



OHIO SECURITIES BULLETIN

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COMMISSIONER OF SECURITIES

88:3 October 1988

1988 Conference

On Thursday and Friday, November 17 and 18, 1988, the Ohio Division of Securities will host a conference in Columbus at the Hyatt On Capitol Square. The conference will combine one day of panel discussions in an educational format with a second day of meetings of the five reorganized Division of Securities Advisory Committees. The panel discussions are designed to cover some of the pertinent securities law issues in the areas of registration, broker-dealer licensing, and corporate governance. Institution of the advisory committees is intended to facilitate an open and continuing communication between the Division and persons in the securities industry and bar.

The highlight of Thursday's program will be the luncheon discussion offering two contrasting viewpoints on the topic "Takeovers and Public Policy." The Division is pleased to be welcoming two distinguished speakers for participation in this discussion—Leigh B. Trevor, partner of the law firm Jones, Day, Reavis & Pogue in Cleveland, and Kenneth Lehn, Chief Economist with the Securities and Exchange Commission in Washington, D.C.

Four panel discussions will comprise the main program on Thursday. The early morning session will focus on registration, with a discussion on structuring small offerings under the Ohio Act and federal exemptions. The late morning session, presented by the broker-dealer panel, will discuss compliance and customer concerns in the areas of suitability, discretionary accounts, market manipulation, and churning.

Following the luncheon in the early afternoon session of the program, the corporate governance panel will present several summaries of issues affecting takeovers and internal corporate affairs. The final session in the late afternoon will be the Division of Securities panel, consisting of the Commissioner of Securities, Counsel to the Commissioner, and the chiefs of the licensing, enforcement, and registration sections of the Division.

A truly distinguished and knowledgeable group of panel participants has been assembled, promising to make the 1988 conference as interesting as it is informative. The complete schedule for Thursday's program, including names of panel participants, is as follows:

8:00 a.m. Enrollment

8:30 a.m. Introduction
Mark V. Holderman, Commissioner
Ohio Division of Securities

8:45 a.m. Registration Panel
Topic: Structuring Small Offerings
Under the Ohio Securities Act
and Federal Exemptions

Moderator: Professor Howard
Friedman, Esq.
University of Toledo
College of Law

Mike Cline, Esq.
Vorys, Sater, Seymour & Pease
Columbus, Ohio

Karl E. May, Esq.
Kohrman, Jackson & Krantz
Cleveland, Ohio

Table of Contents

OHIO SECURITIES BULLETIN
Publication of the
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1988 Conference	1
Division Offices Relocating	3
Personnel	3
Interesting Reading	3
Articles	4
Franchises, Business Opportunity Plans and Securities	4
Ohio Requirements of Broker-Dealer Licensing	4
Registration	6
Commodity Pools	6
Stanger Ratings	7
Consent to Service of Process	7
Registration Filings	7
Broker-Dealer	7
Enforcement	7
Administrative Orders	7
Other Final Administrative Orders	9
Criminal Cases	9

**Ohio Department of Commerce
Division of Securities**

All listings are area code (614)

ADMINISTRATION

Information and Form Requests 644-7381
 Mark Holderman
 Commissioner 644-7381
 Paul Tague
 Deputy Commissioner 644-7463
 Clyde Kahl
 Counsel to Commissioner 644-7421
 Jim Hunt
 Legislative Liaison 644-7435

BROKER/DEALER

Information 466-3466
 Dale Jewell
 Supervisor 644-7465

RECORDS MANAGEMENT

Information 466-3001
 Debra Chafin
 Supervisor 644-7449

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 Manager 644-7455

ENFORCEMENT

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 39, 391 644-7427
 Kathy Veach
 Mutual Funds 644-7423
 James Warneka
 Oil and Gas 644-7433

John Beavers, Esq.
 Bricker & Eckler
 Columbus, Ohio
 W. Michael Fritz, C.P.A.
 Touche Ross & Company
 Columbus, Ohio

10:15 a.m. Break

10:30 a.m. Broker-Dealer Panel

Topic: Compliance and Customer Concerns

Moderator: Ralph Lambiase, Director
 Securities Division,
 Connecticut Department
 of Banking and Securities

R. Gerald Baker, Sr. Vice President
 and Compliance Director
 Prescott, Ball and Turben, Inc.
 Cleveland, Ohio

Gerald W. Wischmeyer, Esq., Sr.
 Vice President and Compliance
 Director
 Integrated Resources Equity Corp.
 Englewood, Colorado

William H. Jackson, Esq., Director,
 District No. 9
 National Association of Securities
 Dealers
 Cleveland, Ohio.

12:00 p.m. Lunch

Topic: Takeovers and Public Policy

Leigh B. Trevor, Esq.
 Jones, Day, Reavis & Pogue
 Cleveland, Ohio

Kenneth Lehn, Chief Economist
 Securities and Exchange Commission
 Washington, D.C.

