



# OHIO SECURITIES BULLETIN

RICHARD F. CELESTE  
GOVERNOR

NAPPY M. HETZLER  
DIRECTOR OF COMMERCE

MARK V. HOLDERMAN  
COMMISSIONER OF SECURITIES

90:2 Spring Quarter 1990

## Arbitration Developments

by William E. Leber

A series of recent developments underscores the growing importance of arbitration to securities regulation, and, in particular, to the relationships between investors and stockbrokers.

Since 1987, when the U.S. Supreme Court first ruled that broker-dealers could require their customers to take their disputes to arbitration rather than to the courts, the number of securities arbitrations has risen dramatically.<sup>1</sup> At that time, despite the potential advantages of arbitration, there was substantial concern that private investors would be seriously disadvantaged by being forced out of the courts and into arbitration.

In September, 1988, in response to *Shearson/American Express v. McMahon*, the commonwealth of Massachusetts adopted rules prohibiting broker-dealers from including mandatory arbitration clauses in brokerage agreements with investors. However, the U.S. Supreme Court recently refused to review the First Circuit Court of Appeals decision which invalidated the Massachusetts rules.<sup>2</sup> The appeals court had earlier found the rules to be preempted by the Federal Arbitration Act and "patently inhospitable to arbitration." They determined that Massachusetts had violated the Arbitration Act's provisions by singling out arbitration agreements from other agreements generally.

While initial concern about mandatory arbitration has been mitigated by reports of substantial awards for investors in some arbitration cases, the expectation that industry-dominated panels would be less favorable to investors has been confirmed. As the number of arbitration cases has grown, so too has the perception that an investor's chances of prevailing are better in independent arbitration forums such as the American Arbitration Association ("AAA") rather than in the two most frequently employed industry-subsidized forums, panels sponsored by the National Association of Securities Dealers, Inc. and the New York Stock Exchange. A recent *Wall Street Journal* article reported that approximately 50% of the cases before industry forums are won by investors, but that investors win 60% of the cases heard by the AAA.<sup>3</sup>

The S.E.C. recently sent letters to leaders of the exchanges and the major brokerage firms urging them to allow investors the option of arbitration in a forum "unrelated to the industry."<sup>4</sup> Blue sky agencies and the S.E.C. have strongly sup-

ported access to arbitration not dominated by the industry, yet recent court decisions confirm that fully independent arbitration may not be readily available to brokerage customers.

Two recent decisions by the Second Circuit Court of Appeals should also serve as an insistent reminder to individual investors that they should carefully review and consider the terms of their brokerage agreement. What recourse is available if a broker abuses or exceeds its grant of authority? Is arbitration in an independent forum available? Can a complaint be heard locally without the added time and expense of out-of-town or out-of-state travel?

In a decision criticized by both the AAA and the American Stock Exchange (AMEX), the court ruled that the AMEX constitution forces investors to travel to New York City if they choose to pursue AAA arbitration against their broker.<sup>5</sup> In a case involving a group of Orlando, Florida investors who were doing business with their local PaineWebber office, the three judge panel told the investors that local arbitration under the AAA was not a remedy available to them under the AMEX constitution. The court interpreted the AMEX provision referring to the "American Arbitration Association in the City of New York" as a limitation on the investors' ability to select a forum, not merely a description of the AAA with reference to the city where its headquarters are located.

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In the other Second Circuit decision, the court also ruled that the terms of an individual investor's brokerage agreement take precedence over the more general arbitration rules of the AMEX.<sup>6</sup> The court upheld the specific terms of an individual brokerage agreement used by Merrill Lynch, an AMEX member, which limited arbitration to securities industry forums. As a result, the court held that the investor gave up any recourse to arbitration before the AAA, despite the "window" of access to the AAA in the AMEX constitution.

A subsequent unanimous decision in the New York State Court of Appeals confirmed that the limited AMEX "window" will still be available unless the AAA is explicitly eliminated as an arbitration option.<sup>7</sup> New York's highest court held that where the customer's option and margin agreements with Cowen & Co. both stated that arbitration would be available in "accordance with the rules then in effect" at the New York Stock Exchange, AMEX, or NASD, the customer could select the AAA because the AMEX rules incorporated the AMEX constitution and its "window" to the AAA. The broker-dealer had unsuccessfully argued that the language limited the customer to the three industry-sponsored panels.

