



OHIO SECURITIES BULLETIN

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89:4 Autumn Quarter 1989

One or More Form 2(B)'s

by Carol L. Barnum

Exemptions from registration requirements for certain government securities offerings are available at the federal and state levels of securities administration. The Securities Act of 1933¹, as amended ("1933 Act"), at section 3(a)(2) exempts securities that are "issued or guaranteed" by "political subdivisions" or "public instrumentalit(ies)." These securities may be described here broadly as United States or state government securities, bank securities and industrial development bond² securities, among others. Parallel exemptions for such securities are found in the Securities and Exchange Act of 1934 ("1934 Act") at section 3(a)(12)(A). See the 3(a)(42) definition of "government securities" in the 1934 Act.³ A federal exemption is not necessarily available for certain industrial and commercial facilities which are financed by government securities. See Code of Federal Regulations sections 230.131 and 240.3b-5.⁴

In Ohio, similar exemptions are found in Ohio Revised Code Sections: 1707.02(B)(1) for U.S. government securities; (see (B)(2) for foreign government securities); 1707.02(C) for certain U.S. or state bank securities; and 1707.02(K) for certain Ohio related industrial development⁵ and other bonds.

O.R.C. 1707.02(B)(3) can and has presented some factual complications. Professor Friedman in 7.01 and 7.02 of the text of his *Ohio Securities Law*⁶ provides a readily available explanation of this code section. Professor Long in *Blue Sky Law*, Volume 12, *Securities Law*⁷ at 4.04 looks at Ohio and other states.

Two categories of securities may be isolated in 1707.02(B)(3). If a security (1) is "issued or guaranteed by" certain "public bod(ies)" (at the state or local level, inside or outside Ohio) and (2) that "public body" recognizes that security as "its valid obligation," then the security is within the parameters of 1707.02(B)(3). A first category 1707.02(B)(3) security is exempt from registration and no form claiming that exemption need be filed, so long as the "machinery" is in place to pay any security payment shortfall from "the proceeds of a general tax." See Ohio Administrative Rule 1301:6-3-02. In contrast a second category of 1707.02(B)(3) securities are securities which are "... not payable out of the proceeds of a general tax." For these second

category securities the exemption from registering these securities in Ohio may be claimed only by the timely filing with the Division of a Form 2(B). For time requirements, again see O.A.C. 1301:6-3-02.

The Ohio Form 2(B) focuses upon: (1) Who is the issuer or guarantor? (2) What section of the applicable state's law justifies the security's existence? (3) How is payment of the security secured? This second category of section 1707.02(B)(3) securities will not be looking to a general tax for payment. (4) Is the security valid? (5) Are principal and interest payments in default? They should not be in default.

When a Form 2(B) is used, what guides are available as to who files it and how many Form 2(B)'s are needed? The Division's practice has been to require a single Form 2(B) for each single issuer.

Brief "issuer" definitions are found at O.R.C. 1707.01(G) in Ohio; section 2(4) and section 11 of the 1933 Act; and section 3(a)(8) of the 1934 Act. In the analysis of "issuer," the definition of "person" may also be useful: O.R.C. 1707.01(D); section 2(2) of the 1933 Act; and section 3(a)(9) of the 1934 Act. In the area of public bodies issuing bonds, some more specific idea of who is an "issuer" may be found in the O.R.C. chapter titled "Uniform Public Securities Law,"

Table of Contents

OHIO SECURITIES BULLETIN
Publication of the
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Carol L. Barnum, Editor

One or More Form 2(B)'s	1
Outstanding Employee Award	3
Interesting Reading	3
Ohio Securities Conference—1989	4
Advisory Committees	4
Broker-Dealer	6
Registration	6
Enforcement	6

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 Kahrl Counsel to Commissioner	644-7421
Jim Hunt Legislative Liaison	644-7435

BROKER-DEALER

Information	466-3466
Dale Jewell Supervisor	644-7465
Greg Betchkal Attorney	646-3466