1:30 p.m. Corporate Governance Panel

Moderator: Edward Schrag, Jr., Esq.
 Vorys, Sater, Seymour &
 Pease
 Columbus, Ohio

Available Takeover Defenses

James R. Tobin, Esq.
 Squire, Sanders & Dempsey
 Columbus, Ohio

Mergers and Acquisitions Update

Gary Kreider, Esq.
 Keating, Meuthing & Klecamp
 Cincinnati, Ohio

SRO Regulation of Internal Affairs

Professor Ronald Coffey, Esq.
 Case Western Reserve University
 School of Law

Issues in Use of Fairness Opinions

Beatrice Wolper, Esq.
 Emens, Hurd, Kegler & Ritter
 Columbus, Ohio

Director and Officer Liability Since 1986
Professor Morgan Shipman, Esq.
The Ohio State University College of
Law

3:00 p.m. Break

3:15 p.m. Division of Securities Panel

Mark V. Holderman, Esq.
Commissioner of Securities

Michael P. Miglets, Esq.
Chief, Registration Section

Dale A. Jewell
Chief, Licensing Section

Sylvia B. Robbins-Penniman, Esq.
Attorney Inspector

Clyde C. Kahrl, Esq.
Counsel to the Commissioner

5:00 p.m. Reception

For participants who are Ohio-licensed attorneys, continuing legal education certification is being sought. Pursuant to Rule X of the Rules for the Government of the Bar, the Division will request six hours of credit from the Ohio Supreme Court Commission on Continuing Legal Education. Participants must also apply to the Commission for credit.

The fee for attendance on Thursday is \$100 per person. Registration includes all panel discussion sessions; all seminar materials, lunch, and refreshments at breaks. An enrollment form is included on the back cover of this issue of the Bulletin. Enrollment forms must be received by Friday, November 11, 1988.

Friday's advisory committee meetings will be held in various meeting rooms at the Hyatt On Capitol Square from 9:00 a.m. to 4:00 p.m. Lunch will be on your own. Enrollment for Thursday's panel presentations is not required in order to participate as a committee member. Advisory committee membership selection forms were included in the last issue of the Bulletin (Volume 88:2). The five advisory committees are:

Takeovers
Exemptions
Registration
Enforcement
Licensing

Contact Paul Tague, Deputy Commissioner, at (614)644-7463 for further information concerning the committees.

Accommodations for those attending both days of the conference are available from the Hyatt On Capital Square on a limited basis. Hotel reservations must be made by no later than November 1, 1988. The Hyatt On Capitol Square can be contacted directly at (614)228-1234.

Division Offices Relocating

The Division of Securities will be moving its offices in December to the new state office tower (State Office

Tower II) at the northwest corner of State and High Streets in downtown Columbus. The Department of Commerce will be occupying floors 20 through 23 of this 32-floor building. The Division will be located on floor 22. Other tenants of the new state tower will include the Department of Development, the Office of Consumers' Counsel, the Ohio House of Representatives, and more than twenty licensing boards and commissions.

The building will also be the home to an 800-seat repertory theatre, two smaller theatres, and a gallery which will comprise a public multi-use center. On the 13th floor, 16 hearing rooms and conference rooms will be available to serve the needs of all of the state agencies in the building.

The Division's new address will be as follows:

Ohio Division of Securities
22nd Floor
77 South High Street
Columbus, Ohio 43266-0548

It is expected that we will be in our new offices by the week of December 5, 1988. Phone numbers will remain unchanged.

Personnel

Bob Bibler of the Division's Registration Section retired effective July 15, 1988, after 24 years of service to the state. Bob began his career with the Division in 1964. At the time of his retirement, he held the position of Supervisor in the Registration Section. The Division wishes Bob well in his retirement.

Cy Sedlacko, Examiner Supervisor with the Division's Enforcement Section, resigned in July to accept a position as Deputy Chief of the Commerce Department's Division of Licensing. Cy had been with the Division since 1982. The Division wishes him well in his new position with our sister agency.

Interesting Reading

Investor Alert! Dirt Pile Gold Swindles, The North American Securities Administrators Association & The Council of Better Business Bureaus (1988).

Securities Litigation 1988—Prosecution and Defense Strategies, Practising Law Institute (1988).

After The Trade: Dealer and Clearing Bank Operations in Money Market and Government Securities, Marcia Stigum (1988).

Going Public: How to Make Your Initial Stock Offering Successful, Martin Weiss (1988).

Contemporary Issues in Securities Regulation, Mark I. Steinberg, ed. (1988).

Articles

FRANCHISES, BUSINESS OPPORTUNITY PLANS AND SECURITIES

Franchising generally is the term applied to the set of circumstances involving a contract by an owner or seller of a technique, brand name or service and a local dealer or purchaser wherein the purchaser buys the right to use that technique, brand name or service. This broad definition often encompasses not only the above set of circumstances, but situations in which persons participate in a franchise by way of investment only.