Because the specific terms of an individual brokerage agreement will determine the options available if a dispute arises, investors should be as attentive to the arbitration rights in their agreements with their brokers as they are to the communication of their investment objectives.

*The author is an Attorney and the Legislative Liaison with the Division. Mr. Leber also is a member of the National Panel of Arbitrators of the American Arbitration Association, and the National Association of Securities Dealers, Inc.*

<sup>1</sup>Shearson/American Express v. McMahon, 55 LW 4757 (1987).

<sup>2</sup>Connolly v. Securities Industry Association, No. 89-894, US SupCt, May 29, 1990.

<sup>3</sup>Wall Street Journal, June 11, 1990, p. A1.

<sup>4</sup>Wall Street Journal, June 11, 1990, p. C1.

<sup>5</sup>PaineWebber Inc. v. Rutherford, No. 89-9035, CA 2, May 7, 1990.

<sup>6</sup>Merrill, Lynch, Pierce, Fenner & Smith Inc. v. Georgiadis, No. 89-9151, CA 2, May 7, 1990.

<sup>7</sup>Cowen & Co. v. Anderson, No. 172, N.Y.Ct. App., July 10, 1990.

# Ohio Insider Trading and Takeover Statute Changes

Counsel to the Commissioner, Clyde C. Kahl, and the Division's Attorney Inspector, Sylvia B. Robbins-Penniman, recently presented a portion of the June 8, 1990 *Ohio CLE Institute Corporate Law Update and Review* program, focusing on changes to Ohio Revised Code sections 1707.041, 1707.042 and new section 1707.043, effected by Senate Bill 321.

Their program presentation and written materials overviewed enforcement and case developments from Ohio's 1969 enactment of 1707.041, to the present. Even as state takeover laws, including Ohio's, were repeatedly attacked and often weakened country-wide by the courts in the early 1980s, the Division successfully regulated certain aspects of takeover activity. The Division used not only the specific takeover laws, but also its general enforcement powers provided in sections 1707.13 and 1707.23 and the broker-dealer licensing requirements in section 1707.14. Refinements and amendments to the takeover laws were promulgated in S.B. 321, which became effective April 11, 1990. The 1707.041 and 1707.042 amendments have corrected some of the problems court decisions had found with these Ohio statutes. Section 1707.043 is new. Its application is parallel to the Securities Exchange Act of 1934's section 16(b), but with significant differences. For example, time limits are not as short as the federal insider trading limit, and the method of counting the time period differs. Also, Ohio law allows several affirmative defenses to a charge of insider trading.

The authors' view is that 1707.043 will not go unchallenged. Comments and questions on 1707.043 found in the program materials are:

- Expect attacks based on the "standard commerce clause and supremacy clause," theories, and additionally, "standard 'minimum contacts' jurisdictional analysis."
- Whether estoppel may be alleged in a greenmail repurchase context.
- Without "illegality" and "damage" definitions in the section, whether there is "a challenge that the statute is unrelated to Ohio's police power?"
- Section 1707.043 triggering events cause the concern they may be "unconstitutionally vague or overbroad", with the possibility that many declaratory judgment shareholder actions may result.
- Whether the 18-month time period is unconstitutionally long.

The authors expect a significant surge in Division hearings under the newly revised 1707.041. The 1707.041 changes highlighted in the program materials are:

- "The exemption for 'friendly' tender offers has been removed; indeed the statute now explicitly regulates self-tenders."
- "Only the Division, in its sole discretion, may order the hearing."

- "The time frame for the hearing and decision is shortened to nineteen [calendar] days."

Excerpted from an old-new 1707.041 chart of changes in the program materials are selected comments regarding S.B. 321 changes and additions:

