OHIO SECURITIES BULLETIN

George V. Voinovich
Governor

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Director of Commerce

Mark V. Holderman
Commissioner of Securities

Ohio Unclaimed Funds: A Perspective for Securities

by Susan K. Nagel, Esq.

Keeping current with the laws and regulations that touch securities is difficult enough when the changes occur in a familiar area of practice, such as the federal statutes or state blue sky laws. However, many regulatory requirements are unfamiliar to even the most seasoned broker-dealer, attorney, or business owner.

The Ohio Unclaimed Funds statute may be one of those unfamiliar areas. This article will deal with general background and specific implications of Ohio's Unclaimed Funds law for the securities industry.

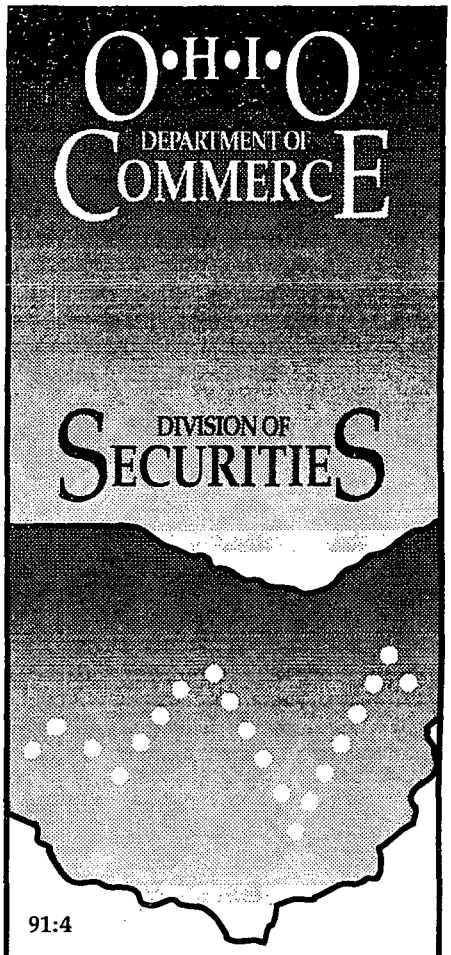
Ohio's Division of Unclaimed Funds ("Unclaimed Funds" or "Division"), an element of the Ohio Department of Commerce, administers the Ohio Unclaimed Funds statute, Chapter 169 of the Revised Code. Securities play a large role in unclaimed funds. Any company that deals with stock is a potential holder of unclaimed securities for purposes of Chapter 169.

Securities turned over to the Division are collected from several sources (holders). The holders are banks and other financial institutions, the businesses themselves, transfer agents, and commercial services that report securities for a fee. Unclaimed stock dividends that are over five years old must be reported to the state, and the underlying shares that generate those dividends are reportable after seven years of inactivity.

For cash and other securities, routine audits may turn up unclaimed funds if your fiscal staff are aware of what to look for. (A checklist is contained in this article to help direct your search.) Once located, those funds can be reported to the division on a form sent out by the division and returned with the funds and their listed owners. At that point, Unclaimed Funds takes over and attempts to locate the owner. After the funds or securities are turned over to the state of Ohio, the state indemnifies the holder from any action taken concerning the funds themselves.

Once reported, depending on the source and nature, the securities are advertised and then, if not claimed, liquidated. Unclaimed Funds will then hold the funds attributable to the liquidated securities on behalf of the missing shareholder. Since Ohio is an unclaimed funds rather than an escheat state, the prompt liquidation of funds from these securities enables the Division to include the funds in the annual newspaper publication of holders of unclaimed funds. Once a year, a list of people who have money in Unclaimed Funds is published in newspapers in all 88 counties in Ohio. Lists are available at the Division itself and are taken to county fairs and other events in order to return the funds to the rightful owners after they are turned over to the state.

The Ohio process is often referred to in error as "escheat." In its true form, escheat means the taking of funds and shutting off the proprietary rights of the true owners of the funds. Fortunately for those with funds in the Ohio Division of Unclaimed Funds, Ohio is a custodial state. This means that once the



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funds are turned over to the state, they are kept in perpetuity until claimed by the rightful owners without cutting off their proprietary rights. At this time, however, there is legislative movement afoot to make Ohio a true escheat state.