RECORDS MANAGEMENT

Information	466-3001
Debra Chafin Supervisor	644-7449

FISCAL OFFICE

Information	644-7453
Nick Caraccilo Manager	644-7455

ENFORCEMENT

Information	466-6140
Sylvia B. Robbins-Penniman Attorney Inspector	644-7413
Karen Terhune Assistant Manager	644-7411
Melanie Braithwaite Attorney	466-8109
Bill Henry Attorney	466-1082
Don Hershberger Examiner	644-7417
Mark Heuerman Attorney	644-9529
Richard G. Porter Attorney	644-7419
D. Michael Quinn Attorney	644-7293
Sid Silvian Attorney	644-7389
Mary Spahia Attorney	644-7395
Joyce Cleary Examinations Section	644-7467
Nancy Benton Inquiries	644-7385

REGISTRATION

Information	466-3440
Michael Miglets Attorney Examiner—Administrator	644-7295
Carol L. Barnum Attorney Examiner—Partnerships	644-7373
Jo Chapman Form 3-O	644-7429
Jim Hunt Attorney Examiner—Forms 3-Q & 3-W	644-7435
Bill Lively Form 2(B)	644-7459
Gordon Stott Forms 39 & 391	644-7427
Kathy Veach Mutual Funds	644-7423
James Warneka Oil and Gas	644-7433

at sections 133.01(T) and (FF) and 133.70(A)(1). A similarly specific view in Ohio law of who may be an "issuer" is in O.R.C. 165.01(D) of the Industrial Development Bond chapter of the code.

Without looking at the laws and regulations of other states, the Division, for this discussion, assumes most states' mechanisms for bond funding are comparable to Ohio's own public body bond funding mechanisms. Some state permitted bonds will be paid out of general tax revenues, others will not be so paid and in Ohio, these would have the Form 2(B) exemption. Looking at the general pattern of bond possibilities, the Division notes, first, that bonds may be issued all at one time or at two or more differing times. See O.R.C. 133.23(A)(1) and 165.03. A singular instead of plural definition of "security" may be found at: O.R.C. 1707.01(B) in Ohio; section 2(1) of the 1933 Act; and section 3(a)(10) of the 1934 Act. O.R.C. 165.01(J) defines a "security interest." O.R.C. 133.01(KK) and 133.70(A)(2) define "securities." O.R.C. 1707.01(B)(3) reads "security" not "securities." The Division notes second, that a public body may issue bonds to execute one project or for multiple projects and even for partial projects. See O.R.C. 165.03. Third, the Division notes that public bodies at state and local government levels may face constraints on their levels of bond funding. To legally issue bonds, there may be distinctions drawn between revenue types coming in or anticipated. There may be a trust mechanism to secure payment of the bonds by that certain revenue type, or with particular real property, perhaps the project itself, securing bond payment. The Division also notes refunding of outstanding bonds may be possible under state laws. For these several areas see O.R.C. 133.34 and generally chapters 133 and 165. If one or more trust indentures comprise part of the bond funding mechanism, is the public body alone "the issuer," or are the trust and public body two issuers, or more issuers if more than one trust indenture is present in the bond funding scheme? A fifth and last point is represented by O.R.C. 165.12 which says the bonds are not a liability of the issuer. Other states' legislation may provide the revenue from the bond project will be the means of paying the bonds, not the state.

"Who is the issuer?" and the problem of multiple issuers was commented upon in two 1986 *Bulletin* articles.⁸ One of these interpretations discusses the problem of a trust as an issuer. When one or more trusts are part of the funding mechanism of the bonds, it may be helpful to focus on where the investor is situated with respect to the trusts that are involved. If there is a two project offering document with but one type of trust certificate that the investor can buy, and he must buy both project units together, not separately, one Form 2(B) filed by the trust issuer should be the result. If the investor could choose to purchase interests in the projects individually or together, two Form 2(B)'s filed should be the result.

The Form 2(B)'s partial focus on payment issues has been mentioned. If the Form 2(B) were a securities registration rather than exemption form, the Division clearly would focus on the details of the "issuer's" financial condition. See the O.R.C. 1707.05(B) and (E) financial guidelines, O.R.C. 1707.06, 1707.09 and 1707.44. To what extent is the "real" issuer's identification important when 1707.02 and the Form 2(B) concerns exemptions from registration, and *not registration* at all?

