and shall be employed *only* by the licensed broker-dealer specified in his license. The license application is filed by the broker-dealer employing him as a salesman of securities. If such salesman severs his connection with such broker-dealer the salesman's license is void.

The inference seems to be that the salesman is totally responsible to his broker-dealer in all acts involving securities, and that he can only sell what his broker-dealer is licensed to sell.

An urge by the salesman to set himself up as an entrepreneur to sell registrations not connected with his employing broker-dealer should be squelched by his employer. If the salesman persists, the broker-dealer is well advised to cancel his salesman's license.

Please note that Policy Statement 76-2-BD has been re-stated. The test requirement must be met if the applicant for a salesman's license has not taken a test within one year from the date of filing his application.

The way this was stated previously seems to have confused some broker-dealers because it mentioned termination date of employment.

June 30th Bulletin – 76-2-BD states as follows:

"A salesman who has terminated his employment with a broker-dealer, and who submits a renewal application over one year from the date of termination such employment, must take the salesman examination".

What was to be stated as Policy is as follows:

A salesman who has terminated his employment with a broker-dealer, and who submits a renewal application over one year from the date of his latest application on file with the Division, must take the salesman examination.

Please note that Policy Statement 76-4-BD has been re-stated also. An applicant for a broker-dealer license should wait for acknowledgment from this Division that his application has been received before filing Proof of Publication. Applicants for a salesman's license should only wait one week, then proceed to file the Proof of Publication without acknowledgment from this Division.

June 30th Bulletin -- 76-4-BD states as follows:

"Proof of Publication will not be accepted by the Division where such notice was published *prior* to the date application for a securities license was filed and acknowledged by the Division of Securities, Broker-Dealer Section".

What was to be stated as Policy is as follows:

Proof of Publication will not be accepted by the Division where such notice was published *prior* to the date the Broker-Dealer application for a securities license was acknowledged by the Division of Securities, Broker-Dealer Section.

Proof of Publication for a salesman will be accepted without acknowledgment if filed at least one week after filing of salesman's application.

Gordon A. Stott, Supervisor
Broker-Dealer Section

CONSUMER FINANCE

EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

There have been various opinions regarding the extent to which the Federal ECOA might pre-empt the Ohio Consumer Finance Acts. A letter was distributed in April, 1976, by the Federal Reserve Board (FRB) which attempts to classify the various state lending laws into three general categories:

Class I

State laws which prohibit a creditor from making two separate extensions of credit to a husband or wife with the *result* that higher interest rates may be obtained than would otherwise be permitted under State Law.

Class II

State laws which forbid two extensions of credit when the second is made *for the purpose* of obtaining higher interest rates.

Class III

State laws which have a flat prohibition against any person or husband and wife having more than one loan from a creditor.

Both Section 1321.13(E) of the Ohio Small Loan Act and Section 1321.59(B) of the Ohio Mortgage Loan Act contain the language "... or with the result of ..." Consequently, the two acts would fall under Class I above.

Under the two Ohio Acts, a person may have a joint account with a spouse or other person or a separate account, but not both, unless the second extension of credit includes the net balance of the first in the computation of the ceilings and lesser charges as though they were a single loan. FRB feels that there is no affirmative requirement that a creditor make a second loan, providing the second loan is not denied on any basis prohibited by ECOA. To illustrate, assume that A and B are married and dealing with a licensee under the Ohio Small Loan Act:

1. A and B have no obligation with licensee. A wishes to borrow \$3,000. B wishes to borrow \$3,000. (ans.) Each voluntarily may obtain a separate loan up to \$3,000 at the maximum rate for such a loan.

2. A and B have a joint \$1,500 obligation with licensee. A wishes to borrow \$2,000. B wishes to borrow \$2,500. (ans.) Each may voluntarily obtain a separate loan of only \$1,500 with finance charges of \$9. per \$100. per year.

Regulation B will pre-empt the Ohio Small Loan and Mortgage Loan Acts only to the extent that the Ohio Acts prohibit each spouse from obtaining credit separately. Regulation B provides further that the two *separate* extensions of credit are not to be combined to determine individual loan ceilings or finance charges.

