



# OHIO SECURITIES BULLETIN

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## Articles

### THE OHIO TAKEOVER LAWS: RECENT DEVELOPMENTS

#### Introduction

The revitalization of state authority over takeovers has engendered massive confusion concerning whether state governments or entrenched management can create virtually absolute barriers to the success of any hostile corporate takeover. The Supreme Court's recent opinion in *CTS v. Dynamics Corporation of America*<sup>1</sup> established that state "control-share acquisition" statutes are mostly constitutional, but the status of the myriad of other creative takeover-related statutes and defensive devices is still unresolved. Moreover, the "sure unconstitutionality" of the old-style state takeover statutes is no longer so sure.

The following article discusses the recent progression of takeover law in Ohio.

#### History

The Division of Securities has been engaged in the direct regulation of takeovers for more than the twenty years since the Ohio Takeover Act was made law. Prior to 1969, the Ohio Securities Act had potential application to takeovers either through regulation of any merger,<sup>2</sup> through the application of the requirements of broker-dealer licensing provisions, or through the exercise of the general enforcement powers of the Division.<sup>3</sup>

In 1969, the Ohio legislature enacted the Ohio Takeover Act, Revised Code section 1707.041, providing for the filing of a registration-type statement twenty calendar days prior to making any takeover. In addition to the requirements of filing and waiting, the Ohio Takeover Act has a provision for a hearing to determine whether the "offeror proposes to make fair, full, and effective disclosure to offerees of all information material to a decision to accept or reject the offer."

In the late sixties and early seventies many states also passed takeover laws similar to the Ohio Act. Most of these acts had the twenty-day waiting period in common, but they varied widely in many other respects.

#### Pre-Mite

The first major round of constitutional challenges to state takeover laws did not come to a head until the mid-1970s. At that time, the SEC as *amicus curiae* began to join raiders at the trial level challenging the constitutionality of various state takeover statutes. The statutes were challenged upon the grounds of (1) violating the "commerce clause" of the United States Constitution, (2) conflicting with the intent of the federal "Williams Act"<sup>4</sup> in violation of the "supremacy clause," or (3) violating constitutional provisions of due process and equal protection.

The first major decision in this line of cases was *Great Western United Corp. v. Kidwell*.<sup>5</sup> This 1978 decision of the Fifth Circuit held that the Idaho tender offer statute was preempted by both the commerce clause and the supremacy clause. While the majority of commentators agreed with the correctness of the ruling, many observed that the result was mandated more by the broad jurisdiction and discretion granted the Idaho commissioner than the inherently interstate nature of the statutory concept.

Over the next year, the majority of state takeover statutes had come under attack by offerors and the SEC, and the majority of those statutes challenged which were struck down fell under either the commerce clause or the supremacy clause. However, the Ohio statute was upheld on both grounds in the case of *AMCA International Corp. v. Krouse*.<sup>6</sup>

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For the purposes of the SEC, the basis of these decisions was more important than the actual result. In particular, the SEC would not argue due process issues, because states could then craft fair constitutional statutes around these arguments. Commerce clause decisions were also less than perfect for the purposes of the SEC, again because states could draft new and tighter statutes, and because the "balancing test" of commerce clause analysis would never create a line "bright" enough to make raiders fully comfortable in challenging a new statute.

The SEC, therefore, preferred preemption on the basis of the supremacy clause. Up to the time of the *AMCA* decision, any supremacy clause arguments required a showing of indirect preemption based upon a showing that Congress had intended the Williams Act to be "carefully balanced" or exclusive legislation. To eliminate the necessity of this difficult and controversial showing,<sup>7</sup> the SEC enacted rule 14d-2b<sup>8</sup>, which expressly preempted all twenty-day waiting provisions, for the *stated* purpose of preempting most existing state takeover statutes.

The State of Ohio sued the SEC to overturn that rule in the case of *Ohio ex rel Krouse v. SEC*.<sup>9</sup> The case was dismissed for lack of standing and the appeal was later dismissed by collateral estoppel.

During the pendency of the appeal of *Ohio ex rel Krouse v. SEC*, the constitutionality of the Ohio Takeover Act was again upheld in the case of *Canadian Pacific Enterprises (U.S.) v. Krouse*,<sup>10</sup> but the twenty-day waiting period of the Act was struck down for its direct conflict with rule 14d-2b. The procedure for complying with section 1707.041 as set forth in an interim order by Judge Kinneary<sup>11</sup> was permanently adopted by the Division.<sup>12</sup> Shortly thereafter, the Supreme Court decided the case of *Edgar v. Mite*.<sup>13</sup>

*Edgar v. Mite*

The case of *Edgar v. Mite* involved a constitutional challenge to the Illinois tender offer statute. The split of opinions among the Justices made any firm conclusions about the extent of the decision questionable;<sup>14</sup> however, five justices did agree that the Illinois Act was an indirect burden on interstate commerce and violated the "balancing test" of the commerce clause.