The attractiveness of such dealings stems from the fact that though the franchisee or purchaser gives up its ability to make independent business decisions, he acquires the benefit of a "head start," in that the business can use a proven and established name or technique. This head start means a great deal to one interested in having his own business because the ground is broken for a successful enterprise.

On the other hand the seller or franchisor, having established his good name or technique in the public eye, can now sit back and earn royalties off of the franchisee's efforts. In essence, franchising is a good parasitic marketing concept with the service, product, or name the common sustenance to all involved.

"Franchises," as these relationships are termed, may or may not activate the protections provided for under federal and state securities laws. The security status of a "franchise agreement" requires a factual inquiry into the economic reality of the relationship. Case law seems to indicate that the test is whether the efforts made by those other than the investor are the undeniably significant ones. Those essential managerial efforts which affect the failure or success of the enterprise dictate whether securities laws precede. *Crowley v. Montgomery Ward & Co Inc.*, 570 F.2d 877, 1978 CCH Dec Paragraph 96,312.

If success is dependent on the efforts of the purchaser or investor, a security is not involved. On the other hand, if the purchaser or investor is merely a passive participant, the situation likely involves a security and securities law.

Ohio does not utilize the term "franchise" in its statutes governing such relationships and has instead coined the phrase "business opportunity plans" pursuant to the Business Opportunity Purchasers Protection Act. Ohio Rev. Code Ann. Chapter 1334. (Baldwin 1986).

A business opportunity plan basically is an agreement permitting a purchaser to obtain the right to offer, sell, or distribute goods or services supplied by a seller; in essence, a franchise, as the term has thus far been used.

Though Ohio's statute does not use "franchise" to describe this arrangement, the small amount of case law on this subject seemingly makes no distinction between a business opportunity plan and a franchise. See e.g., *Peltier v. Spaghetti Tree Inc.*, 6 Ohio St. 3d 194 (1983).

The key to whether such an arrangement involves the selling of a security parallels the distinction at the federal level. As *Spaghetti Tree* points out, the general assembly in implementing Chapter 1334, bore in mind the different activities to be regulated by both the Securities Act and the Business Opportunity Purchasers Protection Act. To this end, Section 1334.12(E) of the Revised Code exempts from its coverage; "the transfer of a registered security, as defined by division (B) of section 1707.01 of the Revised Code."

Therefore, a passive investor in a franchise in Ohio could invoke the protections accorded under the Ohio Securities Act, whereas an investor in a franchise whose profits depend on his own efforts may look to the Business Opportunity Purchasers Protection Act. Compliance with the provisions of Chapter 1334, is regulated by the Office of the Attorney General and necessitates the assumption of the burden of proof by the one claiming the benefits of this chapter, i.e., the franchisor or seller. Ohio Rev. Code Ann. Section 1334.08 (Baldwin 1986). No filings with either the Division of Securities or the Attorney General's office are required, but the Attorney General may, upon reasonable cause stemming from or as a result of complaints, institute several actions, including those for declaratory judgments and temporary restraining orders.

D. Dye-Joyce

OHIO REQUIREMENTS OF BROKER-DEALER LICENSING

The Division receives frequent inquiries concerning the necessity of being licensed as a broker-dealer for the purposes of engaging in securities transactions in Ohio. The following article will outline the issue of when dealer licensing is necessary.

Authority and prohibitions of dealer licensing are found in Ohio Revised Code Section 1707.14. The prohibitions are:

1. no person shall act as a broker unless licensed (1707.14(A));
2. no person shall sell securities other than through or with a licensed dealer (1707.14(B)); and
3. no person shall engage in the business of buying, selling or dealing in securities other than through or with a licensed dealer (1707.14(B)).

These three prohibitions and their counterparts in Revised Code Section 1707.44(A) are the only prohibitions triggering the dealer licensing provisions of the Act.

It is important not to make the mistake of viewing the definition of dealer in Section 1707.01(E)(1) as controlling the issue of when licensing is required. Sections 1707.14 and 1707.44(A) set forth the requirements for licensure.

One intending to engage in one of the three activities prohibited by Revised Code Section 1707.14 must:

1. be licensed as a dealer;

or, if intending to engage in one of the latter two activities (found in Section 1707.14(B));

2. transact through a licensed dealer;
3. transact with a licensed dealer; or
4. claim an exception under Section 1707.14(B).

Note that dealer licensing is mandatory and without exception, if one intends to act as a broker for others.

The purposes and provisions of dealer licensing involve four prongs:

1. taking a test;
2. certification of business repute;
3. certification of net worth; and
4. filing a consent to service.