Currently, because there is no limit on the time Ohio holds unclaimed funds, people are amazed to find that they actually have money listed with the state for long dormant bank accounts, utility deposits, or securities that have been lost or left in a safe deposit box. Naturally, they are curious about how the funds got to Ohio initially and how to claim their money. Businesses which are holders of these funds are equally curious about reporting requirements and what their obligations are concerning unclaimed funds.

On behalf of the Director of Commerce, the Unclaimed Funds locator section in the Division presents information concerning these funds to the public through newspaper listings, special events, and daily contact. When an inquiry is made, the records of owners are searched for any unclaimed funds and if funds are found, the inquiring party is sent a claim form. Those who are entitled to claim the funds include the named owners themselves, heirs, administrators of estates, and professional locators with power of attorney to claim for their clients. Once the claim form is returned with proper documentation, it is reviewed for sufficiency of proof and, if the claim is deemed to be valid, it is vouchered and paid. This basic payment process is followed in most situations.

If you deal with securities you may be a holder and have unclaimed funds to report without being aware of it. The following box lists the types of property, securities, and accounts you may have and when to report them to the state of Ohio.

Unclaimed Funds Reporting Checklist

Account Balances Due—Five Years:
Checking accounts, Christmas/vacation club accounts, credit balance from customer accounts, escrow funds, excess proceeds from foreclosures, IRA and Keough accounts, loan overpayments, matured C.D.s or savings certificates, savings accounts, security deposits, share accounts, share certificate accounts, share draft accounts, suspense accounts, unidentified deposits and remittances, or any of the above written off to income.

Dissolutions and Liquidations—One Year:
All monies or rights to monies, and other intangible property distributable in the course of dissolution or liquidation of a business entity.

Insurance—Five Years:
Agent's credit balances, drafts unpresented for payments, group policy benefits, individual policy benefits, premium refunds, proceeds due beneficiaries, proceeds from matured policies, endowments or annuities, unidentified remittances, other accounts due under policy terms, and any above account written off to income.

Miscellaneous Checks and Intangible Personal Property Held in the Ordinary Course of Business (or any of the following property written off to income)—as indicated:
Five Years—Accounts payable, commissions, credit balance accounts, customer overpayments, deposits for rents, lease payments or unused services, funds held in suspense liabilities, refunds due, unclaimed loan collateral, and worker's comepnsation benefits.
Three Years—Layaways.
One Year—Oil, gas ans mineral proceeds, commissions, royalties, sums payable under pension and profit-sharing plans, unidentified remittances, unrefunded overcharges, and wages, payroll, or salaries.

Safe Deposit Box & Safekeeping—Five Years:
Bonds, coins, currency, stamps, stocks, and other items.

Securities and Related Interest—as indicated:
Holders include: Dividend and interest paying agents, investment and trading broker/dealers, bank trust departments, transfer agents, other fiduciaries and corporations providing transfer and/or paying agent services to their own shareholders.
Five Years—Cash dividends, cash for unredeemed stock shares, cash-in-lieu of fractional shares, interest checks (bonds and debentures), stock and dividend reinvestment plans, and undistributable stock dividends.
Seven Years—Mutual fund shares, undeliverable stock shares, underlying stock shares*, and unexchanged stock shares.
**NOTE*: For underlying shares the following sequence of events occurs: uncashed checks or dividends returned by the post office are reportable after five years. Two years later, if dividends have continued to go uncashed or returned, or if there is no other contact by the owner of such funds, the underlying shares which produced those accrued dividends are also reportable. The shares would not be in the possession of the corporation or transfer agent.

Uncashed Checks—as indicated:
One year—Vendor-supplier and pension checks.
Five years—Bank drafts, C.D. interest checks, cashier's checks, certified checks, checks charged-off to income, debited against expense, held in liability account, or reversed to cash, expense checks, foreign exchange checks, money orders, profit sharing checks, refund and rebate checks, registered checks, treasurer's checks, and warrants.
Fifteen years—Traveler's checks.

Utilities—Five Years:
Capital credit distributions of a cooperative, membership fees, refunds or rebates, utility deposits, and other items.