Reference is now made to Section 1321.59(A) of the Ohio Mortgage Loan Act. While we have received no written opinion, it is the consensus of legal opinion that separate extensions of credit to the same person by affiliates or agents operating under both Small Loan and Mortgage Loan Acts would continue to constitute a violation when the extensions result in concurrent obligations under both Acts.

Robert P. Fickell, Supervisor
Consumer Finance Section

ENFORCEMENT

FURTHER ACTIVITY UNDER THE OHIO TAKE-OVER STATUTE

CORRECTION. On page four of the June 30, 1976, Bulletin, reference was made to a Voting Trust Proposal by the directors of Valley Camp Coal Company. A Show Cause Order was entered to determine whether the Voting Trust was subject to the Ohio Take-over Act. A hearing was held. At the hearing, the directors argued that the Trust Proposal was exempt because of consent by the Valley Camp Board.

The matter was still pending when the Voting Trust Proposal was withdrawn. The Valley Camp directors then recommended a merger offer by Quaker State Oil Company.

On June 3, 1976, THRALL CAR MANUFACTURING COMPANY filed its intention to take-over YOUNGSTOWN STEEL DOOR COMPANY by purchasing a majority interest in, but not all of the voting stock of, YOUNGSTOWN STEEL DOOR COMPANY, at a price of \$14 per share.

The target company asked the Division to conduct a hearing under Ohio Revised Code Section 1707.041.

The hearing commenced on June 25 and was ended on July 16. On July 22 the hearing examiner filed the Findings of Fact, Conclusions of Law and Recommendations. In an order dated August 2, 1976, Commissioner James S. Reece determined that:

1. The take-over bid of THRALL was in violation of Chapter 1707 of the Ohio Revised Code,
2. The form .041 filing by THRALL did not provide for full, fair and effective disclosure and that THRALL could meet the requirements of a full, fair and effective disclosure by preparing an offering circular containing additional disclosures, and,
3. The terms of the offer should be amended to include disclosures as set forth in the hearing officer's Conclusions of Law, and;
 - a. requiring the proposed payment of the 35 cents per share soliciting dealer's fee be reduced by any commissions or other fees charged by the dealer for effecting the tender,
 - b. providing disclosure be made by offering circular acceptable to the Division, delivered to all offerees prior to acceptance of tender shares,
 - c. providing for a minimum offering period of 30 days and one extension of the offering period for a maximum of 15 days, and
 - d. providing that after the shares tendered exceed 52%, all shares be taken up on a pro rata basis.

THRALL thereupon filed suit in federal court in the case of THRALL CAR MANUFACTURING vs. JAMES A. RHODES, et al.

Subsequent to the filing of the federal court suit, Lampson & Sessions offered \$17 per share for all of the shares of YOUNGSTOWN STEEL DOOR. The Board of Directors of YOUNGSTOWN STEEL DOOR recommended the offer to its shareholders.

THRALL has announced that it will tender its stock to Lampson & Sessions. Counsel for YOUNGSTOWN STEEL DOOR reported that on September 27, 1976, ninety percent of YOUNGSTOWN'S shares had been tendered. As of this writing, the lawsuit, THRALL CAR COMPANY vs.

JAMES A. RHODES, et al., is still pending. Motions for dismissal have been filed as the questions at issue are now moot.

RESULTS OF ACTIVITY UNDER TAKE-OVER STATUTE

In the IMETAL take-over of COPPERWELD, the Division secured compliance with the Take-over Statute and the offer was successfully made by IMETAL, after resistance by its Board of Directors was overcome and after its compliance with the Ohio Take-over Statute was forced by the Court of Common Pleas of Franklin County, Ohio.

In the GENERAL CABLE CORPORATION take-over of MICRODOT, GENERAL CABLE intended to offer \$17 per share, but withdrew its offer in the face of a counter offer of \$21 per share by NORTHWESTERN INDUSTRIES, INC. The counter offer was a price increase to each shareholder of \$4 per share.