When one analyzes the issue of whether dealer licensing is necessary, ask the questions underlying the purposes for licensing:

1. Does this transaction require a minimal knowledge of the market for securities?
2. Is this a transaction in which the public might normally be vulnerable to sharp practices?
3. Is this a transaction in which the persons involved should have some minimum net worth at stake for the effective enforcement of the statute through effective civil litigation?
4. Is this a transaction in which it typically may be necessary to contact the parties involved or obtain service in order to bring an injunctive action?

A borderline dealer licensing question coupled with affirmative responses to these questions probably dictates the necessity of licensure.

The definition of "broker" is found in Revised Code Section 1707.01(X). This is a newer section that has not yet been subject to judicial interpretation. Observe that the exceptions from the definition, though wordy, are very narrow. Two unusual points should be noted. First, the receipt of a commission is a very important consideration with regard to this definition. Second, although this definition excepts brokers acting in the sale of a business, Revised Code Section 1707.01(X)(3), this does not exempt the seller from dealer licensing and registration provisions.¹

The definition of "sale" is found in Revised Code Section 1707.01(C). The definition is too broad and complex to discuss in detail here. Note however, that Sections 1707.14(B) and 1707.44(A) use slightly different language. Section 1707.44(A) includes the phrases: "... cause them to be sold, offer them for sale, cause them to be offered for sale" Although that language is not explicitly found in Section 1707.14(B), it is certainly incorporated by reference to Section 1707.01(C).

The provision found in Section 1707.14(B) regarding engaging in the business of buying, selling and dealing is not subject to an exact specification. Its relevance to the statute occurs when a person is engaged in widespread trading or buying but would not otherwise be considered "selling." Many practitioners call the Division in antici-

pation of the Division's pronouncing a certain specific number of transactions to be "engaging in the business." The Division has not been able to oblige their requests.

The provisions of Section 1707.14(B) do not require that all sales be "through" a licensed dealer. A sale can take place in compliance with Section 1707.14(B) without the licensed dealer actually performing all ministerial aspects of the transaction. The requirements of the provisions "with a licensed dealer" would generally provide that the dealer be involved in the planning aspects of the transaction, be available to answer questions, and otherwise participate to the extent of the transaction benefiting from the dealer's industry expertise.

The exceptions from dealer licensing set forth in Section 1707.14(B)(1) through (4) are fairly straightforward with several important points. First, note that sales to institutional investors initially appear to be excepted pursuant to Sections 1707.03(D) and 1707.14(B)(1), but the last paragraph of Section 1707.14(B) limits the exception to issuers only.

Second, observe that while most transactional exemptions from registration found in Section 1707.03 also carry a licensing exception (with the exception of the dealer transactions specified in Sections 1707.03(M), 1707.03(N), 1707.03(S), and 1707.03(T)), most registration exemptions under Section 1707.02 for specific securities do not carry corresponding licensing exceptions (with the exception of Sections 1707.02(G) commercial paper and 1707.02(I) non-profit memberships). This is especially important in the context of the exchange exemption contained in Section 1707.02(E).

Third, note that registration by description pursuant to Section 1707.06 carries a dealer licensing exception, but only within the parameters of Section 1707.06(B).

An interesting quirk to the dealer licensing requirements is that, invariably, we are discussing the licensure of a corporation. Claiming a licensing exception for a corporation does not automatically except employees of the corporation from the application of the Securities Act to their activities. For example, let us say that a corporation is claiming an exception from licensing pursuant to a registration by description under Section 1707.06(A)(1). Although the corporate issuer is excepted from dealer licensing pursuant to Sections 1707.14(B)(2) and 1707.06(B), the individual employees making the sales need to find their own exceptions from licensure under the Act. In this case, relief is found in Section 1707.01(F)(2) defining the term "salesman."

Section 1707.01(F)(2) provides that:

general partners of a partnership, and the executive officers of a corporation or unincorporated association, licensed as a dealer, are not salesmen within the meaning of this definition, nor are such clerical or other employees of an issuer or dealer as are employed for work to which the sale of securities is secondary and incidental

This provision sets forth the basic understanding of when employees are considered "salesmen" in need of licensing².

An example—Licensing provisions in the context of a takeover.

Frequent inquiries are made concerning the necessity of licensing an offeror in a takeover. To these questions we can apply the above analysis.

Q: What provisions of the Act deal with licensing in a takeover situation?

A: Dealer licensing provisions are not found in Section 1707.041 (the Take-over Act), but are found in Section 1707.14.

Q: Is the offeror's contemplated activity prohibited?

A: If the offeror will engage in the business of "buying, selling or dealing" in the securities, then that activity requires compliance with the dealer licensing provisions of the Act. The issue of whether a takeover involves "buying, selling or dealing" involves the same type of analysis as one might find in cases defining a "private offering" under federal securities law, or "repeated and successive transactions" under state securities laws.