In most states, unclaimed funds agencies are still fledglings. Ohio's Unclaimed Funds laws have been in effect since 1968. Since that time, the Ohio General Assembly, with the help of the United States Supreme Court, has helped to define what constitutes unclaimed funds and who should receive them. Since the initial enactment of Chapter 169 in 1968, unclaimed funds procedures and practices have been revised and redefined.

In *Texas vs. New Jersey*, 379 U.S. 674 (1965), the Supreme Court held that the state of the last known address of the rightful owner is entitled to keep the funds for the owner. Thus, if a Michigan corporation has unclaimed dividends with the owners' last known address in Ohio, the dividends will go to Ohio. With securities, the issues can become blurred because of questions arising from stocks held in street name and other important implications.

The U.S. Supreme Court has assigned *Delaware vs. New York*, U.S. Supreme Court, No. 111 Original (1990) to a special master. The outcome of this case is expected to determine what happens to securities and funds held by securities firms with no owner state listed, such as consolidated accounts and large funds. Several solutions, including giving the funds to the state where the firm has its principal place of business, to the state of incorporation, or to the state where the office listing the securities is located, have been proposed. The outcome of this case (expected to be decided sometime in early 1992) could have a substantial impact on the state of Ohio and Ohio securities firms.

Two issues of primary concern to the Division of Unclaimed Funds are to ease the reporting burden on holders of securities and other accounts when filing unclaimed funds reports in Ohio, and to assure that the interests of citizens of Ohio with accounts in other states are protected. For these reasons, Ohio has entered into reciprocity agreements with several states, including: Florida, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, South Dakota, Virginia, and Wisconsin and has a reciprocity agreement with New York pending. The Division is also actively pursuing agreements with all other states.

Basically, when Ohio signs a reciprocity agreement with, for example, North Carolina, Ohio agrees to send North Carolina all the accounts with the owner's last known address in North Carolina and, in return, North Carolina agrees to send Ohio those accounts with the last known address in Ohio. This enables accounts to be actively advertised in Ohio where the rightful claimant would be more likely to see their name listed in the paper. Another attractive feature of reciprocity, benefiting companies and other holders, is that the reporting process is streamlined because holders no longer have the burden of filing unclaimed funds reports in every state, where laws and reporting requirements differ. Holders can now report directly to Ohio and, via reciprocity, have the reporting to other states done for them. Depending on the terms of the reciprocity agreement, most securities are first liquidated and then the proceeds are exchanged.

Changes in the Ohio Unclaimed Funds statute are occurring at a rapid rate. The Uniform Unclaimed Property Act of 1981, the most recent attempt to promote uniformity in unclaimed property laws, is being revisited by the Ohio State Bar Association for their recommendations. Recent revisions to Chapter 169 include the elimination of interest paid on accounts held by the state and a five percent processing fee charged to all accounts when paid.

Revised Code section 169.12 provides for monetary civil penalties of up to $500 a day for failure to report unclaimed funds or other property. Other issues and ambiguities in records kept by transfer agents and holders of unclaimed securities can complicate this procedure. As a result, the Division of Unclaimed Funds urges you to be aware of your responsibilities under the Ohio law, and stands ready to assist you in complying with Chapter 169.

If you have any questions about reports or claims, if you have not received a reporting packet, if you wish to check your name or the name of your business for unclaimed funds, or if you have any other questions concerning unclaimed funds, please contact:

OHIO DIVISION OF UNCLAIMED FUNDS
DEPARTMENT OF COMMERCE
20th FLOOR
77 SOUTH HIGH STREET
COLUMBUS, OHIO 43266-0545
(614) 466-4433

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Records 466-3001	Registration 466-3444

Limited Partnership Roll-Ups

by William E. Leber

Limited partnerships were popular investments during the 1970s and 1980s when favorable tax benefits helped to overcome their disadvantages, low liquidity, and lack of investor control.

Typically, limited partnerships were established as vehicles for investment in real estate or oil and natural gas drilling projects. They offered an opportunity for qualified individuals to participate in the steady gains that those industries were experiencing. And they appeared to offer relatively low risk; potential losses were limited to the amount invested, usually a minimum of ten to fifteen thousand dollars.

However, the Tax Reform Act of 1986 eliminated many of the tax shelters which had harbored the limited partnerships, and had made them especially attractive in relation to other investments. The collapse of the real estate market in many areas of the country and the decline in the prices paid for oil and gas combined with the tax law changes to virtually shut down the market for new limited partnership offerings.