- Old §1707.041 definitions are now in "§1707.01, the general definition section of the Ohio Securities Act. The term 'take-over bid' has been replaced by the term 'control bid,' which is defined in §1707.01(V)(1). The jurisdictional nexus is contained in the definition of 'subject company,' in 1707.01(Z)(1). The effect of the removal to §1707.01 on other sections, such as §1707.042, is unclear."
- §1707.01(V)(2) further explains what is not included in "control bid".
- §1707.01(W) has the modified definition of "Offeror".
- "Offeree" is moved "to §1707.01(BB), with slight wording modifications."
- "Beneficial owner" is newly defined in §1707.01(AA).
- "§1707.01(CC), with slight wording modifications" defines "Equity security".
- Old §1707.041's "twenty-day prenotification period was held to be unconstitutional in *Canadian Pacific Enterprises (US) v. Krouse*, 506 F. Supp. 1192 (S.D. Ohio 1981). This provision was eliminated by S.B. 321."
- Old §1707.041(B)'s "creeping tender provision was declared unconstitutional in *Hanna Mining v. Norcen*, No. C82-959 (N.D. Ohio June 6, 1982). The prohibitions against certain business combinations were enacted in S.B. 321 and placed in R.C. Chapter 1704."
- "S.B. 321 changed 'target' to 'subject,' and increased required disclosure of plans affecting employees."
- Required "Offeror" background information is changed "from five years to three."
- "S.B. 321 made significant changes in the hearing schedule for Division consideration and review of a control bid. The time periods were changed in order to comply with the Williams Act time frames as interpreted by the court's decision in *Cardiff Acquisitions, Inc. v. Hatch*, 741 F2d 906 (8th Cir. 1984)."
- "Although S.B. 321 changed the hearing process, the standard is still full disclosure, and not 'fairness' of the tender offer. Because of the decision in *Babcock & Wilcox Co. v. Hurd*, 5 OO3d 408 (App 1977) which held that the target was an interested party entitled to appeal under Chapter 119, and the problems this raises in the timeliness of a final decision, the hearing process was removed from the general Ohio Administrative Procedure Act."
- S.B. 321 added a new §1707.041(B)(2) "prohibition for further tender during a division proceeding against the offeror; the stay is not limited to proceedings under R.C. §1707.041."

- In §1707.041(B)(3), "S.B. 321 added the concept of preventing a series of increasingly lower priced tender offers by adding a 'fair price' provision to the statute."
- §1707.041(B)(4) has new "limits to application of the pro rata formula to tender offers not regulated by federal rules governing pro rata offers."

Changes in 1707.042 are generally limited to the definitional changes (noted above), which the authors observe may alter the application of 1707.042.

## In O.R.C. 1707.45, Who Has the Burden?

by Mary L. Spahia

Defense attorneys for felony count securities violations defendants, seem to misinterpret Ohio Revised Code section 1707.45 to conclude that the burden of proof has unconstitutionally been shifted to the defendant to disprove guilt. In fact, the Ohio Supreme Court and a Federal court have reviewed section 1707.45 and have ruled that the section is constitutional and the burden of proof remains on the State. However, when a defendant claims the benefit of a transactional exemption or the availability of a registration by description, the burden shifts to the defense to prove the exemption or the registration.

Section 1707.45 reads:

"In any indictment, complaint, or information under section 1707.44 of the Revised Code, it shall not be necessary to negative the existence of facts which would bring a security within section 1707.02 or 1707.05 of the Revised Code, or would bring a transaction within section 1707.03, 1707.04, or 1707.06 of the Revised Code or to negative existence of facts which would bring a transaction within the exceptions of section 1707.34 of the Revised Code. The burden of proof shall be upon the party claiming the benefits of any such sections."

This section does not shift the entire burden of proof in a criminal matter upon the defendant. This section merely states that when a party purports to have a right to an exempt transaction under the Ohio Securities Act as stated in Ohio Revised Code Chapter 1707, he must carry the burden of proof when establishing his right to the same. In his scrutiny of section 1707.45, Professor Howard M. Friedman states:

"RC 1707.45 makes the availability of an exemption from registration, or the availability of registration by description, an affirmative defense in any prosecution under RC 1707.44. It places the burden of proving by a preponderance of the evidence (not merely the burden of going forward with evidence) upon the party claiming the benefit of statutory provisions granting an exemption or permitting registration by description. The section specifies that an indictment therefore need not negate the existence of facts which would bring a security or a transaction within the

exemptions of RC 1707.02 to RC 1707.06 and RC 1707.34."<sup>1</sup>

As far back as 1934, the Ohio Court of Appeals, 2nd District, Greene county, addressed the constitutionality of the language currently stated in section 1707.45 of the Ohio Securities Act. The court stated in *Caterlin v. State*<sup>2</sup> that the "Legislature may place, on persons accused of violations of Blue Sky Law, burden of proving sales made by them are within exemptions on which they rely." Page 414. "In the instant case the theory of the Blue Sky Law is that the sale of securities, therein defined without a license is unlawful. Proof of such sale raises a presumption of guilt and is not, in our judgment, violative of defendant's constitutional rights to require him to establish, by a preponderance of the evidence, that he comes within an exemption provided in the statute . . ." Page 414.