Some examples of Form 2(B) issues may be helpful. For each example assume one offering document is used. Assume liability for the issued bonds is not the state-created authority's or the trustee's (if a trustee is used). Question 7(b) of the Form

2(B) requires identification of the source of authority for a state or local government creating a bond issuing authority. O.R.C. 1707.02(B)(3)'s "issue," but not "guarantee" language would then appear to apply.

1. State Authority "A" issues highway bonds. Assume no trust indenture, or one trust indenture is used. One Form 2(B) needs to be filed.
2. State Authority "B" issues highway bonds in March, 1990 and a second series in June, 1990. One Form 2(B) needs to be filed.
3. County Authority "C" issues bonds for an office building and for a jail; two projects, not just one. One Form 2(B) needs to be filed. The Division notes it is unlikely that the Division would prefer one rather than two Form 2(B)'s if the two projects were in two differing states.
4. ⁹School District "D," instead of alone coming to the bond market, joins its bond needs to School Districts "E" through "R." A county wide "Greater School Fund "S" Company" is statutorily created and with one trust indenture bonds with one offering document for "E"- "R" are issued. Assume a separate trustee and Greater School Fund "S" Company have no liability on the bonds. The 15 "D"- "R" school districts retain their proportionate liability for the proportionate level of borrowing of each. The Division will look for one Form 2(B) if a partial interest in all 15 districts at once is to be purchased by the investor. Fifteen Form 2(B)'s are required if 15 trust indentures enable an investor to buy the project trust interest of any one of the 15 districts without having to buy all 15. In this single offering document the Division would be expecting from 1 to 15 and possibly a 16th bond counsel's opinion. The Division notes the use of a legally created "joint authority" in a state will be considered by the Division to be much like Greater School Fund "S" Company in this example.
5. Assume a hypothetical where O.R.C. 1707.02(K) does not apply and where, not public entities, but ten private corporations go through a single State Authority "T" to issue bonds in one offering document. Assume one trust indenture. Assume liability for payment of the bonds rests proportionately with the respective private corporations. One Form 2(B) needs to be filed. If two trust indentures are in the funding mechanism, as for example if two bond issuing time periods are being used, two Form 2(B)'s need to be filed. If ten indentures are used and investors may separately purchase each company's project bond, ten Form 2(B)'s need to be filed.
6. Assume one private corporation "U" funds and constructs one project through issuance in one offering document by State Authority "V" and State Authority "W." The Division would require one Form 2(B) if one trust indenture is used and two Form 2(B)'s if two trust indentures are used, or if interests in the partial projects may be purchased separately.

The Division is open to any comment on these or related 2(B) situations. However the Division cannot offer opinions or "no action" letters in such matters and the burden of establishing an exemption claim remains upon the claimer.¹⁰

The author is an Attorney Examiner with the Division.

¹Commerce Clearing House, *Federal Securities Law Reports*, paragraph 533 *et seq.*

²Section 103 of the Internal Revenue Code of 1954, as amended.

³See 1 above, paragraphs 21,191 and 21,248F.

⁴See 1 above, paragraphs 1012 and 21,181.

⁵*Ohio Securities Bulletin* (3/1980). Also Friedman (in 6 below) at OSB 15.05.

⁶*Ohio Securities Law & Practice*, Howard M. Friedman, 1987 and updated, Banks-Baldwin Law Publishing Company.

⁷1985, and updated, Clark Boardman Company, Ltd., Joseph C. Long.

⁸*Ohio Securities Bulletin* 86:3 October, 1986 pages 14-17, Interpretations 86:3/1 and 86:3/1.1. Also Friedman (in 6 above) at OSB 11.17 and 11.18.

⁹A Securities and Exchange Commission no action letter illustrating one funding variation is found at the 1980 reports (see 1 above), paragraph 76,456.

¹⁰O.A.C. 1301:6-3-01; O.R.C. 1707.45.