State securities administrators, the National Association of Securities Dealers, Inc. (NASD), the Securities and Exchange Commission, and many investors have identified a new threat to the value of limited partnership investments: Limited Partnership Roll-ups.

Roll-ups involve the restructuring of several limited partnerships into a public corporation which is then traded on a national exchange or market system.

In theory, the roll-up process seems an effective way to consolidate management and expenses for the limited partnerships which lost money as the underlying value of their projects fell. However, according to a study by Liquidity Fund Management reported in the *Washington Post* (February 28, 1991), average share values for investors have fallen by about two-thirds following roll-ups. Some roll-ups have increased in value, but the majority have had disastrous results for investors. In practice, limited partnership roll-ups do not appear to produce the anticipated advantages.

Critics of roll-ups charge that investor losses are the result of abuses of a regulatory system that did not anticipate the new investment format:

- The general partners pay themselves large fees and bonuses for effecting the roll-up and allow the redemption of their interest at pre-roll-up prices.
- The limited partners must vote to approve the roll-up, but lengthy documents with convoluted disclosures make an informed decision almost impossible for individual investors.
- Limited partners are pressured to vote for the roll-up by Wall Street professionals who are paid only for "yes" votes.
- Individual investors are limited by proxy rules and other regulatory standards from effectively communicating with each other.
- "Cram-downs" and "Super-majorities" which allow slim majorities of the limited partners to approve a roll-up, but require greater than majority approval to change to roll-up corporation.

Those abuses have led to a widespread call for regulatory changes. "Wall Street can spot a turkey in a second, (but) you can fool the limited partners, because they are middle-class, main street investors," said U.S. Representative Edward J. Markey, a sponsor of H.R. 1885, the Limited Partnership Roll-up Reform Act of 1991.[1]

That federal proposal is one element of a multifaceted response from the states, the industry, and the federal government to roll-up abuses. There is no unanimity of opinion about a solution to the problem, but there is widespread agreement that roll-ups must be more tightly controlled.

The North American Securities Administrators Association (NASAA) presented its support for H.R. 1885 in testimony before the Telecommunications and Finance Subcommittee of the House Committee on Energy and Commerce.[2] Dee Harris, Director of the Arizona Division of Securities, spoke on behalf of NASAA when he reported that investors and market professionals have complained to state securities regulators about the problems of limited partnership roll-ups.

Director Harris also outlined the conflict in the regulatory framework that has placed the regulation of roll-up shares outside the scope of state securities laws. Because the roll-up shares are generally listed on a national exchange or national marketing system, the post-roll-up shares are sold in the states under a statutory "exchange" exemption. When the individual limited partnerships were initially qualified for sale in the states, blue sky law standards (in the form of NASAA guidelines specific to the underlying industry) were imposed. However, consolidated offerings made under a national "exchange" exemption are not subject to the same scrutiny.

Director Harris testified that federal action was necessary because one state acting alone could not halt the roll-up abuses. He expressed his

support for the protective provisions of H.R. 1885:

- Prohibitions on "cram-downs" and "supermajority" voting requirements;
- Restrictions on fees to general partners for sponsoring the roll-ups;
- Briefer, more meaningful disclosure;
- Relaxation of proxy soliciting rules to allow greater communication between investors;
- Limitations on compensation for soliciting votes on roll-up proposals; and
- The requirement of independent, objective fairness opinions.

Director Harris also proposed amending H.R. 1885 to provide for the requirement of an independent committee charged with protecting the rights of limited partners in each roll-up, and shortening the effective date of the legislation to considerably less than the 18 months initially proposed.

On May 9, 1991, the NASD announced rules adopted to combat roll-up abuses, particularly a prohibition against paying broker-dealers for soliciting only "yes" votes on a roll-up vote.[3] Under the new rules, the general partner will be required to pay for the broker-dealer's services even if the roll-up vote fails. The new NASD rules also require roll-ups traded on NASDAQ or in the secondary market to issue annual and interim reports and to have at least two independent directors on the corporate general partner's board. Additional standards to deal with roll-ups are also being considered by the NASD.