Section 1707.45 has been examined by the United States Sixth Circuit Court of Appeals as well as the Ohio Supreme Court. Its constitutionality has undergone a favorable review. In *United States v. Tehan*, 365 F. 2d 191 (C. A. 6, 1966)<sup>3</sup> the defendant was found guilty of violating the Ohio Securities Act. Specifically, he was found guilty of selling unregistered securities: to wit; promissory notes, without being properly licensed to do so. This was in direct contravention of sections 1707.44(A) and 1707.44(C)(1) of the Ohio Revised Code. After exhausting state remedies, defendant instituted proceedings for a writ of habeas corpus under the provisions of 28 U.S.C. sections 2241-2254 for alleged constitutional violations.

In its opinion, the court succinctly summarized points of law pertaining to section 1707.45, as follows:

"In the instant case we find that the shifting to the Appellant of the burden of proving by a preponderance of the evidence the exempt status of the promissory note . . . is not unreasonable, nor does it offend any principle of justice, nor does it constitute a denial of due process of law." At page 194 of the *Tehan* opinion.

"We believe . . . the provision of Ohio Revised Code Section 1707.45 which places the burden upon the defendant to show that securities are sold under such circumstances as to bring the sale within one of the exemptions provided by the Act, are constitutionally within the police power of the State of Ohio." Page 194.

"While the Ohio Statute places the burden upon a defendant to avail himself of the exempt status, it does not diminish the proof necessary for conviction imposed upon the state. The burden remains with the State to offer proof of the essential elements of the indictment . . ." Pages 195-6 (footnote reference deleted).

Headnote 8<sup>4</sup> states the following: "In prosecution for violation of Ohio Blue Sky Law, fact that defendant failed to produce evidence that sale was within one of the exemptions of the law except defendant's attempt to show that transaction was purely a loan between friends did not diminish duty of state to prove the defendant guilty beyond a reasonable doubt . . ."

These points of law as memorialized in the court's opinion, illustrate that in the federal court arena in Ohio, section

1707.45 of the Ohio Securities Act has passed constitutional muster.

The Ohio Supreme Court case addressing the constitutionality of section 1707.45 is *State v. Frost*, 57 Ohio St. 2d 121 (1979). Pursuant to an appeal from the Court of Appeals for Franklin County, the Ohio Supreme Court held in point two of the court's syllabus:

"The requirement in R.C. 1707.45 that the defendant bear the burden of proof in claiming an exempt transaction under R.C. 1707.03 does not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution."

In *Frost*, the defendant appellee "... was indicted on [nine] counts of selling securities without a license in violation of R.C. 1707.44(A), and on 12 counts of selling unregistered securities in violation of R.C. 1707.44(C)." Essentially, the defendant claimed the transactions in question were within the exemption provided for in section 1707.03(B). That section provides, in pertinent part, that "[a] sale of securities made by or on behalf of a bona fide owner, neither the issuer nor a dealer, is exempt, if such sale is made in good faith and not for the purpose of avoiding sections 1707.01 to 1707.45 of the Revised Code, and is not made in the course of repeated and successive transactions of a similar character ..."

The trial court had instructed the jury, pursuant to section 1707.45 "... that the appellee had the burden of proof by preponderance of the evidence in order to establish the exemption defense." Appellee was subsequently convicted on 14 of the counts of securities violations. Said finding was reversed by the Court of Appeals. Reversal was based on the finding that the burden of proof was erroneously placed on the appellee contrary to section 2901.05(A).

Section 2901.05(A) reads:

"Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused."

The case then was appealed to the Ohio Supreme Court. Justice Locher wrote the majority opinion.

The first issue to be addressed in that opinion was "... whether the enactment of R.C. 2901.05(A) as interpreted in *State v. Robinson* [47 Ohio St. 2d 103 (1976)], evinces manifest legislative intent to impliedly repeal the provision of R.C. 1707.45." Section 2901.05(A) is found to be a general provision of the Ohio Revised Code, in contrast to section 1707.45 which is called "a special provision" at page 123.

Justice Locher stated that it was "... a long-standing rule that courts will not hold prior legislation to be impliedly repealed by the enactment of subsequent legislation unless the subsequent legislation clearly requires that holding." The court also quoted Ohio Revised Code section 1.51 at page 124:

"If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to

the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail."

The court then contrasts section 2901.05(A)'s "... going forward with evidence or of raising an affirmative defense," on the one hand, with section 1707.45's "... placing the burden of proof upon the party claiming an exemption", and concludes at page 124 they are "irreconcilable."