Outstanding Employee Award

The Division's Outstanding Employee Award for the quarter ending September 30, 1989 was presented to Clyde C. Kahrl, Counsel to the Commissioner. Clyde was instrumental in planning and arranging for the installation of computers in the Division. The award recognizes his insight, initiative and perseverance in that effort.

Interesting Reading

See the opinion of *State v. Warner v. Schiebel*, No. C-870222, Court of Appeals of Ohio, Hamilton County, (11-15-89) for a lengthy discussion of various federal and state securities issues in this widely publicized case. In particular, note the court's reaffirmation of previous interpretations of the levels of scienter necessary to bring a fraud action under the Ohio Securities Act. See, e.g., *State v. Trevedi*, 8 Ohio App. 3d 412 (Ham. 1982); *State v. Walsh*, 66 Ohio App. 2d 85 (Fkln. 1979).

Recent issues of the *Ohio State Bar Association Report* have contained items that readers of the *Bulletin* may wish to review.

In the 10-30-89 issue of the OSBA Report, at page 827, the OSBA Corporation Law Committee reports on partnership issues. The long term centralization of partnership records in the Ohio Secretary of State's Office is discussed. Also discussed is the merger of partnerships into other entities.

In the 11-13-89 issue, at page 866, action by the Ohio Tax Commissioner related to franchise tax reporting by respectively, real estate: investment trusts, investment companies and mortgage investment companies, is reported.

The OSBA has printed two Ohio Supreme Court cases of potential interest. The first, reported at the 9-25-89 OSBAR and decided 9-13-89, looks at the issue of "sale of securities." *Worrell v. Multipress, Inc.* (1989), 45 O.S.3d 241. The second reported at the 11-13-89 OSBAR and decided 11-8-89, looks at the issue of negligence of an accountant. *Investors REIT One v. Jacobs* (1989), 46 O.S.3d 176.

Ohio Securities Conference—1989

The Ohio Securities Conference was continued in 1989 with approximately 180 members of the bar and representatives of the securities industry in attendance at the conference program on Monday, October 30, 1989. This year the conference was held at the Columbus Marriott North in Columbus, Ohio.

The conference program consisted of four panels discussing interesting and current securities topics. Each panel was guided by a moderator and presented subjects including Investor Remedies from the Plaintiff's Perspective, Securities Arbitration, Business Acquisitions and activities of the Division of Securities. The program was approved for six hours credit of continuing legal education.

On Tuesday, October 31, 1989, advisory committee meetings were in session at the Columbus Marriott North. All five committees met and reviewed various proposals for submission to the Division. Reports of those meetings are included in this *Bulletin*. The Advisory Committees include Takeover, Registration, Licensing, Exemption, and Enforcement.

Advisory Committees

ENFORCEMENT ADVISORY COMMITTEE

The Enforcement Advisory Committee met on October 31, 1989, as part of the annual Ohio Securities Conference hosted by the Division of Securities. The various subcommittees had drafted several rule proposals for consideration by the Enforcement Advisory Committee as a whole. In addition, other topics were introduced for discussion over the ensuing year.

The Enforcement Advisory Committee recommended that the Division evaluate two provisions for promulgation as amendments to the administrative rules. The first, drafted by Charles F. Hertlein, Jr., of Dinsmore and Shohl, would add a provision to the definition of "date of sale" under O.A.C. 1301:6-3-03(K), to permit the date that independent escrow is broken to be used. If an independent escrow agreement is not utilized, or the sale takes place after escrow is broken, the rule would apply as it does currently. The second rule change was drafted by Phillip Lehmkuhl of Squire, Sanders and Dempsey, and Natalie Shirley of the Investment Company Institute. As recommended to the Division by the Committee, the rule would amend O.A.C. 1301:6-3-391 to permit retroactive registration of mutual fund oversales on a Form 391. These proposals have been presented to the Commissioner by the Commit-

tee co-chairs, Charles F. Dugan II of Vorys, Sater, Seymour and Pease, and Becky Robbins-Penniman of the Division.