The Illinois Act was an extreme example of state regulation. For example, the Illinois commissioner had global jurisdiction over many corporations that were neither domestic nor local in character. He also had the discretion to restrain these offers for an unlimited period of time. Several states, including Ohio, filed briefs *amicus curiae* observing that their statutes were more narrowly drafted and applied. Thus, when casting the fifth and deciding vote for preemption, Justice Powell appended his concurrence with the caveat that he "believed that this decision left some room for state regulation of tender offers."<sup>15</sup>

*Immediate Reaction*

In the immediate aftermath of the *Mite* decision, several district courts were willing to heed Justice Powell's language and rule on statutes on a case-by-case basis.<sup>16</sup> Despite these early reactions, within several months, two federal court decisions dealing with the attempted takeover of Martin Marietta by Bendix were so sweeping in their denouncement of all state action—including the application

of the most traditional state antifraud powers—that all state regulation of takeovers appeared dead and buried.

#### *Martin Marietta v. Bendix*

The battle for control of the Martin Marietta Company took place in the summer of 1982, immediately following the delivery of the *Mite* decision. Both Michigan and Maryland asserted actions against the Bendix Corporation under various state laws. In both cases, federal courts struck down the state actions as unconstitutional.<sup>17</sup>

The Sixth Circuit decision was most dramatic in its use of the commerce clause to preempt the application of Michigan antifraud provisions to Bendix solicitations of Michigan shareholders. Using a hybrid supremacy clause/commerce clause analysis, Judge Kennedy ruled, "To the extent that the Michigan statutes interfere with a nationwide takeover offer which is already subject to the provisions of the Williams Act, they violate the commerce clause."<sup>18</sup>

#### *The Ohio Control Share Acquisition Statute*

Following the *Mite* decision, the Ohio Bar Association's tender offer subcommittee, in conjunction with the Division of Securities, began discussions regarding the possible rewriting of the Ohio Takeover Act to bring it into line with the opinions in *Mite* and *Canadian Pacific*. The Sixth Circuit decision was delivered in the midst of these discussions. It was apparent that if the *Martin Marietta* decision were applied literally, then no possible state action could ever be taken in the middle of a takeover, nor could any state law be construed to apply during the pendency of a takeover.<sup>19</sup> Because the *Martin Marietta* doctrine would not distinguish between various types of state regulatory or antifraud statutes, it was felt that the existing Takeover Act—whose constitutionality, after all, had been twice upheld—might as well remain unaltered. Because of *Martin Marietta*, it was agreed that a radically different approach would be necessary if the state of Ohio wished to take a more constitutionally secure action bringing domestic takeovers under control.

In crafting a different approach to takeovers, the committee made several observations. First, while there was no consensus for creating an absolute bar to takeovers, there was a dramatic interest in slowing the process and allowing the shareholders to rationally choose among alternative offers from raiders and management.<sup>20</sup> Second, it was apparent that, pursuant to *Mite*, evenhandedness would be required of the statute, allowing neither favoritism to management nor excessive discretion to government.<sup>21</sup>

The original theory of state jurisdiction over domestic takeover regulation was based upon the previously sacrosanct authority of states over their own corporations. Under the rubric of "the internal affairs doctrine," the United States Supreme Court has repeatedly held that states have unlimited discretion, to the exclusion of the federal securities acts, to control the "internal affairs" of their domestically chartered corporations. In *Mite*, however, citing the extracorporate nature of an open-market tender offer, the Supreme Court rejected the application of the internal affairs doctrine to the Illinois securities-type takeover statute. In order to be thoroughly consistent with the theory of the internal affairs doctrine, therefore, the Ohio Bar Subcommittee created the Control Share Acquisition Statute as an intrinsic part of the Ohio Corporate Code.<sup>22</sup>

Enacted in November 1982 as section 1707.831 of the Revised Code, the Control Share Acquisition Statute provides that no person or group can increase his block of shares beyond one of the trigger ranges of 20%, 33%, or 50% without a shareholder vote of approval. That vote requires no more than a majority of a quorum, but it requires a majority of both interested and disinterested shares as defined by the statute. The shareholder vote must be taken within fifty calendar days of notice by an acquiror. In essence, the Ohio Control Share Acquisition Act is a "close corporation" type provision applied to a public corporation.<sup>23</sup>

#### *Response of Other States*

Within a short period following the enactment of the Ohio law, other states enacted laws within their corporate codes to provide similar protections with variations. The Ohio/Indiana style of statute requires a shareholder vote prior to the acquisition of shares or voting rights that would give the acquiror certain levels of control. The Maryland model is a "fair price" statute that focuses on the second step of the two-step takeover and requires the offeror to either obtain a supermajority approval or pay a "fair price" to those squeezed out in the second step. Pennsylvania requires a fair price; it requires 30% shareholders to offer a fair price upon first acquisition of the block—without intent to squeeze out the remainder, and it allows directors to "consider . . . employers, suppliers, and customers" in defending a takeover. Several other states have "freeze-out laws" preventing an offeror from squeezing out the minority for a specific period of time—for example, five years.<sup>24</sup> A number of these statutes have been challenged over the past four years and several were struck down.<sup>25</sup>