In the BETHELEHEM COPPER take-over of VALLEY CAMP COAL, BETHELEHEM intended to offer \$55 per share, but withdrew its offer in the face of a counter offer by QUAKER STATE OIL COMPANY for an exchange of 3.625 shares of QUAKER STATE for one of VALLEY CAMP. The QUAKER STATE stock was selling for 18-1/8, which meant the offer had the equivalent value of \$65.70 tax free exchange. Immediately following the offer, QUAKER STATE stock went to 20%, which meant a value to the VALLEY CAMP shareholders of \$75.27.

THRALL'S offer of \$14 for YOUNGSTOWN STEEL DOOR was topped by Lampson & Sessions' offer of \$17 per share. THRALL'S offer was for only half of the stock while Lampson & Sessions was for all of the stock.

There are several interesting features of these take-over cases. For example, when a take-over bid is filed with the Division and vigorously pursued by the offeror, the target company will be acquired by new management, either the offeror or a second bidder. When a price higher than the initial tender offer is paid for the stock, the take-over is concluded after friendly negotiation.

The Ohio Take-over Statute has provided additional time for target company management to obtain a better price for its shareholders. It was not designed, nor is it able, to block a take-over bid.

When a filing is made under the Ohio Take-over Statute, it would seem that it might be beneficial to the offeror to make a concerted effort to negotiate with the target company during the pendency of the hearing.

STATE OF OHIO vs. STANLEY M. COOPER

The sequel of the subject case reported in the bulletin of June 30, 1976, is that on September 8, 1976, Stanley M. Cooper, formerly a licensed securities broker in Cincinnati, was sentenced to eleven years in prison and ordered to repay eleven defrauded investors in seven states. Attorneys for Cooper informed the Hamilton County Common Pleas Judge, Robert S. Kraft, that Cooper had no money.

The Division of Securities brought criminal charges against Cooper after an audit disclosed that he sold approximately \$13 million in securities in various fraudulent transactions, one of which included interests in an alleged post office in Xenia, Ohio. At the time of the 1974 tornado, which destroyed many homes and other buildings in Xenia, Cooper told investors that he had toured the area by helicopter and the post office was not damaged, when in fact no such post office was ever built or planned.

In bankruptcy court, attorneys for Cooper estimated that only \$800,000 would be recovered as compared to debts exceeding \$10 million.

OIL AND GAS

It has come to the attention of the Division that Ohio investors have been the target of a telephone and mail solicitation campaign which attempts to sell working interests in out-of-state oil and gas wells, all without the benefit of registration in Ohio. A receiver has been appointed in Texas and Oklahoma for some of these companies. Investors may want to file civil claims with the receiver according to ORC 1707.45 or contact the Ohio Division of Securities for other remedies.

TEXAS RECEIVER – Tom Fry, 2001 Bryan Tower, Suite 2805, Dallas, Texas 75201

1. Southwest Coal & Energy
2. La Pravada Oil & Gas Co.
3. Oklahoma Coal & Energy
4. Texas Coal & Energy
5. Spindletop Oil & Gas

OKLAHOMA RECEIVER – C. S. Smith, The Oil Center, 2601 Northwest Expressway, Suite 111, Oklahoma City, Oklahoma 73112

1. Petco Oil & Gas, Inc.
2. Kentucky Crude Oil & Gas, Inc.
3. U.S. Crude Oil & Gas, Inc.

If anyone has any information regarding solicitation by phone or mail of working interests in out-of-state wells, they should contact the Ohio Division of Securities.

FOREIGN REAL ESTATE

On August 24, 1976, Joseph J. Mandel, aka Joseph J. Mandanici, was indicted by the Grand Jury of Cuyahoga County, Ohio, on three counts: (1) the unlicensed sale of foreign real estate; (2) the sale of unregistered foreign real estate; and (3) grand theft.