Again by the court: "The issue then is whether the General Assembly has manifested its intent that R.C. 2901.05(A) prevail." On pages 124-125 of the opinion, Justice Locher recognizes the desperate need to place a heavier burden of proof on those charged with securities violations because of possible widespread fraud upon the public. In dictum, he states that the citizenry participates in business enterprises based upon their "... perception of the credibility of, and the resulting confidence in [the] system." He further states that the Ohio Securities Act was "... adopted to prevent fraudulent exploitations through the sale of securities."

The majority opinion further states at page 125:

"It is axiomatic that it will be assumed that the General Assembly has knowledge of prior legislation when it enacts subsequent legislation. It is reasonable, therefore, to assume, in light of the purposes behind the enactment of R.C. Chapter 1707 and absent manifest intent to the contrary, that the General Assembly desired that an individual charged with a violation of R.C. Chapter 1707 shoulder a heavier burden of proof because of the possibility of widespread fraud upon the public."

More recently, the Ohio Supreme Court reminded us in *State v. Volpe*, 38 Ohio St. 3d 191 (1988), that where there is no manifest legislative intent that a general provision of the Revised Code prevail over a special provision, the special provision takes precedence. (*State v. Frost* approved and followed). *Volpe* pertained to gambling violations.

The second issue addressed in *Frost* was whether or not section 1707.45 "... unconstitutionally shifts the burden of proof to a defendant in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution." Justice Locher commenced discussion of this second issue by citing to *In Re Winship*, 397 U.S. 358 (1970). Therein, Justice Brennan's majority opinion, at page 364:

"Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction *except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.*" Emphasis by Justice Locher at page 125.

Justice Locher notes *In Re Winship* does not directly address the proof burden of an affirmative defense. Next, he referred to *Mullaney v. Wilbur*, 421 U.S. 684 (1975), which reviewed a Maine homicide statute, and discussed *In Re Winship*, with a conclusion that: "... [a]ny remaining doubt that *Mullaney v. Wilbur* does not stand for the proposition that the prosecution must constitutionally carry the burden of proof on affirmative defenses was removed by the United States Supreme Court's decision in *Patterson v. New York* (1977), 432 U.S. 197." Page 127.

In the case before the Ohio *Frost* court, the appeals court was reversed and it was held "... not unconstitutional to require a defendant to carry the burden of proof in such a case, [the section 1707.03(B) *bona fide* owner exemption availability] because it does not require the defendant to negate any facts of the crime which the state must prove in order to convict." The prosecution still has responsibility "... to prove beyond a reasonable doubt, the essential elements of the offense ..." Thus, section 1707.45 passed the Ohio Supreme Court's test as a constitutional statute.

It is quite clear that Ohio and Federal courts have consistently upheld the constitutionality of section 1707.45 of the Ohio Securities Act. Any contrary thoughts stem from misinterpretations of section 1707.45.

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*The author is an Enforcement Section Attorney with the Division.*

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<sup>1</sup>*Ohio Securities Law & Practice*, Howard M. Friedman, 1987 and updated, Banks-Baldwin Law Publishing Company, Text 45.08 (footnote reference deleted).

<sup>2</sup>*Caterlin v. State*, 16 Ohio L. Abs. 410 (2nd App., Greene 1934); appeal dismissed 128 Ohio St. 110 (1934); appeal dismissed 292 U.S. 614 (1934).

<sup>3</sup>*cert. denied* 385 U.S. 1012 (1967).

<sup>4</sup>Headnotes are by West Publishing Company editors.

## Ohio Securities Conference—1990

The Ohio Securities Conference has been scheduled for the third consecutive year with the dates of this year's Conference being Monday and Tuesday, November 5 and 6, 1990. The Conference will be held at the Columbus Marriott North, 6500 Doubletree Avenue, Columbus, Ohio 43229 which is the same location at which the 1989 Conference was presented.

As in the past conferences, the first day of the Conference on Monday, November 5, 1990 will consist of a course of instruction in a variety of securities law matters. The course includes a discussion and analysis of the essentials of a security and a panel which reviews exempt sales and small private offerings and discusses certain related problems and issues under Federal and Ohio regulations. In the afternoon, a panel will present the requirements for small public offerings under the Federal and Ohio law. A panel discussion follows dealing with liabilities and corrective filings under the Ohio Securities Act. The final afternoon session is the Division of Securities panel which will review recent rule proposals and enactments.