#### *Fleet Aerospace v. Holderman*

The Ohio Control Share Acquisition Act was not challenged until May of 1986 in the case of *Fleet Aerospace v. Holderman*.<sup>26</sup> In that case, the District Court ruled that the Ohio Control Share Acquisition Statute was unconstitutional for three distinct reasons: (1) It violated the supremacy clause because it conflicted with the purposes of the Williams Act, and (2) It violated the commerce clause as a direct burden and (3) as an indirect burden on commerce. The District court decision was upheld in full by the Sixth Circuit Court of Appeals.<sup>27</sup>

#### *CTS v. Dynamics Corporation of America*

Pending the appeal of *Fleet Aerospace*, the Supreme Court delivered its decision in the case of *CTS v. Dynamics Corporation of America*.<sup>28</sup> That case involved a constitutional challenge to the Indiana version of the control share acquisition statute.

Writing for the majority of the court, Justice Powell expanded his concurrence in *Mite* to allow Indiana to enact a statute that did not directly conflict with the Williams Act, was evenhanded in its approach, and had strict time and jurisdiction limits upon its application.

Pursuant to the reasoning in *CTS*, the Supreme Court vacated the order in *Fleet Aerospace* and remanded the case to the Sixth Circuit for reconsideration in light of *CTS*.<sup>29</sup> The Division has moved that the Sixth Circuit enter judgment in favor of the Division and remand the case to the District Court for consideration of appropriate relief.<sup>30</sup>

Not only does the *CTS* decision revitalize the Ohio Control Share Acquisition Statute, but it also provides continued vigor to the Ohio Takeover Act. That Act has yet to be declared unconstitutional and the Division of Securities has continued to enforce its provisions throughout the past years. Language in Justice Powell's *CTS* opinion lends strong support for the tightly drawn Ohio Takeover Act, as was originally surmised after the *Mite* decision, but before *Martin Marietta*. Several other cases decided in the interim also lend support.<sup>31</sup>

Pending the return of a decision in *Fleet Aerospace*, the Division of Securities will continue to enforce the provisions of Revised Code sections 1707.041 and .042 in light of the opinions in *Canadian Pacific Enterprises*, *Mite*, and *CTS*.<sup>32</sup>

C. Kahrl

<sup>1</sup>CCH Fed. Sec. L.Rep. ¶93,213 [Current].

<sup>2</sup>Most mergers are now exempt from the registration requirements of the Act pursuant to the merger exemption found in Oh. Rev. Code Ann. § 1707.03(U)(West 1981).

<sup>3</sup>The general antifraud and fairness enforcement powers of the Division are found in Revised Code sections 1707.13, .23, .25, and .26.

<sup>4</sup>15 U.S.C. A. §§ 78m(d)-(e), 78n(d)-(f) (West 1981).

<sup>5</sup>577 F.2d 1256 (5th Cir. Idaho 1978).

<sup>6</sup>482 F. Supp. 929 (S.D. Ohio 1979).

<sup>7</sup>*Cf. Piper v. Chris-Craft Industries, Inc.*, 430 U.S. 1, 29 (1977).

<sup>8</sup>17 CFR § 240.14d-2 (1980).

<sup>9</sup>No. C-2-80-111 (S.D. Ohio, Oct. 18, 1980).

<sup>10</sup>506 F. Supp. 1192 (S.D. Ohio 1981).

<sup>11</sup>Interim order, *Canadian Pacific Enterprises v. Krouse*, No. C-2-80-1056 (S.D. Ohio, Dec. 17, 1980) (order dissolving temporary restraining order).

<sup>12</sup>Ohio Securities Bulletin, Issue No. 2, 1981 (not dated or numbered on its face) at 3.

<sup>13</sup>457 U.S. 624 (1982).

<sup>14</sup>For articles discussing *Mite* in its immediate aftermath, see, Bartell, "State Corporate Takeover Regulation," 15 Rev. Sec. Reg. 807 (1982); Pozen, "Making State Takeover Statutes Safe From Constitutional Attack," Nat'l L.J. Aug. 1982, at 18, col. 1; Pitt, "Hostile Tender Offers Now Omnipresent Fact of Life," Legal Times of Wash., July 19, 1982 at 16, col. 1.

<sup>15</sup>457 U.S. at 646 (Powell, J. concurring in part).

<sup>16</sup>See e.g., *Agency Rent-A-Car v. Connolly*, 686 F.2d 1029 (6th Cir. 1982).

<sup>17</sup>*Martin Marietta Corp. v. Bendix Corp.*, 690 F.2d 558 (6th Cir. 1982); *Bendix Corp. v. Martin Marietta Corp.*, 547 F. Supp. 522 (D.Md. 1982).

<sup>18</sup>690 F.2d at 565.

<sup>19</sup>Query: If criminal fraud statutes are suspended during a takeover, what about state homicide statutes?

<sup>20</sup>In many previous tender offers, shareholders were often prevented from receiving the highest offer for their shares. In the Conoco takeover, for instance, there were thirteen separate shareholder pools. The shareholders in each pool received dramatically different amounts for their shares, and the highest bidder was never

able to escape the administrative hurdles of the Hart-Scott-Rodino Act in time to complete its bid.