In the case of *Holderman v. Nagelvoort*, (Franklin CP, 12/24/86) the Division alleged that Nagelvoort & Co., a New York broker-dealer, was acting as a broker for the bidder in the context of a tender offer by Ropak, Inc. for Buckhorn, Inc., without licensure in Ohio and in violation of Revised Code Sections 1707.14(A), 1707.14(B) and 1707.44(A).

The allegations made to the Division were that Nagelvoort had been persistently calling Buckhorn shareholders (who were primarily Ohio residents) on the phone to persuade them to tender their shares. Routine inquiries by the Division were difficult because the Division had little knowledge of who to contact, either at the broker's offices or at the offices of the bidder. A temporary restraining order was issued against Nagelvoort, and was later removed when Nagelvoort expeditiously obtained licensure.

Although it was not necessary to reach the issue of whether Nagelvoort was "buying, selling and dealing" in securities, the Division alleged violations of both Revised Code Sections 1707.14(A) and 1707.14(B). A quick review of the purposes of licensure will reveal that this type of case offers a classic example of why we have dealer licensing:

1. Offerees will always have numerous questions concerning the specifics of a tender offer. In the interest of public policy, only someone with knowledge of and expertise in the securities market should be engaging in these solicitations.

2. Tender offers are notorious for sharp practices. Public policy demands that takeover solicitations not be made by unknowns or felons.

3. As has been repeated so often, takeovers cannot be undone (one cannot unscramble the eggs). Without some sort of guarantee of solvency, the extent of liability of an offeror for fraud is quite limited.

4. The *Nagelvoort* case illustrated the problems with the Division obtaining service upon an offeror, or even

contacting counsel. It would seem fundamental to the effective policing of the securities industry in Ohio that the Division easily be able to obtain service upon one engaging in repeated widespread solicitations within the state.

As this case illustrates, the issue of dealer licensure in the context of a takeover is not trite.

Q: What actions are necessary to comply with the licensure provisions of Section 1707.14(B)(2)?

A: Section 1707.14(B)(2) requires that licensure provisions are satisfied by transacting "through or with" a licensed dealer. The word "through" seems plain enough, but the bounds of "with" are less clear.

In the context of tender offers, several offerors have had a licensed dealer post its name on the cover of the prospectus as an "information agent" while listing the dealer's phone number and address. The Division has never taken a formal stand on such a device and this article is not such a proclamation. But if one looks at the purposes of dealer licensing one can see that in the context of an information agent whose name appears on the cover of the offering document, certain public policy provisions are addressed:

—Offerees have a competent and knowledgeable source of information.

—The reputation of the dealer is on the line.

—The dealer may be subject to certain types of liability.

—Various interested parties, including the Division, can obtain service upon the parties.

Whether in the context of a takeover, private offering, or public offering, the issues of dealer licensing arise with far more frequency than one not acquainted with the statute would expect. Those issues can usually be resolved quite quickly however, following the analysis set forth above.

C. Kahlr

¹See, *Carrousel North, Inc. v. Chelsea Moore Co.*, 9 Ohio App. 3d 344 (Ham. 1983), in which the court held that the sale of 100% of a corporation to one purchaser constituted the sale of a security. The exception for dealer licensing in this case is applied to the broker who may be a real estate agent or other professional who can obtain no exceptions from dealer licensing. The seller, or issuer, can probably obtain both a registration and licensing exemption in this case by filing a Form 3(O).

²Observe that this definition talks about corporations "licensed as a dealer." Although the definition of salesman is primarily intended to deal with the issues surrounding actual licensed dealers, the standard of who is or is not a salesman can be applied to cases in which the seller is not licensed.

Registration

COMMODITY POOLS

The Division adopted the North American Securities Administrators Association (NASAA) guidelines regarding commodity pools on January 1, 1988.

For re-registration of offerings filed prior to this adoption, the Division will require a representation by the general partner or sponsor that a sticker with substantially the following language will be attached to prospectuses for use in Ohio:

This offering was registered prior to the adoption by the Ohio Division of Securities of the North American Securities Administrators Association guidelines on Commodity pools.

The investor should be advised that the offering may not meet the limitations imposed pursuant to the Commodity Pool guidelines effective January 1, 1984.

The requisite sticker language may be tailored to the specific filing to the extent a specific section of the guidelines is contemplated.

Issuers of these filings should understand the offering is eligible for re-registration only based on the subsequent adoption of the guidelines. The offering would therefore be "grandfathered" in regards to a merit review.

Re-registrations of these offerings does not imply that the Division would have no objections in a substantive review.

New offerings, whether or not similar to grandfathered filings, will have the NASAA Commodity Pool guidelines applied as adopted. Re-registration requests of new offerings will also have the guidelines applied in a full review.

In the event changes are made to the guidelines, i.e., a new set is adopted by NASAA, it is probable Ohio will adopt those as well in its merit review of commodity pools.