The complete schedule for the course program for Monday, November 5, 1990, with names of speakers, is as follows:

8:00 a.m. **Enrollment**

8:45 a.m. **Introduction**

Mark V. Holderman, Esq., Commissioner  
Ohio Division of Securities

9:00 a.m. **Topic: What Is a Security?**

Professor Howard M. Friedman, Esq.  
*College of Law, University of Toledo*  
Toledo, Ohio

10:00 a.m. **Topic: Exempt Sales and Small Private Offerings**

### Overview of Federal and Ohio Regulations

Donald B. Gardiner, Esq.—Moderator  
*Squire, Sanders & Dempsey*  
Columbus, Ohio

10:20 a.m. **Break**

10:35 a.m. **Topic: Exempt Sales and Small Private Offerings (Cont.)**

### Integration Problems

Joseph D. Carney, Esq.  
*Calfee, Halter & Griswold*  
Cleveland, Ohio

### Solicitation Issues

Amy R. Kaplan, Esq.  
*Benesch, Friedlander, Coplan & Aronoff*  
Cleveland, Ohio

### Resales of Securities

Regina M. Joseph, Esq.  
*Fuller & Henry*  
Toledo, Ohio

12:15 p.m. **Lunch—Securities Industry Overview**

William B. Summers, Jr.  
President and Chief Operating Officer  
*McDonald & Company Securities, Inc.*  
Cleveland, Ohio  
1990 Chairman of NASD's National Business Conduct Committee

1:45 p.m. **Topic: Small Public Offerings Under Federal and Ohio Law**

### Intrastate Offerings, Rule 147 and Regulation A Registrations

David A. Neuhardt, Esq.  
*Thompson, Hine & Flory*  
Dayton, Ohio

### Rule 504 Offerings

Robert K. Rupp, Esq.  
*Baker & Hostetler*  
Columbus, Ohio

### Registration by Qualification and Description

Michael P. Miglets, Esq.  
*Division of Securities*  
Columbus, Ohio

3:00 p.m. **Break**

3:15 p.m. **Topic: Liabilities and Corrective Filings Under Ohio Securities Act**

### Qualifications of Securities Sold Without Compliance

Russell P. Austin, Esq.  
*Schwartz, Kelm, Warren & Rubenstein*  
Columbus, Ohio

### Civil Liabilities and Remedies

Adrienne C. Lalak, Esq.  
*Kahn, Kleinman, Yanowitz & Arnson Co., L.P.A.*  
Cleveland, Ohio

### Retroactive Filings; Civil Liability

James F. Lummanick, Esq.  
*Frost & Jacobs*  
Cincinnati, Ohio

4:15 p.m. **Division of Securities Panel**  
**Topic: Recent Rule Proposals and Enactments**

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*

William E. Leber, Esq.  
*Legislative Liaison*

5:00 p.m. **Adjournment**  
(Reception)

This course has been approved by the Ohio Supreme Court Commission on Continuing Legal Education for 6.00 CLE credit hours, including .00 hours in ethics and .00 hours in substance abuse instruction.

On the following day, Tuesday, November 6, 1990, meetings of the five Advisory Committees will be held at the same location beginning at 9:00 a.m. The Advisory Committees include Takeover, Registration, Exemptions, Enforcement and Licensing. Additional interested members on these committees are welcome, whether or not the Monday course is attended.

The Registration fee for attendance on Monday, November 5, is \$125 per person. Registration includes all activities on November 5 and 6, including instructional materials and the buffet breakfast on November 6 from 8:00 to 9:00 a.m. An enrollment form is set forth on the last page of the Bulletin and may be used in registering for the Conference. Enrollment forms must be received by Monday, October 29, 1990.

The Columbus Marriott North has a limited block of discounted rooms for attendees who make hotel reservations by

October 14, 1990. Please call (614) 885-1885 and refer to the Ohio Securities Conference.

## Personnel

Jack Heminger, a Field Examiner in the Enforcement Section with over fifty years of service with the State, retired on May 31, 1990. The Division learned with sorrow of his unexpected death on Friday, June 15, 1990. Jack Heminger's work with the Division had resulted in an Outstanding Employee Award in 1988, and he will be missed.

Richard G. (Greg) Porter, an Attorney in the Enforcement Section for a year, resigned effective June 1, 1990, to pursue the private practice of law.