<sup>21</sup>The Ohio Control Share Acquisition Statute, Revised Code § 1701.831, applies to "friendly" bids and leveraged buyouts as well as hostile tender offers.

<sup>22</sup>*Cf. Krieder*, "Fortress Without Foundation? Ohio Takeover Act II," 52 U. Cin. L. Rev. 108 (1983); Sargent, "Do the Second Generation State Takeover Statutes Violate the Commerce Clause?" 8 Corp. L. Rev. 3 (1985).

<sup>23</sup>In addition to the basic provisions of O.R.C. §§ 1701.01 and .831, the legislation provided the Division of Securities express prosecutorial authority over "Control Bids," O.R.C. § 1707.042, and created a presumption of legality for "shark repellent" charter provisions, O.R.C. § 1707.11.

<sup>24</sup>See, Sargent, "Do the Second Generation State Takeover Statutes Violate the Commerce Clause?" 8 Corp. L. Rev. 3 (1985); See also, Danilow & Bentley, "State Takeover Statutes After *Mite*" 20:2 The Rev. of Sec. & Comm. Reg. 13 (1987).

<sup>25</sup>See, Danilow & Bentley, "State Takeover Statutes After 20:2 The Rev. of Sec. & Comm. Reg. 13 (1987).

<sup>26</sup>637 F. Supp. 742 (1986).

<sup>27</sup>796 F.2d 135 (1986).

<sup>28</sup>CCH Fed. Sec. L. Rep. ¶93,213 [Current].

<sup>29</sup>Order of the Supreme Court of the United States in *Ohio v. Fleet Aerospace Corp.*, No. 86-344 (April 27, 1987).

<sup>30</sup>Motion and Brief in Support of the Motion, *Fleet Aerospace v. Holderman*, No. 86-3533 (6th Cir. 6/1/87).

<sup>31</sup>*Cardiff Acquisitions v. Hatch*, 751 F.2d 906 (8th Cir. 1984). *Agency Rent-A-Car v. Connolly*, 686 F.2d 1029 (1st Cir. 1982).

<sup>32</sup>See also, "Takeovers: When is a Hearing Appropriate?" 1987:3 Ohio Sec. Bull 7; "Ohio Revised Code Section 1707.04(13)(2) Ruled Unconstitutional" 1982:2 Ohio Sec. Bull 13.

## Commissioner's Letter

Legislation continues to be in the forefront of the Division's concerns. As evidenced by the space devoted in our recent Bulletin issues to the proposed NMS exemption, we are focused not only on its potential impact but also on the shortcomings of the entire 1707.02(E) exemption. The erosion of listing and maintenance criteria and waivers of these standards has long since broken the nexus between blue chip issuers and exchange-listed companies. Therefore, the Division suggested an amendment which would build in minimum criteria to Section 1707.02(E). The Division felt the amendment would maintain investor protection, exempt 80% of the Ohio-based NMS issuers, and still be self-executing, requiring no filing whatsoever with the Division. Unfortunately we could not convince the legislative committee nor Ohio Bar Association Securities Law Section to support the proposal.

The Division has been called upon to provide input during the House Financial Institutions Committee hearings on H.B. 291 concerning "greenmail." As known by everyone who has followed the tender offer controversy over the past

years, there is an overabundance of theories on how to best preserve shareholder welfare in a takeover setting. One widely debated question is whether the payment of greenmail ultimately maximizes shareholder wealth. The understanding of that issue determines whether "greenmail" payment is a legitimate management tool. The Division has not taken a strong stance on H.B. 291 because the bill is not in the final drafting stages. Only as this process nears completion will the Division want to speculate more substantively on the relative merits of such a bill.

## PERSONNEL

A shifting of job functions within the Division was announced recently. In a reorganizational move, Paul Tague was appointed Deputy Commissioner, Gregory Zelasko was moved to Attorney Inspector, and Michael Miglets was promoted to Registration Supervisor. Each of these individuals have been with the Division for several years and the experience they bring to their respective positions will undoubtedly enhance the functioning of the Division.

## MISCELLANEA

The Division has reprinted its registration forms to accomplish two goals. The first was to reduce the size to 8-1/2 x 11 inches, bringing them in conformity with modern court standards. While we realize many supporting documents will continue to be filed on 8-1/2 x 14 inch paper, we would appreciate the use of the shorter paper whenever practicable.

Secondly, when reconstructing the new forms we found several items on particular forms were either superfluous, redundant, or just plain confusing. Hopefully the new text will be simpler for practitioners to complete.

## THE NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION (NASAA)

In the first week of September, the upcoming annual convention of NASAA will mark the end of a year of extraordinary reorganization.

The membership has approved substantial alterations to the corporate charter and the offices have moved from Topeka, Kansas to Washington, D.C., while the staff and committee structure have been dramatically altered.

The purpose of this reorganization is to focus more of NASAA's resources on the area of federal/state coordination. It is hoped that the tensions between federal and state regulators can be reduced while at the same time a more effective and streamlined federal/state regulatory system is implemented.