The Committee also heard reports from the Task Force responsible for studying the problems the bar and industry have in complying with O.A.C. 1301:6-3-391, and devising possible solutions. Two approaches were submitted. The first, authored by James F. Lummanick of Frost & Jacobs, defines the term "excusable neglect," and outlines factors to be considered by the Division in determining whether purchasers would be prejudiced by a retroactive filing. The second proposal, drafted by Gregory Zelasko of Vorys, Sater, Seymour and Pease, enlarges the time frames for making corrective filings. After extensive discussion, the Committee decided that the Task Force members had made an excellent beginning, and requested certain refinements to the drafts for further consideration.

Finally, Becky Robbins-Penniman initiated discussion regarding two rules under consideration by the Division. The first would require all securities brokers licensed by Ohio to be also registered with the S.E.C. The second rule proposal is patterned after the new S.E.C. rule governing sales practice requirements for penny stocks. The Committee requested further analysis and development of the suggested rules, and discussions are scheduled. These latter proposals have generated a significant amount of comment, and the Enforcement Advisory Committee welcomes input from members of other advisory committees during the development and consideration of these issues. Either co-chair of the Enforcement Advisory Committee may be contacted.

EXEMPTION ADVISORY COMMITTEE

The Exemption Advisory Committee met on October 31, 1989, the second day of the 1989 Ohio Securities Conference. Twenty-three members of the Committee were in attendance. Three proposals for amendments to the administrative rules were considered in addition to other topics submitted for discussion.

The Committee reviewed the first proposal which would provide an additional exemption to O.A.C. rule 1301:6-3-03(N) for a security exempted from registration under Rule 701 of the Securities Act of 1933. Because reporting companies cannot use Rule 701, further consideration is to be given to provide uniform application of the proposed amendment.

A proposal was next considered by the Committee to provide a new definition of commercial paper and promissory notes which are exempted under section 1707.02(G) of the Revised Code, by amending O.A.C. rule 1301:6-3-02(C). An amendment had been made to the original proposal and, after discussion, the Committee agreed to an appointment of a special committee for review of the proposals and report of its recommendations.

Other topics discussed by the Committee concerned possible exemptions being extended to interests in charitable pool remainder trusts and of the exercise of stock warrants rights, not registered in Ohio but purchased in the secondary market. A proposed rule for an exemption applicable to charitable pool remainder trusts was submitted for discussion. Further consideration was deferred until additional information on this proposal could be developed. No action was taken and no proposals were submitted with respect to the exercise of stock warrant rights.

LICENSING ADVISORY COMMITTEE

A meeting of the Licensing Advisory Committee of the Ohio Division of Securities took place October 31, 1989, at the Columbus Marriott North. Fifteen Committee members were in attendance.

The Committee focused its discussion on a number of proposed rule changes set forth by the Division. After Committee consideration, it was decided that certain proposals for rule changes not be made. The following rule proposals will be discussed further or formally introduced into the rulemaking process.

O.A.C. rules 1301:6-3-06(A)(2) and 1301:6-3-09(L) will be amended to require the maintenance of records of all material transactions of offerings for four years after the date of the last sale in that offering.

O.A.C. rule 1301:6-3-15(C)(2) will be deleted.

O.A.C. rule 1301:6-3-16(B) will be amended to require salesmen not previously licensed with the Division to have passed a specified security examination within the past two years.

The Committee proposed that the Division amend its Form 16 which requires a dealer to indicate whether the salesman was terminated for "cause." The Committee suggested revising this form to use more concrete language, such as that found in the National Association of Securities Dealer's U-5.

The Committee also suggested adding a \$25,000 limitation to O.A.C. rule 1301:6-3-15(E)(3)(b).

O.A.C. rule 1301:6-3-15(I)(2), concerning the use of Focus II reports, will be deleted.

O.A.C. rule 1301:6-3-15(K), regarding change of officers or directors, will be amended to require notification of specified material events within *thirty days*.

O.A.C. rule 1301:6-3-15(L)(1) shall be amended to change the time requirement for broker-dealers to request the Division to cancel a salesman's license from ten to thirty days.