Please contact the Division with any comments or questions you may have.

STANGER RATINGS

Disclosure documents for securities registered in Ohio are permitted to use Stanger ratings as long as any affiliation, past or present, material or otherwise is disclosed in connection with the offering.

To this end, the disclosure will also have to reveal if no affiliation exists.

CONSENT TO SERVICE OF PROCESS

Applications for registration of limited partnerships which require the filing of a consent to service of process (Ohio form 11 or uniform form U-2) may also require the filing of a corporate resolution (U-2A) in circumstances where the general partner is not an individual.

REGISTRATION FILINGS

Form Type	Third Quarter 1988	Year to Date 1988
2(B)	245	727
3-O	2,677	8,907
3-Q	356	1,129
3-W	51	144
04	0	2
041	0	3
041(B)(4)	0	1
5(A)	0	1
6(A)(1)	83	244
6(A)(2)	24	98
6(A)(3)	19	50
6(A)(3)OG	2	2
6(A)(4)	23	74
09	353	1,027
09OG	0	3
091	488	1,399
10	0	0
39	45	128
391/09	6	11
391/3-O	184	563
391/3-Q	35	144
391/3-W	3	6
391/6(A)(1)	0	2
391/6(A)(2)	1	1
391/6(A)(3)	1	2
391/6(A)(4)	0	1
TOTAL	4,596	14,669

Broker-Dealer

DEALER AND SALESMAN LICENSES AS OF SEPTEMBER 30

	1988	1987
Broker-Dealer		
Ohio	253	
Non-Ohio	1,481	
Total	1,734	1,638
Salesman		
Ohio	13,127	
Non-Ohio	32,114	
Total	45,241	46,860

Enforcement

ADMINISTRATIVE ORDERS

The following are summaries of recent enforcement administrative orders of note. The orders have been issued by the Division after notice of the parties' opportunity for an administrative hearing in accordance with Ohio Revised Code Chapter 119. Orders which have been appealed to Common Pleas court are so noted.

Keystone National Development Corp.

On June 2, 1988, the Division issued a Cease and Desist Order against Keystone National Development

Corp. of Westerville, Ohio. The Division found that incorrect dates of sale were reported on a Form 3-Q filing made with the Division on behalf of Keystone National Development Corp. Ohio Administrative Rule 1301:6-3-03(K) determines the date of sale to be the earlier of the date a subscription agreement or its equivalent is signed by the purchaser or the date the purchaser transfers or loses control of the purchase funds. Ohio Revised Code Section 1707.44(C)(1) was found to have been violated. The Division also declared null and void the Form 3-Q, File Number 349189, filed with the Division on behalf of Keystone National Development Corp., which reported incorrect dates of sale. Keystone National Development Corp. appealed the Order in Franklin County Court of Common Pleas on June 15, 1988.

Bobbert Energy Group; The Oxford Completion Fund; Robert Mark Siebert, and Robert Andrew Foti

On June 6, 1988, the Division issued a Cease and Desist Order against Bobbert Energy Group, The Oxford Completion Fund, Robert Mark Siebert, President, and Robert Andrew Foti, Vice President, all of Los Angeles, California. The Division found that false representations of material facts were made when investors were told that the Oxford Completion Fund was a "risk-free" investment and that a return on investment was guaranteed. In addition, the securities were unregistered and the respondents were not licensed to sell the securities. Ohio Revised Code Sections 1707.44(A), 1707.44(C)(1), and 1707.44(B)(4) were found to have been violated.

James Richard Neeb

On June 14, 1988, the Division issued a Cease and Desist Order against James Richard Neeb of Columbus, Ohio. The Division found that Neeb, formerly licensed as a salesman of securities in Ohio, had failed to disclose in his license application that he had been the subject of an SEC injunction for the sale of unregistered securities. This omission constituted a violation of Ohio Revised Code Section 1707.44(B)(3).

La Mesa Village, Ltd.

On July 8, 1988, the Division issued a Cease and Desist Order to La Mesa Village, Ltd., of Columbus, Ohio. The Division found that limited partnership interests had been sold to Ohio residents without proper compliance with Ohio law. Ohio Administrative Rule 1301:6-3-03(K) determines the date of sale to be the

earlier of the date a subscription agreement or its equivalent is signed or the date the purchaser transfers or loses control of the purchase funds. Ohio Revised Code Sections 1707.44(A), 1707.44(C)(1), and 1707.44(G) were found to have been violated.

Fred Alvaro, Jr.; Petroleum Investors 1984-A, Ltd.; Petroleum Investment Services, Inc.

On July 8, 1988, a Cease and Desist Order was issued against Fred Alvaro, Jr., Petroleum Investors 1984-A, Ltd., and Petroleum Investment Services, Inc., all of Worthington, Ohio. The Division found that sales of limited partnership units in Petroleum Investors 1984-A, Ltd., had been made without being properly registered or exempted in Ohio. Ohio Administrative Rule 1301:6-3-03(K) determines the date of sale to be the earlier of the date a subscription agreement or its equivalent is signed or the date the purchaser transfers or loses control of the purchase funds. Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1) were found to have been violated.