The need for increased recognition of the necessity of federal/state coordination was emphasized by NASAA president Daniel Bell in a recent speech to the U.S. Senate Banking Committee. Bell observed that the issues of federalism and market integrity are not limited to the field of takeover regulation.

Abusive takeover practices under investigation by the Senate Banking Committee are not phenomena isolated from other aspects of the securities market. Bell argued that restoring marketplace integrity requires coordinating

affirmative regulatory action in the daily marketplace in the following areas:

- (1) Routine, timely access to SEC information by the states;
- (2) Joint investigatory and enforcement powers similar to those in the Commodities Futures Trading Act;
- (3) Notice to and participation by the states in SEC rulemaking and development of integrated computer registration;
- (4) Expanded oversight and accountability of self-regulatory organizations in the enforcement of internal SRO rules and arbitration of investor complaints.

As a device to more widely disseminate information concerning the policies, positions, public affairs of NASAA, under agreement with NASAA Commerce Clearing House, Inc. now publishes the CCH NASAA Reporter. The Reporter is the repository for all NASAA Committee Reports, proposed and implemented Guidelines, Statements of Policy, and other news. It is hoped that this device will provide wider dissemination of NASAA actions and proposed actions, resulting in opportunity for greater feedback.

# Enforcement

## FINAL ORDERS ISSUED

### *G.M. Gas Exploration, Inc./George W. McAuliffe*

On April 3, 1987, a CEASE AND DESIST ORDER was issued against G.M. Gas Exploration, Inc. and its president, George W. McAuliffe, Columbus, Ohio. The Division found that G.M. Gas Exploration, Inc. and George W. McAuliffe sold or caused to be offered for sale unregistered promissory notes in violation of Ohio Revised Code Section 1707.44(C)(1).

### *P.J. Brothers Limited I*

On March 6, 1987, a SUSPENSION ORDER was issued against the application for registration by description of P.J. Brothers Limited I filed on January 20, 1987. The Division suspended the registration and the right of the issuer or any dealer to buy, sell, or otherwise deal in the securities of P.J. Brothers Limited I. The Division alleged that the issuer failed to submit advertising which appeared in the Lancaster newspaper for prior approval to the Division, in violation of Ohio Administrative Code Rule 1301:6-3-06(F).

The Division confirmed the suspension of the registration on March 27, 1987, after a hearing was held and P.J. Brothers Limited I failed to show cause as to why the Suspension Order should be terminated. The Division subsequently terminated and rescinded the March 27, 1987 Division Order after the issuer withdrew the application for registration on April 3, 1987.

### *Earl R. Voorhies/Earl R. Voorhies and Associates/Grand American International Corporation*

On April 7, 1987, a CEASE AND DESIST ORDER was issued against Earl R. Voorhies and Earl R. Voorhies

and Associates, Lighthouse, Florida, and Grand American International Corporation, Denver, Colorado. The Division found that Earl R. Voorhies and Earl R. Voorhies and Associates solicited an exchange of Ohio Tourist Center, Inc. stock for Grand American International Corporation convertible debentures. The debentures were unregistered and neither Earl R. Voorhies or Earl R. Voorhies and Associates were licensed to sell securities, in violation of Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1).

*LakeTbula Gardens, Inc.*

On April 20, 1987, the Division SUSPENDED THE REGISTRATION by description filed on June 23, 1986, on behalf of LakeTbula Gardens, Inc., Madison, Ohio. The Division suspended the registration which consisted of 3,500,000 shares of Class C common stock and the right of the issuer to buy, sell, or deal in the Class C common stock. The Division alleged that LakeTbula Gardens, Inc. failed to disclose in the offering circular that Robert Haynes, president, chairman of the board of directors, and principal stockholder, was indicted on June 4, 1986, for an alleged violation of Title 26 United States Code Annotated Section 7206(1) and that the case was still pending in United States District Court, Northern District of Ohio. In addition, the Division alleged a failure to amend the offering circular to disclose an amended land contract agreement entered into by LakeTbula Gardens, Inc. to pay an additional \$500,000 increase in the purchase price. LakeTbula Gardens, Inc. violated Ohio Administrative Code Rule 1301:6-3-06(C)(4)(b) and (d) and Ohio Revised Code Section 1707.44(E).

On May 13, 1987, the Division issued a Revocation Order against the registration by description of LakeTbula Gardens, Inc. filed on June 23, 1986, and the right of LakeTbula Gardens, Inc. to buy, sell, or deal in its Class C common stock registered by this offering, after Robert Haynes withdrew this registration by description with prejudice and waived the hearing scheduled pursuant to Ohio Revised Code Section 1707.13.

*Spa and Hot Tub Outlet, Inc.*

On April 21, 1987, a CEASE AND DESIST ORDER was issued against Spa and Hot Tub Outlet, Inc., Columbus, Ohio. The Division found that Spa and Hot Tub Outlet, Inc. placed television commercials in which they offered mortgage revenue bonds as a bonus. Spa and Hot Tub Outlet, Inc. was unlicensed to sell securities, in violation of Ohio Revised Code Section 1707.44(A).