The Division will propose moving the substance of O.A.C. rule 1301:6-3-15(P) into rule O.A.C. 1301:6-3-15(K) and allow the use of the appropriate broker-dealer form of the National Association of Securities Dealers for notice to the Division.

The Division and Committee will continue to explore an amendment to O.A.C. rule 1301:6-3-15 to require all broker-dealers to register with the S.E.C. before licensure with the state of Ohio.

The Division and Committee continues to explore the possibility of adopting the S.E.C.'s recent Penny Stock Rule into O.A.C. rule 1301:6-3-19.

Dale A. Jewell, Committee Co-Chair and Supervisor of the Broker-Dealer Section at the Division, may be contacted for further information about this meeting.

REGISTRATION ADVISORY COMMITTEE

A total of twenty-one members of the Registration Advisory Committee were in attendance for the second meeting following the Ohio Securities Conference. The meeting was opened by Chairman Warren Udisky of Benesch, Friedlander, Coplan & Aronoff and Michael Miglets of the Ohio Division of Securities. D. Michael Quinn of the Division kept the minutes for the meeting.

Discussion was primarily focused on registration by description. The Division suggested an amendment which would require that a prospectus be delivered for all registrations by description over \$250,000 or oil and gas offerings, instead of just requiring prospectus delivery for Rule 504 offerings under Regulation D.

The Committee also discussed amending Revised Code sections 1707.06(A)(2) and (3) to exclude accredited investors as defined in Regulation D instead of \$100,000 purchasers. The Division's proposal was to use the Regulation D definition of accredited investor, but promulgate the definition by rule instead of by statute. The Committee felt that this approach would give the Division more flexibility if an amendment was necessary. Draft proposals will be circulated among the Committee members then submitted to the Division.

The expense limitation under Revised Code section 1707.06(A)(1) and the escrow for registrations by description of proceeds were also discussed. The Committee felt a *Bulletin* article outlining the escrow of proceeds issue and explaining the Division's concern was more appropriate than a rule at this time. The Committee will also work on the expense limitation issue with the Division this winter.

If you want copies of the minutes of the Committee meeting or the proposals you may contact Michael Miglets at the Division.

TAKEOVER ADVISORY COMMITTEE

There was a small turnout for the meeting of the Takeover Advisory Committee occasioned by the circumstance that, within the jurisdiction of the Committee, very little was occurring of great consequence.

Nevertheless, through the collective information of those attending, it appeared that several pieces of legislation affecting Ohio takeover law might move forward in the near future. A "technical corrections" amendment to Revised Code section 1707.041 sponsored by the Ohio State Bar Association may be moving forward. This proposal is distinct from the Bar Association's proposal to amend Chapter 1701—popularly called the "merger moratorium" statute. Although there may be some disagreement as to whether the corrections to section 1707.041 are technical or substantive, because there seem to be several drafts, the discussion was merely informational in nature.

The Division wished members of the Committee to be aware that the Division has received two requests to act under section 1707.042 this year. One action has been mooted, but the other action is still a potentiality. For normal reasons, enforcement details are confidential.

Broker-Dealer

DEALER AND SALESMAN LICENSES AS OF
DECEMBER 23, 1988 AND DECEMBER 22, 1989:

	<u>1989</u>	<u>1988</u>
Broker-Dealer	1,491	1,729
Salesman	52,467	56,043

Registration

REGISTRATION FILINGS AS OF DECEMBER 31,

Form Type	Autumn Quarter 1989	Year 1989	Autumn Quarter 1988	Year 1988
2(B)	353	1,175	340	1,067
3-O	2,492	11,642	2,469	11,376
3-Q	338	1,459	369	1,498
3-W	35	150	44	188
04	0	2	0	2
041	0	1	0	3
041(B)(4)	0	0	0	1
5(A)	0	0	0	1
6(A)(1)	62	257	62	306
6(A)(2)	14	81	29	127
6(A)(3)	13	45	14	64
6(A)(3)OG	2	3	1	3
6(A)(4)	11	66	16	90
09	421	1,429	290	1,317
09OG	0	0	2	5
091	278	1,426	481	1,880
10	0	0	0	0
39	47	188	34	162
391/09	3	13	3	14
391/091	1	1	0	0
391/3-O	180	782	209	772
391/3-Q	49	167	54	198
391/3-W	2	8	4	10
391/6(A)(1)	0	5	0	2
391/6(A)(2)	1	1	0	1
391/6(A)(3)	0	3	0	2
391/6(A)(4)	0	0	1	2
TOTAL	<u>4,302</u>	<u>18,904</u>	<u>4,422</u>	<u>19,091</u>