Michael C. Dickens d/b/a The Ticket Exchange

On July 9, 1988, the Division issued a Cease and Desist Order against Michael C. Dickens d/b/a The Ticket Exchange of Cincinnati, Ohio. Dickens had sold promissory notes to an Ohio resident without properly registering or exempting the notes. In addition, Dickens was not licensed to sell securities in Ohio. Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1) were found to have been violated.

Columbus Consolidated Agency, Inc.; Donald Schlater; Richard Rolwing; Peter Culichia

On July 15, 1988, the Division issued a Cease and Desist Order against Columbus Consolidated Agency, Inc., Donald Schlater, Richard Rolwing, and Peter Culichia. The Division found that a cargo container program, sold by respondents as an investment tax shelter, constituted an investment contract, and therefore a security under Ohio Revised Code Section 1707.01(B). The sale of the unregistered, non-exempt investment scheme by the respondents without a license to sell securities in Ohio violated Ohio Revised Code Sections 1707.44(A) and 1707.44(C)(1). The Division further found that respondents violated Section 1707.44(B)(4) by making false representations of material and relevant facts concerning the cargo container program's legitimacy as a tax shelter. The Order was appealed in Franklin County on August 1, 1988.

OTHER FINAL ADMINISTRATIVE ORDERS

<u>Respondent</u>	<u>Date Issued</u>	<u>Order No.</u>	<u>Action Taken/ Type of Order</u>
MacMillan & Associates Sylvania, Ohio	06/13/88	88-096	Cease & Desist
Falina Angel Partners; John E. Conlan; Shawnee Capital Corp. Indian Hill, Ohio	06/21/88	88-103	Cease & Desist
Windsor Equity Corporation B/D License No. 46532 Brookfield, Wisconsin	07/05/88	88-107	Revocation of Broker/Dealer License
William E. Parodi Woodland Hills, California	07/08/88	88-108	Cease & Desist
First Investment Securities Inc. Little Rock, Arkansas	07/08/88	88-115	Cease & Desist
Joseph P. Lombardi Ft. Lauderdale, Florida	07/19/88	88-120	Cease & Desist
Lake Manor Limited Partnership; Wayne F. Lang; Daniel S. Tyler; and First Investors Realty Corp. d/b/a Royalton Square Management Co., General Partners Strongsville, Ohio	07/20/88	88-121	Cease & Desist
B.G. Caps, Incorporated Bowling Green, Ohio	07/20/88	88-122	Cease & Desist
Lyle C. Loughry Ravenna, Ohio	07/25/88	88-123	Cease & Desist
Mobile Home Park, Inc. Chardon, Ohio	07/29/88	88-126	Cease & Desist
John Algie d/b/a Pace Research Services, Inc. B/D License No. 20538 Newport Beach, California	08/08/88	88-128	Revocation of Broker/Dealer License
Forum Consolidated Drilling Program; Forum Consolidated Energy, Inc.; Ronald G. Williams, President Dallas, Texas	08/25/88	88-135	Cease & Desist

CRIMINAL CASES

<u>Case Names</u>	<u>Jurisdiction/ Referring Staff Person</u>	<u>Action Taken</u>	<u>Comments</u>
Edward Cecutti	Hamilton County/ Referred by Clyde Kahl	<ol style="list-style-type: none"> 1. Pled guilty on 05/16/88 to 2 counts of unlicensed sales of securities. 2. Sentenced on 06/14/88 to 18 months in prison on 2 separate counts, to be served consecutively. The sentence was suspended and 6 months imprisonment and 3 years probation were imposed. Restitution was also ordered to be paid to investors. 	Edward Cecutti was indicted on 03/15/88 on 6 counts of securities violations. He formerly operated Mutual Credit Services, Inc., a company which financed other business enterprises by selling subordinated debentures to the public.
Charles Peebles	Franklin County/ referred by Karen Terhune	<ol style="list-style-type: none"> 1. Indicted on 06/13/88 for the following: <ol style="list-style-type: none"> a. 5 counts of securities fraud; 	Charles Peebles, formerly a principal of American Heritage Research, Inc., and Heritage Market Research, Inc., allegedly sold