*A Merry Olds, Inc.*

On April 21, 1987, a CEASE AND DESIST ORDER was issued against A Merry Olds, Inc., Barberton, Ohio, for selling securities without being licensed in violation of Ohio Revised Code Section 1707.44(A). The Division found that A Merry Olds, Inc. placed an advertisement offering stock as a bonus with the purchase or lease of a G.M. automobile.

*Citizens Oil and Gas Corp.*

On April 27, 1987, a CEASE AND DESIST ORDER was issued against Citizens Oil and Gas Corp., Newport Beach, California. The Division found that Citizens Oil and Gas Corp. sold interests in Alaska oil and gas leases, which constituted the sale of unregistered securities, in violation of Ohio Revised Code Section 1707.44(C)(1).

*TexAm Resources, Inc.*

On April 30, 1987, a CEASE AND DESIST ORDER was issued against TexAm Resources, Inc., Dallas, Texas. The Division found that TexAm Resources, Inc. was unlicensed and sold unregistered working interests in oil and gas wells, in violation of Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1).

*Group III Marketing, Inc./William Baer*

On May 18, 1987, a CEASE AND DESIST ORDER was issued against Group III Marketing, Inc. and William Baer, Columbus, Ohio. The Division found that Group III Marketing, Inc. and William Baer sold unregistered notes with a 20% promised return while they were unlicensed to sell securities, in violation of Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1).

*E.P. Tenuta*

On May 29, 1987, a CEASE AND DESIST ORDER was issued against E.P. Tenuta, Columbus, Ohio. The Division found that E.P. Tenuta sold an unregistered undivided interest in an oil well of Essco Energy Corporation while he was unlicensed to sell securities, in violation of Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1).

*G.M. Exploration, Inc./George W. McAuliffe*

On May 20, 1987, a CEASE AND DESIST ORDER was issued against G.M. Exploration, Inc. and George W. McAuliffe, Columbus, Ohio. The Division found that George W. McAuliffe, president of G.M. Exploration, Inc., sold unregistered common stock in G.M. Exploration, Inc. while he was unlicensed to sell securities, in violation of Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1).

*Cellular Technology of Ohio I, Ltd.*

On May 21, 1987, a CEASE AND DESIST ORDER was issued against Cellular Technology of Ohio I, Ltd., Lorain, Ohio. The Division found that Cellular Technology of Ohio I, Ltd. sold unregistered limited partnership units, in violation of Ohio Revised Code Section 1707.44(C)(1).

*Mark Loats*

On June 4, 1987, a CEASE AND DESIST ORDER was issued against Mark Loats, Aurora, Colorado. The Division found that Mark Loats sold unregistered stock while he was licensed as a securities salesman with Marshall Davis, Inc., in violation of Ohio Revised Code Section 1707.44(C)(1).

*N.L. Gebhart*

On June 8, 1987, a CEASE AND DESIST ORDER was issued against N.L. Gebhart, Batavia, Ohio. The Division found that N.L. Gebhart placed an advertisement in the newspaper to sell unregistered investments while he was unlicensed to sell securities, in violation of Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1).

*Investments International, Inc.; International Oil Partners; Darrell Davis*

On June 29, 1987, a CEASE AND DESIST ORDER was issued against Investments International, Inc., International Oil Partners, and Darrell Davis, Nashville, Tennessee.

see. The Division found that unregistered units in oil and gas partnership programs were sold by Investments International, Inc. and Darrell Davis, who were unlicensed to sell securities, in violation of Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1).

*Keith Willis, Michael Boyd*

On June 30, 1987, a CEASE AND DESIST ORDER was issued against Keith Willis, President, and Michael Boyd, Vice President, dba Crown Communications Corp., Columbus, Ohio. The Division found that Keith Willis and Michael Boyd sold unregistered shares of common stock, in violation of Ohio Revised Code Section 1707.44(C)(1).

#### FINAL ORDERS ISSUED AFTER ADMINISTRATIVE HEARINGS

*Edward E. Atha*

On April 1, 1987, a CEASE AND DESIST ORDER was issued against Edward E. Atha; Athens, Ohio. The Division found that Edward Atha sold or caused to be sold unregistered percentage interests in oil and gas wells while he was unlicensed to sell securities, in violation of Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1).

*International Investment Resources, Incorporated*

On June 12, 1987, a CEASE AND DESIST ORDER was issued against International Investment Resources, Inc., Englewood, Colorado. The Division found that International Investment Resources, Inc. sold an unregistered interest in a Wyoming oil and gas lease while it was unlicensed to sell securities, in violation of Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1).

*Marvene Bloomfield*

On May 5, 1987, a CEASE AND DESIST ORDER was issued against Marvene Bloomfield at Mt. Gilead, Ohio. The Division found that Bloomfield had been engaged in the business of selling "advance-fee self-liquidating" loans, without registration of the interests or licensing as a

dealer, in violation of Revised Code Sections 1707.44(A) and 1707.44(C)(1).