Enforcement

FINAL ADMINISTRATIVE ORDERS

The following are recent enforcement administrative orders. 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:

<u>Respondent</u>	<u>Date Issued</u>	<u>Order No.</u>	<u>Action Taken/ Type of Order</u>
Western Consolidated Mining Company, Inc., A.K.A. Wescon; William R. Gibbs, President Las Vegas, Nevada	9/13/89	89-094	Cease and Desist

FINAL ADMINISTRATIVE ORDERS—continued

<u>Respondent</u>	<u>Date Issued</u>	<u>Order No.</u>	<u>Action Taken/ Type of Order</u>
Arthur S. Burgess Middleburg Heights, Ohio	9/28/89	89-102	Cease and Desist
Levering Management, Inc. Mt. Vernon, Ohio	9/29/89	89-103	Suspension of Dealer's License
Berg Management Group; NRG Corporation, Inc.; International Capital Funders, Inc.; Merlyn R. Berg; Universal Bookkeeping Service; Marie Lapriore Las Vegas, Nevada	10/2/89	89-104	Cease and Desist
Charles Miller and Associates, Inc., d.b.a. Professional Capital Investments, Inc.; Charles Miller Columbus, Ohio	10/2/89	89-105	Cease and Desist
J.H. and Associates; Eagle Exploration, Inc.; Robert A. Shurtleff Niles, Ohio; B-J of Ohio, Inc. Zanesville, Ohio; Bernard L. Henry Warren, Ohio	10/2/89	89-106	Cease and Desist
William W. Hobbs Mansfield, Ohio	10/18/89	89-124	Suspension of Securities Salesman's License; Cease and Desist
James D. Azer Bellville, Ohio	10/18/89	89-125	Suspension of Securities Salesman's License; Cease and Desist
Cast Film Partners, Ltd. Form 3(Q), File No. 339594 Form (3Q), File No. 346173 University Heights, Ohio	10/23/89	89-127	Cease and Desist; Null and Void of Partial Filing; Null and Void
North Star Ltd I; North Star Energy, Inc., and David C. O'Connor, General Partners Form 3(Q), File No. 345211 Columbus, Ohio	11/16/89	89-133	Cease and Desist; Null and Void of Partial Filing
The South Bend Venture, Limited Partnership Form 3(Q), File No. 354261 Columbus, Ohio	11/16/89	89-134	Cease and Desist; Null and Void of Partial Filing