On June 17, 1991, the SEC proposed rules for Limited Partnership Roll-Up Transactions designed to "enhance the quality and readability of information provided to investors ... by heightening the disclosure requirements regarding conflicts of interest and fairness of a roll-up transaction."[4] The proposed rules present a broad definition of "Roll-Up Transaction." They also present additional disclosure requirements focusing on the reasons for the roll-up, valuation, and fiduciary rights in a manner similar to those required for "going private" transactions.

Mr. Leber is Counsel to the Commissioner of Securities. He received his Bachelor of Arts from The Ohio State University and his Juris Doctor from the Capital University Law School.

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[1] *Newsweek*, June 24, 1991.

[2] Statement on behalf of the North American Securities Administrators Association by Dee Harris, Director of the Arizona Division of Securities, before the Telecommunications and Finance Subcommittee of the House Committee on Energy and Commerce, April 23, 1991.

[3] *New York Times*, May 10, 1991.

[4] CCH *Federal Securities Law Reports*, ¶84. 810 reporting Securities Act Release No. 6899 and Exchange Act Release 29313, dated June 17, 1991.

Dealer Suspensions Continue

On August 9, 1991, the Division ordered the suspension of Worthington Investment, Inc. of Worthington, Ohio ("Worthington Investment").

The Division's Order presented three bases for suspending the dealer: (1) failure to produce documents to the Division; (2) disarray of books and records; and (3) failure to maintain regulatory net worth. The Order also reported the Division's intent to revoke the dealer's license. Also on August 9, Franklin County Common Pleas Judge David Cain ordered Worthington to not destroy its books and records and to produce documents by Wednesday, August 14, 1991.

Counsel for Worthington Investment denied the Division's allegations and indicated that the dealer would actively contest the Division's action. A hearing on a motion to quash the subpoena was set for August 19, 1991. On August 13, 1991, a Temporary Restraining Order was issued to stay the suspension.

An administrative hearing on the suspension has been scheduled for August 27, 1991. Worthington Investment, Inc. of 500 Wilson Bridge Road in Worthington has approximately 90 salesmen in seven offices, all in Ohio.

The suspension of Worthington Investment marked the fourth time in 1991 that the Ohio Division of Securities has suspended the license of a licensed securities dealer. Earlier, the Division had suspended the dealer's licenses of Liberty First Securities, Inc., First Ohio Equities, and Ohio State Planning.

On July 24, 1991, the Division revoked the Dealer's license of First Ohio Equities. The Division's Revocation Order charged that the action was being taken because the dealer had failed to maintain adequate books and records to determine regulatory net worth and because the dealer had caused unreasonable delays in the delivery of customers' securities. Earlier, the Division had suspended the First Ohio Equities license and provided notice of opportunity for a hearing, but the dealer did not request a hearing to contest the charges.

In May, the Division also ordered the revocation of the license of Liberty First Securities, Inc. The Division's intention to revoke the license was reported in an April 25 Suspension Order, but Liberty First did not request a hearing to contest the Division's charges that it had failed to maintain adequate books and records, and that its general ledger was significantly out of balance.

In April, the Division had suspended the dealer's license of Liberty First. Liberty First and the Division consented to an order issued by Franklin County Common Pleas Judge David L. Johnson requiring Liberty First to maintain records and to not dispose of assets, except to deliver shares to investors. The former se-

curities dealer refused to consent to the Division's request for the appointment of a receiver to take control of its assets and records.

In February, the Division issued an Order suspending the Dealer's license of Ohio State Planning of Grandview Heights, Ohio. The Division Order charged that the securities dealer had negative net worth. In lieu of contesting the suspension, Ohio State Planning and the Division agreed to allow the dealer to be on inactive status, on the proviso that it would be required to serve a six-month suspension before returning to active status as an Ohio dealer of securities.

Rules Hearing Held on July 30

Final Hearing to Be Held On October 1

by William E. Leber

On July 30, the Division held a public hearing to receive comments on the rules proposals which were presented in Issue 91:2 of the *Ohio Securities Bulletin*. At the outset of the hearing, the Division announced that the rules would be refiled to incorporate numerous comments the Division had received prior to the hearing, and to consider incorporating the comments made on the record of the hearing.

Prior to the hearing, the Division received numerous informal comments from attorneys, accountants and brokerage firms and six sets of written comments.