*Vesta Ventures, Inc. and Robert G. Shoup*

On July 8, 1987, an amended CEASE AND DESIST ORDER was issued against Vesta Ventures, Inc. and Robert G. Shoup, Glenford, Ohio. The Division found that Vesta Ventures, Inc. and Robert G. Shoup sold unregistered interests in Vesta Ventures Investments 1983-D Drilling Program, in violation of Ohio Revised Code Section 1707.44(C)(1).

#### CRIMINAL CASES

*Hollis B. Reed/Reed Energy, Inc.*

On May 14, 1987, Hollis B. Reed, the former owner of Reed Energy, Inc., was SENTENCED to eighteen (18) months in prison in Franklin County. Mr. Reed pled guilty on March 31, 1987, to one count of making false representations while selling securities and one count of selling securities without a securities license. Mr. Reed sold fractional undivided interests in more than nine Reed Energy, Inc. oil and gas programs to approximately 200 investors, mostly who were out-of-state residents. This case was investigated and referred by Karen Terhune.

*Robert L. Larson (aka J. Robert Larson)*

In May 1987, Robert L. Larson was SENTENCED to three years in prison in Cuyahoga County. Mr. Larson pled guilty to eight theft counts on March 19, 1987. Mr. Larson violated his probation from a 1985 securities conviction when he sold unregistered limited partnership units in another bogus partnership while he was unlicensed to sell securities. Tina Manning, formerly of the Division staff, provided information to the Cuyahoga County Prosecutor in this matter.

*Ohio v. Furtwengler, No. C-860631 (Ham. App 6/24/87)*

The Hamilton County Court of Appeals ruled against the defendant's assignment of error based upon the claimed denial of a speedy trial. The Court found that although 522 days elapsed between the day of his arrest and the first day of trial, the continuances leading to this delay were agreed to or necessitated by the defendant.

#### NOTICE TO SHOW CAUSE/NOTICE OF OPPORTUNITY FOR HEARING ORDERS

<u>Name/Address</u>	<u>Date</u>	<u>Alleged Violations</u>
Jack H. Davis and JADCO International 17070 Collins Avenue Miami Beach, Florida 33160	4/3/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
Motherboard Companies, Inc.; Motherboard Corporation; Carl J. Breth 315 Lincoln Court Fort Collins, Colorado 80524	4/3/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
Cellular Technology of Ohio I, Ltd. 520 Broadway Avenue Lorain, Ohio 44052	4/3/87	Ohio Revised Code Section 1707.44(C)(1)
Blinder, Robinson & Co.; Meyer Blinder, Principal Larry Blinder, Principal 6455 South Yosemite Englewood, Colorado 80111 (Notice of Intent to Deny Licensure)	4/6/87	Ohio Administrative Code Rule 1301:6-3-15(O)

<u>Name/Address</u>	<u>Date</u>	<u>Alleged Violations</u>
Laser Arms Corporation; Robert Wardlaw, President 645 Madison Avenue New York, New York 10022	4/7/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
Raymond J. Hill; Keystone Covenant Group, Inc. 33 South James Road Suite 304 Columbus, Ohio 43213	4/13/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
Arinn, Inc.;; Jebco Research Labs, Inc.;; P.O. Box 1129 Palatine, Illinois 60078 Edward Block 1215 Freman Road Hoffman Estates, Illinois 60194	4/13/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
East McMillan Executive Building, Ltd.;; 529 Liberty Hill Cincinnati, Ohio 45210 Alfred B. Craig, Jr. 2245 Gilbert Avenue Cincinnati, Ohio 45206	4/15/87	Ohio Revised Code Sections 1707.44(A), 1707.44(B)(4), and 1707.44(C)(1)
E.P. Tenuta 4174 Chadbourne Drive Columbus, Ohio 43220	4/15/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
Ohio Kentucky Ltd. Ptnshp. 1987-1; Ohio Kentucky Oil Corporation; Thomas J. Carpenter 1206 North Main Street, Suite 123 North Canton, Ohio 44720	4/17/87	Ohio Revised Code Section 1707.44(B)(4)
United Controls, Inc. 891 Moe Drive, Suite B Akron, Ohio 44310	4/21/87	Ohio Revised Code Section 1707.44(C)(1)
The Heritage Company; fka Pennington and Scott Enterprises Barry H. Katz; Jack Matson; 6191 Orange Drive Davie, Florida 33314	4/29/87	Ohio Revised Code Sections 1707.44(A), 1707.44(B), 1707.44(C)(1), and 1707.44(G)
Donald H. Coots; Don H. Coots & Associates 1987 Lincoln Way East Wooster, Ohio 44691 (Amended Notice to Show Cause Or- der)	5/8/87	Ohio Revised Code Sections 1707.44(A), 1707.44(B)(4), 1707.44(C)(1), and 1707.44(G)
Alexander Hamilton and Co.;; fka CEECO-Caldera Energy and Exploration Co. 1321 Seventh Street, Suite 201 Santa Monica, California 90401	5/18/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
Investments International, Inc.;; International Oil Partners; Darrell Davis 3212 West End Avenue, Suite 400 Nashville, Tennessee 32703	5/18/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
The Bonanza Report; James Bartell P.O. Box 520097 Salt Lake City, Utah 84152	5/21/87	Ohio Revised Code Section 1707.44(A)
GFD Solarium, Inc.;; 1132 Euclid Avenue Cleveland, Ohio 44106 Ronald Nardolillo 1229 Cordova Mayfield Heights, Ohio 44124	6/10/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)