CRIMINAL CASES—continued

<u>Case Names</u>	<u>Jurisdiction/ Referring Staff Person</u>	<u>Action Taken</u>	<u>Comments</u>
Wilbur Zink; Roy Currens; Gary Trudell	Franklin County/ referred by Karen Terhune	<ul style="list-style-type: none"> b. 3 counts of false representations in the sale of securities; c. 6 counts of unlicensed sales of securities; d. 6 counts of selling unregistered securities; and e. 8 counts of theft. <p>1. Indicted on 06/13/88 as follows:</p> <ul style="list-style-type: none"> a. Zink—8 counts; b. Currens—4 counts; and c. Trudell—4 counts. 	<p>or caused to be sold units in a nonexistent fund, the Aggressive Cash Management Fund. This boiler-room operation was halted after a search warrant was executed for books and records.</p> <p>These 3 co-defendants were formerly salesmen for American Heritage Research, Inc., and Heritage Market Research, Inc. Investors were told that funds invested in the Aggressive Cash Fund would be pooled to purchase strategic and precious metals.</p>
Roy L. Currens	Franklin County/ referred by Karen Terhune	<p>1. Indicted on 06/13/88 for the following:</p> <ul style="list-style-type: none"> a. 1 count of an unlicensed sale of securities; b. 1 count of an unregistered sale of securities; c. 1 count of theft; and d. 1 count of securities fraud. 	<p>Roy Currens allegedly sold stock in the deep sea salvager, Mel Fisher. The stock is nonexistent and the investor was led to believe that Mr. Currens was licensed to sell securities.</p>
Charles Williams; John Lewis	Montgomery County/ referred by Karen Terhune	<p>1. Both men were indicted on 06/17/88 on securities violations as follows:</p> <ul style="list-style-type: none"> a. Charles Williams—3 counts; and b. John Lewis—2 counts 	<p>Charles Williams allegedly caused to be offered for sale unregistered stock in his company, Classic Heating and Air Conditioning. John Lewis allegedly was the salesman who solicited the investor and consummated the sale.</p>
Paul J. Welsh, II	U.S. Attorney's Office/ referred by Karen Terhune	<p>1. Found on 06/29/88 to have violated a provision of his federal probation by acting as a broker and dealer in securities.</p> <p>2. Sentenced to 18 months imprisonment in federal prison on 07/07/88.</p>	<p>Paul Welsh was convicted in 1981 of defrauding investors of \$1.8 million in a West Virginia coal development operation offered by Midwest Consolidated Coal Co., of which he was vice-president. The U.S. Second Circuit Court of Appeals in Richmond upheld the conviction in 1985. He was sentenced to 3 concurrent 3-year terms on 1 interstate fraud count and 2 counts of wire fraud, and was placed on 5 years probation on 2 other wire fraud charges.</p> <p>On 06/29/88, after a 2-day hearing in Charleston, West Virginia, U.S. District Judge John T. Copenhaver, Jr., found that Mr. Welsh had violated a provision of his probation by selling unregistered, non-exempt fractional undivided interests in oil and gas programs to Ohio and other investors in 1983 and 1984.</p>

CRIMINAL CASES—continued

<u>Case Names</u>	<u>Jurisdiction/ Referring Staff Person</u>	<u>Action Taken</u>	<u>Comments</u>
Lyle Loughry	Portage County/ referred by Corey Crognale	1. Indicted on 07/03/88 on 2 counts of selling unregistered securities.	Lyle Loughry, a financial planner and former insurance salesman, allegedly sold shares of an unincorporated trust association located in California to investors.
Richard Underwood	Montgomery County/ referred by Karen Terhune	1. Indicted on 07/26/88 for the following: a. 4 counts of unlicensed sales of securities; b. 4 counts of misrepresentations in the sale of securities; c. 4 counts of sales of unregistered securities; d. 9 counts of theft; and e. 4 counts of forgery.	Richard Underwood allegedly sold stock in his company, First Security Service of Dayton, to be held "on a silent partnership basis". The price per share was \$100 and investors were allegedly promised dividends of \$200 per share per month.
Kim E. Little	Franklin County/ referred by Melanie Braithwaite	1. Sentenced on 07/11/88 to 18 months incarceration. This sentence was suspended and the following was ordered: a. 60 days imprisonment; b. 5 years probation; c. Restitution of \$211,950 to investors; and d. A permanent bar from selling securities and association with co-defendant Edward Little.	Kim Little pled guilty on 04/18/88 to 15 felony counts of securities violations. He was formerly secretary-treasurer of Littlefield Oil Co.
James Phister	Stark County/ referred by Corey Crognale	1. Indicted on 08/19/88 for the following: a. 2 counts of unlicensed sales of securities; and b. 2 counts of selling unregistered securities.	James Phister sold shares of his own company, Professional Management Investment Company, to investors.

ENROLLMENT FORM

Please enroll the following people in the Division of Securities 1988 Conference:

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Fee: \$100 per person (includes all sessions, lunch on Nov. 17, and seminar materials).

Make checks payable to:
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Hotel: The Hyatt On Capitol Square has a limited block of discounted rooms for attendees who make hotel reservations by November 1. Call (614)228-1234.

Deadline: Forms and requests for refunds must be *received* by Friday, November 11.