At the hearing, four persons testified on various aspects of the proposed rules.

Patricia Louie of the Investment Company Institute expressed support for the Division's proposal regarding mutual fund oversales, and spoke in support of additional amendments the Investment Company Institute would like to see in the rules. Louie proposed the elimination of limitations on investment by mutual funds in securities exempt from the 1933 Securities and Exchange Act under section 144A, and securities of issuers with less than three years of continuous operation. The Investment Company Institute is a Washington, D. C. trade association representing a national membership of mutual funds, closed-end investment companies, and Unit Investment Trusts.

Lyman Brownfield, a Columbus attorney, raised a number of issues. He commented on the limitation to purchases for investment in the proposed exemption from registration for sales of promissory notes, and on the necessity for extensive financial reporting by issuers. Brownfield also questioned the necessity for licensees and license applicants to report certain cease and desist orders, and the accuracy of transcripts prepared by the Division for investigative hearings held under R.C. 1707.23. He suggested that currently licensed salesmen be "grandfathered" for the two-year experience requirement for branch office supervisors.

Don Antrim of the Columbus law firm of Emens, Hurd, Kegler & Ritter directed comments to the proposed provisions of O.A.C. 1301:6-3-19 (A)(11). Antrim objected to the brevity of the rule's explicit reference to the citation for the federal, penny stock "cold call" rule and urged support for House Bill 495 (see the Legislative Report in this issue of the *Ohio Securities Bulletin*) as a more appropriate expression of an Ohio "cold call" standard.

Bruce Niswander of Worthington Investment Inc. of Worthington, Ohio presented a prepared statement on behalf of that securities dealer. In his statement, Niswander did not cite any specific rules provisions, but he generally questioned the viability of subjecting Ohio intrastate dealers and their clients to national brokerage standards.

Gregory Zelasko then presented a written comment letter on behalf of the Columbus law firm of Vorys, Sater, Seymour & Pease which was accepted by the Division but not read into the record.

At 2:00 p.m. on October 1, 1991, the Ohio Division of Securities will hold a hearing regarding the proposed changes to the refiled rules of the Division. The hearing will be held in Salon A of the Columbus Marriott North, 6500 Doubletree Avenue, Columbus, Ohio 43229-1145 in conjunction with the Ohio Securities Conference. Public Notice of the rules changes and the hearing appears in this edition of the *Ohio Securities Bulletin*.

Mr. Leber, Counsel to the Commissioner of Securities, served as Hearing Officer for the July 30 hearing.

1991 Ohio Securities Conference

by Paul Tague

The 1991 Ohio Securities Conference will be held on September 30 and October 1, 1991 at the Columbus Marriott North. The Conference starts at 8:50 a.m. on Monday, September 30, and features topics that should be of interest to both the securities bar and the securities industry.

This year's Conference has been approved by the Ohio Supreme Court Commission on Continuing Legal Education for 6.50 CLE credit hours, including 1.50 hours in ethics and .50 hours in substance abuse instruction.

After a registration period starting at 8:00 a.m. the Conference will open at 8:50 with an introduction by Commissioner Mark V. Holderman.

The first panel, "Ethical Considerations for Securities Law Practitioners" will be moderated by Professor Howard Friedman of the University of Toledo College of Law. That 9:00 a.m. program will be followed at 10:45 by a panel discussion on "Due Diligence in Securities Offerings," featuring Stanley E. Everett of the Akron law firm of Brouse and McDowell.

Following the Due Diligence panel and lunch, Ann Gerwin of Strauss & Troy in Cincinnati will moderate a panel discussion on Broker-Dealer Compliance in Initial Public Offerings and Secondary Transactions, which will feature James Francis of The Ohio Company, Karl E. May of Kohrman, Jackson and Krantz, and William H. Jackson of the NASD.

At 3:30 p.m., Commissioner Holderman and Division staff members will present a recap of recent developments in the Ohio Division of Securities. Professor Michael Distelhorst of Capital University Law School will present a 5:00 p.m. program entitled "Substance Abuse: A Perspective on Intervention."

Following the conference program, Ohio Securities Conference, Inc. will sponsor a reception which will start at 5:30.