<u>Name/Address</u>	<u>Date</u>	<u>Alleged Violations</u>
NRG, Inc. 7771 West Oakland Blvd. Sunrise, Florida 33321	6/10/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
The 22300 Lorain Road Income Producing Partnership; Consolidated Foreclosure Partnership #1; Melvin W. Mitchell 22300 Lorain Road Fairview Park, Ohio 44126	6/10/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
Rich-Morrow Insurance Agency, Inc.; dba Aircraft Iron Company; 270 Lexington Avenue P.O. Box 3586 Mansfield, Ohio 44907 Ward C. Argust 1274 Lex Park Drive Mansfield, Ohio 44907	6/11/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
William W. Hobbs 1 Lakewood Drive, C-8 Mansfield, Ohio 44904 (Also, Notice of Opportunity for Hear- ing on Suspension or Revocation of License	6/11/87	Ohio Revised Code Section 1707.44(C)(1) and Ohio Ad- ministrative Code Rule 1301:6-3-15(O)(9)(a)
Columbia Diversified, Inc. 19600 Fairchild, Suite 310 Irvine, California 92715	6/22/87	Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1)
Jose Luis Castaneda 303 East Edgewater, #B Balboa, California 92661 (Notice for Refusal of Licensing Appli- cation)	6/29/87	Ohio Administrative Code 1301:6-3-15(O)

#### TERMINATION ORDERS

<u>Name/Address</u>	<u>Date</u>	<u>Reason for Termination Order</u>
Zestotherm, Inc. 10274 Alliance Road Cincinnati, OH 45242	4/13/87	Approval of Form 39, File No. 62434.
U.S. Mutual Securities Corp.; U.S.M. Oil & Gas Income Program Series 1983-B 200 Renaissance Center, Suite 3060 Detroit, Michigan 48243	5/20/87	Undertaking entered into and for good cause shown.
Midwest United Industries, Inc.; Arthur Dearing 601-609 Walnut Street Greenville, Ohio 45331	5/21/87	For good cause shown.
Arinn, Inc.; Jebco Research Labs, Inc.; Edward Brock P.O. Box 1129 Palatine, Illinois 60078	5/28/87	For good cause shown.
Kordon I, Ltd.; 45 Tech View Drive Cincinnati, Ohio 45215 Mark J. Fitzgerald Mark J. Fitzgerald Securities, Inc. 11580 Enyart Road Loveland, Ohio 45140	6/9/87	Approval of Form 39, File No. 63188.
Village Properties, Ltd. F. Jay Andress III 2131 Grandin Road Cincinnati, Ohio 45208	6/10/87	Approval of Form 39, File No. 62815.

<u>Name/Address</u>	<u>Date</u>	<u>Reason for Termination Order</u>
Colony Park Company 1234 Ashland Avenue Columbus, Ohio 43212	6/10/87	Approval of Form 39, File No. 63790.
Commodity International; Richard S. Luntz aka Dick Luntz Suite 1070, Hanna Building Cleveland, Ohio 44115	6/10/87	For good cause shown.
Dodds Monument, Inc. 123 West Main Street Xenia, Ohio 45385	6/23/87	Approval of Form 39, File No. 63022.
East McMillan Executive Building, Ltd.; 529 Liberty Hill Cincinnati, Ohio 45210 Alfred B. Craig, Jr. 2245 Gilbert Avenue Cincinnati, Ohio 45206	6/23/87	Rescission of investor purchase and refund of purchase price.

# Registration

## REGISTRATION FILINGS (1/1 - 6/26)

2(B)	504
3(O)	5,890
3(Q)	891
3(W)	86
4	0
5	0
6	297
9	1,848
39	67
391	440
	<hr/>
	10,023

## LICENSES IN EFFECT ON 6/26

Broker-Dealer	1,625
Salesman	44,266

### PLEASE HELP US UPDATE OUR MAILING LIST

Please detach and return the following slip to us in order that we might update our present mailing list. If your address is correctly listed and you wish to continue receiving the *Bulletin*, it is not necessary to return this slip.

- My address has been incorrectly recorded by the *Bulletin*. Corrections are written below.
- My address has changed. My new address is written below.
- I no longer wish to receive the *Ohio Securities Bulletin*.

#### Address as now listed:

Name(s) \_\_\_\_\_

Firm Address \_\_\_\_\_

#### New Address:

Name(s) \_\_\_\_\_

New Address \_\_\_\_\_

Please return to: Ohio Division of Securities, Attn: Debra Chafin, 180 E. Broad St., Columbus, Ohio 43215 - (614) 644-7449.