CRIMINAL CASES

<u>Case Name</u>	<u>Jurisdiction/ Referring Staff Person</u>	<u>Action Taken</u>	<u>Comments</u>
Roy L. Currens	Franklin County/ Referred by Karen Terhune	<ol style="list-style-type: none"> 1. Sentenced on 9/15/89 to 1 1/2 years imprisonment on each of 2 counts of securities violations. 2. Confinement was suspended, five years probation was imposed, and he was ordered to make restitution to investors. 	Roy L. Currens pled guilty to 2 counts of securities violations on 6/9/89 which stemmed from his sales of units in a nonexistent fund, the Aggressive Cash Management Fund, while he was employed by American Heritage Research, Inc., and Heritage Market Research, Inc.
Stephen T. Haley; Kenneth R. Smith	Greene County/ Referred by Mary Spahia	<ol style="list-style-type: none"> 1. Search warrants were executed in 4 Ohio counties for books and records on 10/6/89. 2. Criminal complaints were filed on 10/16/89 alleging securities violations. 3. Preliminary hearings scheduled for 10/25/89 were waived, and bonds for both men remained set at \$500,000. 	Books and records of companies controlled by Stephen T. Haley and Kenneth R. Smith were seized. These entities included: Intermark International, Inc., Global Investment Trading Co., and Homestead Financial Services, among others. Mary Spahia was appointed and sworn in as a special Assistant Prosecuting Attorney in Greene County for this case.
Arthur P. Miller	Franklin County/ Referred by Norman Essey and Mary Spahia	Sentenced on 10/23/89 to 3 years incarceration and ordered to pay a fine of \$2,500.	Arthur Miller entered a no contest plea on 8/26/89 to a Bill of Information of 10 counts each of sales of unregistered securities and misrepresentations in the sale of securities, and was pronounced guilty. He sold interests totaling approximately \$5 million for his investment fund, Financial Service Group Investment Account, in which investors were promised a 12 to 14 percent annual return.
David Scott Schindler	Cuyahoga County/ Referred by Mary Spahia	<p>Indicted on 10/16/89 for the following:</p> <ol style="list-style-type: none"> 1. 4 counts of the sale of unregistered securities; 2. 4 counts of false representations in the sale of securities; and 3. 1 count of grand theft. 	David Scott Schindler, President of Worldwide Stock, Inc., allegedly sold unregistered promissory notes in Worldwide Stock, Inc. Investors were told their investments were to be utilized in the furniture business, which allegedly did not occur.
Dale Normand	Guernsey County/ Referred by Mary Spahia	<ol style="list-style-type: none"> 1. Criminal complaint filed on 6/19/89 alleging 1 count of a securities violation. 2. Extradited from California on 10/26/89. 3. Arraigned on 10/27/89 at which time a \$75,000 bond was ordered. 4. Preliminary hearing held 11/2/89, where probable cause was found. 	As President of Heritage Securities, Inc., the General Partner of Stellex Partners, Ltd., Dale Normand allegedly sold unregistered limited partnership units to Ohio investors.
Gary L. Trudell; Wilbur Zink	Franklin County/ Referred by Karen Terhune	<p>Pled guilty on 10/30/89 to the following:</p> <ol style="list-style-type: none"> 1. Gary L. Trudell— <ol style="list-style-type: none"> a. 1 count of the sale of unregistered securities; and b. 1 count of theft. 2. Wilbur Zink— <ol style="list-style-type: none"> a. 1 count of the unlicensed sales of securities; and b. 1 count of theft. 	Gary L. Trudell and Wilbur Zink sold units in a nonexistent fund, the Aggressive Cash Management Fund, while employed by American Heritage Research, Inc., and Heritage Market Research, Inc., both boiler-room operations located in Columbus. Investors were promised a 20 percent annual return.

CRIMINAL CASES—continued

<u>Case Name</u>	<u>Jurisdiction/ Referring Staff Person</u>	<u>Action Taken</u>	<u>Comments</u>
Charles C. Peebles	Franklin County/ Referred by Karen Terhune	Pled guilty on 11/2/89 to the following: 1. 3 counts of sales of unregistered securities; 2. 3 counts of unlicensed sales of securities; 3. 1 count of securities fraud; and 4. 1 count of misrepresentations in the sale of securities.	Charles C. Peebles, the former President of American Heritage Research, Inc., sold or caused to be sold, units in the Aggressive Cash Management Fund. Investors were told that their funds would be pooled to purchase strategic and precious metals. The boiler-room operation was halted after a search warrant was executed for books and records.
Robert L. Jones; Bernard L. Henry	Stark County/ Referred by Melanie Braithwaite	Pled guilty on 11/15/89 to the following: 1. Robert L. Jones— a. 4 counts of securities fraud and misrepresentations in the sale of securities; and b. 12 counts of sales of unregistered securities and unlicensed sales of securities. 2. Bernard L. Henry— a. 4 counts of securities fraud and misrepresentations in the sale of securities; and b. 11 counts of sales of unregistered securities and unlicensed sales of securities.	Robert L. Jones and Bernard L. Henry sold unregistered oil and gas working interests in a joint venture, J.H. and Associates 1986-1; N. Camden Well 1. Some investors were told at the time of their purchase that their investment would be so successful that they would recoup their investment funds within 3 months to 1 year.