James Maxwell, Jr.
Attorney Inspector

ADMINISTRATIVE ACTIONS

Summary of Enforcement Activities for July and August, 1976

July, 1976

Inquiries Received	151
Complaints Received	48
Complaints Closed	16
Broker/Dealer Suspensions	0
Salesman Suspensions	0
Salesman License Revocations	0
Salesman License Refusals	0
Registration Suspensions	1
Hearings Held	6
Court Actions	1
Prosecutions Recommended	0
In-Depth Investigative Interviews	193
Subpoenas Issued	5
Matters Referred to Attorney General	6
Matters Referred to SEC	0

August, 1976

Inquiries Received	151
Complaints Received	24
Complaints Closed	27
Broker/Dealer Suspensions	0
Salesman Suspensions	0
Salesman License Revocations	0
Salesman License Refusals	0
Registration Suspensions	0
Hearings Held	4
Court Actions	18
Prosecutions Recommended	8
In-Depth Investigative Interviews	38
Subpoenas Issued	9
Matters Referred to Attorney General	2
Matters Referred to SEC	1

Summary of Credit Union Activity for July and August, 1976

July, 1976

Suspensions	1
Hearings	0
Mergers	0
New Charters Granted	1

August, 1976

Suspensions	0
Hearings	0
Mergers	0
New Charters Granted	0

Summary of Consumer Finance Activity for July and August, 1976

<u>Licenses Issued</u>	<u>July</u>	<u>August</u>
Small Loan	12	11
Second Mortgage	13	9
Premium Finance	0	2
Pawnbroker	1	1
<u>Licenses Cancelled</u>		
Small Loan	7	2
Second Mortgage	2	2
Premium Finance	0	0
Pawnbroker	0	0
<u>Licenses Suspended</u>		
Small Loan	0	0
Second Mortgage	0	0
Premium Finance	0	0
Pawnbroker	0	0

Summary of Broker/Dealer Activity for July and August, 1976

<u>Applications Received</u>	<u>July</u>	<u>August</u>
Securities Broker/Dealer (Form 15)	12	7
FRE Broker/Dealer (Form 331-A)	1	4
Securities Salesman (Form 16)	219	200
FRE Salesman (Form 331-B)	10	16
<u>Licenses Issued</u>		
Broker/Dealer	16	16
Salesman	199	158
<u>Licenses Cancelled</u>		
Broker/Dealer	5	6
Salesman	133	95

Summary of Examination Section Activities for July and August, 1976

	<u>July</u>	<u>August</u>
Broker/Dealer Examinations	15	15
Registration Examinations		
Form 6	3	8
Form 9	1	10
Other	4	1
Credit Union Examinations	75	52
Small Loan Examinations	171	94
Second Mortgage Loan Examinations	134	90
Pawnbroker Examinations	0	24
Premium Finance Examinations	0	1
Compliance Examinations	305	208
Financial Examinations	2	2

STATISTICS

	<u>Registrations</u>			
	<u>Applications Received</u>		<u>Certificates and Orders Issued</u>	
	<u>July</u>	<u>Aug.</u>	<u>July</u>	<u>Aug.</u>
2(B)	46	43	38	38
3(O)	614	488	689	428
5(A)	1	1	0	1
6(A)(1) & 6(A)(2)	218	174	203	110
6(A)(3)	28	26	36	17
6(A)(4)	4	6	3	4
<u>Form 9's</u>				
<u>Interstate Corporate</u>	23	19	30	21
<u>Stock Option & Pur. Plan</u>	6	3	5	9
<u>Intrastate Corporate</u>	3	3	2	4
<u>Investment Companies</u>	43	38	47	37
<u>R.E.I.T.</u>	0	0	0	0
<u>R.E. Ltd. Partnerships</u>	17	15	24	13
<u>Cattle Funds</u>	1	0	0	0
<u>Other Non-Corporate</u>	1	0	0	0
<u>Oil & Gas Offerings</u>	17	18	29	17

Form 39's

Application for registration by qualification for securities having been sold without compliance with the Ohio Securities Act

18	13	0	33
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**STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES
180 East Broad Street
Columbus, Ohio 43215**