## Outstanding Employee Award

Vivienne V. Cassidy is the recipient of the Division's Outstanding Employee Award for the quarter ending March 31, 1990. Vivienne was recognized for the outstanding performance of her duties as a Clerical Specialist in the Records Management Section. She has been with the Division since April, 1986.

## Broker-Dealer

**LICENSES AS OF THE QUARTER ENDED AT END OF JUNE, RESPECTIVELY, FOR THE YEARS AS FOLLOWS:**

	<u>1990</u>	<u>1989</u>
Broker-Dealer	1,589	1,667
Salesman	56,057	55,614

## Registration

**REGISTRATION FILINGS AS OF THE QUARTERS ENDING, RESPECTIVELY, AS FOLLOWS:**

Form Type	Spring Quarter at End of 6-1990	Spring Quarter at End of 6-1989	Year to Date at End of 6-1990	Year to Date at End of 6-1989
2(B)	248	302	441	526
2(E)	2	0	2	0
3-O	2,911	3,052	6,298	6,405
3-Q	297	315	683	764
3-W	39	40	68	74
04	0	2	0	2
041	0	1	0	1
6(A)(1)	65	68	120	135
6(A)(2)	21	15	42	44

**REGISTRATION FILINGS AS OF THE QUARTERS  
ENDING—continued**

Form Type	Spring Quarter at End of 6-1990	Spring Quarter at End of 6-1989	Year to Date at End of 6-1990	Year to Date at End of 6-1989
6(A)(3)	15	6	26	20
6(A)(4)	16	17	27	38
09	421	364	813	580
091	276	409	539	875
39	30	48	58	109
391/09	4	7	10	10
391/091	0	0	1	0
391/3-O	213	194	417	407
391/3-Q	40	46	80	90
391/3-W	1	2	3	6
391/6(A)(1)	2	1	2	3
391/6(A)(3)	1	0	1	3
<b>TOTAL</b>	<b>4,602</b>	<b>4,889</b>	<b>9,631</b>	<b>10,092</b>

## 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>
<b>J. Christopher Rodeno</b> Chagrin Falls, Ohio	3/5/90	90-028	Revocation of Securities Salesman's License
<b>Jack Welch Baldwin</b> Worthington, Ohio	3/22/90	90-033	Revocation of Securities Salesman's License; Cease and Desist
<b>Neal Phypers Corporation</b> Cleveland, Ohio	4/12/90	90-035	Revocation of Dealer's License; Cease and Desist
<b>Leslie William Nichols,</b> aka Leslie W. Nichols, aka Les Nichols; Excellence Oil and Gas, Inc. Ventura, California	4/13/90	90-036	Cease and Desist
<b>The Copley Mutual Fund, Inc.;</b> Irving Levine Washington, D.C.	4/16/90	90-037	Cease and Desist
<b>Steadman American Industry Fund;</b> Steadman Associated Fund; Steadman Investment Fund and Steadman Oceanographic Technology and Growth Fund Washington, D.C.	4/17/90	90-038	Cease and Desist
<b>Chico's Express, Inc.,</b> formerly, Chico's Charbroiled Chicken, Inc. Form 3(Q), File No. 347435 Form 3(Q), File No. 353237 Form 3(O), File No. 339878 Granville, Ohio	4/23/90	90-043	Cease and Desist; Null and Void of, Partial Filing



FINAL ADMINISTRATIVE ORDERS—continued

<u>Respondent</u>	<u>Date Issued</u>	<u>Order No.</u>	<u>Action Taken/ Type of Order</u>
<b>Cuyahoga Administrative Group</b> Brecksville, Ohio	5/7/90	90-048	Cease and Desist
<b>Brady, Foley &amp; Co., Inc.</b> Cleveland, Ohio	5/10/90	90-053	Cease and Desist
<b>Cherokee Coal Corp.</b> <b>Form 3(Q), File No. 334414</b> Milton, Ohio	5/11/90	90-055	Cease and Desist; Null and Void of Filing
<b>Edmund Michael Kilbourne</b> Kalamazoo, Michigan	5/11/90	90-056	Revocation of Securities Salesman's License
<b>AEI Group, Inc.</b> Columbus, Ohio	5/17/90	90-058	Final Order; Suspension of Dealer's License
<b>J. Christopher Rodeno</b> Chagrin Falls, Ohio	5/22/90	90-059	Final Order; Finding of Good Business Repute

CRIMINAL CASES

<u>Case Name</u>	<u>Jurisdiction/ Referring Staff Person</u>	<u>Action Taken</u>	<u>Comments</u>
David S. Schindler	Cuyahoga County/ Referred by Mary Spahia	<ol style="list-style-type: none"> <li>1. <b>Pled guilty</b> on 3/1/90 to 4 counts of making a misrepresentation in the sale of a security.</li> <li>2. <b>Sentenced</b> on 4/25/90 to 18 months on each count, to be served concurrently. Confinement was suspended, probation of 5 years was imposed and restitution was ordered to be paid.</li> </ol>	David Schindler, president of Worldwide Stock, Inc., sold unregistered promissory notes in Worldwide Stock, Inc. Investors were told their investments were to be utilized in the furniture business, which did not occur.
Jagannadham Kottha	Cuyahoga County/ Referred by Greg Porter	<p><b>Indicted</b> on 3/5/90 for the following:</p> <ol style="list-style-type: none"> <li>1. 2 counts of the sale of an unregistered security.</li> <li>2. 2 counts of the unlicensed sale of a security.</li> <li>3. 1 count of theft.</li> </ol>	Jagannadham Kottha allegedly sold unregistered shares of common stock in Storm Lakes BioTechnology, Inc. on two different occasions to a Cleveland-area resident.
Ronald D. Robbins	Franklin County/ Referred by D. Michael Quinn and Daniel Malkoff	<ol style="list-style-type: none"> <li>1. <b>Sentenced</b> on 3/15/90 to 1 year imprisonment.</li> <li>2. Confinement was suspended and 3 years probation was imposed.</li> </ol>	Ronald Robbins, while a licensed securities salesman, kept investors' checks and converted the funds to his wife's bank account, rather than purchasing the securities for which he received the funds.
Michael J. Burke	Franklin County/ Referred by Karen Terhune	<ol style="list-style-type: none"> <li>1. <b>Sentenced</b> on 3/28/90 to 6 years imprisonment.</li> <li>2. Sentence was reduced to 6 months in the county jail and probation of 5 years was imposed.</li> <li>3. Restitution of \$34,000 was ordered to be paid.</li> </ol>	Michael Burke sold promissory notes to investors for his company, AMM Investments, and promised annual rates of return of 50% - 60%. The securities sales occurred after a Cease and Desist Order was issued against Mr. Burke and a predecessor company, MJB Enterprises, for indistinguishable activities.

**CRIMINAL CASES—continued**

<u>Case Name</u>	<u>Jurisdiction/ Referring Staff Person</u>	<u>Action Taken</u>	<u>Comments</u>
Jack Spence	Muskingum County/ Assisted by Bill Henry	<b>Pled guilty</b> on 4/24/90 to the following: 1. 2 counts of the sale of an unregistered security. 2. 1 count of receiving stolen property in excess of \$5,000.	Jack Spence, a real estate agent, was involved in a title company which failed to pay off approximately 7 mortgages. He sold interests in a mortgage pool in a cover-up attempt.
Naomi Taubman	Montgomery County/ Assisted by Karen Terhune	<b>Convicted</b> by a jury on 5/18/90 of the following: 1. 30 counts of the unlicensed sale of a security. 2. 30 counts of the sale of an unregistered security.	Naomi Taubman, a Troy accountant, sold unregistered promissory notes totaling \$1.9 million to 18 investors who were her clients, while unlicensed as a securities salesperson. Investors were promised interest rates as high as 24 percent and tax-free income.

**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) \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

**New Address:**

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

Address \_\_\_\_\_

\_\_\_\_\_

Please return to: Ohio Division of Securities, Attn: Joanne E. Hunt, 77 South High Street, 22nd Floor, Columbus, Ohio 43266-0548.

**ENROLLMENT FORM**

Please enroll the following people in the  
OHIO SECURITIES CONFERENCE—1990

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (        ) \_\_\_\_\_

Total number enrolling: \_\_\_\_\_

Amount enclosed: \_\_\_\_\_

**FEE:** \$125 per person (includes all activities on  
November 5 and 6).

Please make checks payable to:  
*Ohio Securities Conference Committee, Inc.*

**MAIL:** Send enrollment forms and payment to:  
Paul Tague, Deputy Commissioner  
Ohio Division of Securities  
77 S. High St. 22d Flr.  
Columbus, OH 43266-0548

**DEADLINE:** Forms and requests for refunds must be  
received by Monday, October 29, 1990.