On Tuesday, October 1, the five advisory committees to the Division of Securities will convene, starting at 9:00 a.m. The Registration, Exemptions, Licensing, Enforcement and Takeover committees will each meet, and all present and former members of the committees are invited to attend. If you are not presently a member of a committee or if you are a committee member and desire to change your committee assignment, write to the Division regarding your preference.

The author is the Deputy Commissioner of the Ohio Division of Securities, and received his undergraduate and Law degrees from The Ohio State University.

NASAA Report

by Mark V. Holderman

For many years, since the demise of the Conference of Midwest Securities Commissioners, the Division of Securities has been an active member of the North American Securities Administrators Association (NASAA), an association of state and provincial blue sky regulatory agencies. The Division is currently working with NASAA on several issues that will directly affect securities registrations in Ohio:

• Limited Partnership Roll-ups: There has been increased demand for reform in the area of limited partnership "roll-ups," transactions which usually involve the combination of several limited partnerships into a single new entity. The Division and NASAA are concerned that roll-up transactions usually result in a diminution of the voting rights and ownership interest of the prior limited partners. In response to those concerns, NASAA has developed guideline provisions regarding roll-up standards to be imposed in the registration process and will soon distribute those guidelines for public and membership comment. The roll-up guideline provisions would mandate specific standards to be included in partnership agreements and other charter documents prior to approval of a limited partnership registration. Also, legislation has been proposed at the federal level (see accompanying article in this issue of the *Ohio Securities Bulletin*) and the SEC is seeking comment on its proposed rules to deal with limited partnership roll-up abuses.

• Omnibus Guidelines: The Direct Participation Committee of NASAA has focused on the development of Omnibus Guidelines which are intended for application to securities offerings where no other guidelines are directly applicable. After extensive drafting and numerous revisions, the Omnibus Guidelines are now being distributed for public and membership comment. Unless extensive modifications are made in response to the public and membership comments, they will be considered for adoption at the NASAA fall conference. Text of the proposed guidelines will be published in the Commerce Clearing House, Inc. *NASAA Reports.*

• SRD: The federal Electronic Data Gathering, Analysis and Retrieval (EDGAR) system being developed by the SEC to enable issuers to file securities offerings electronically, has completed initial testing and will be phased in as a mandatory procedure. In conjunction with the federal proposal, NASAA has created the Securities Registration Depository (SRD) committee to explore means to implement computer-based, "paperless" registration filings for the states. The Division has been working with Ohio-based Compuserve Incorporated, an on-line interactive database service which is a subcontractor to the EDGAR project. Compuserve, with headquarters in Columbus, is the

world's largest computer information service network, and a pioneer in the development and implementation of computer "bulletin boards," where computer users can obtain and share information over telephone and satellite networks. The Division is considering proposals for the acceptance of both interstate electronic filings and electronic filings for registrations by description (i.e. form 6's) and claims of exemption (3(O), 3(Q), etc.).

The author, a graduate of Kenyon College, received his M.B.A. and J.D. degrees from the University of Toledo and is the Commissioner of the Ohio Division of Securities.

Examination Section Report

Pre-licensing exams

by Richard A. Pautsch

O.A.C. 1301:6-3-15(F)(1) states that every dealer shall keep and maintain books and records which shall be adequate to enable the division to determine at all times the financial condition of such dealer.

Before a broker-dealer can be issued a license by the licensing section, a pre-licensing examination will be completed by the examination section.

There are three basic reasons for the pre-licensing exam. First, we want to assure ourselves that books and records are set up. Second, we want to verify that required net capital is present. And third, our examiner will need to ask a series of questions about your plans for the operation of your business. To complete the examination, our examiner will need to see financial statements, and a general ledger.

We will need to verify items on the balance sheet. For example, to verify cash balances we will need copies of bank statements. If assets include notes receivable, we will need copies of the notes and appraisals on security for the notes. If assets include securities, we will need to see evidence of ownership and evidence of the value claimed for the security. If assets include property, we will need to see evidence of ownership and an appraisal supporting the value claimed. If net capital is to be provided by the use of subordinated debt, we will need to have a copy of the subordination agreement. We will need to review the minute book, and the stock record book. We will also need copies of stock certificates showing ownership of the broker-dealer.

When we receive notification from the licensing section of a pending broker-dealer, our examiner will call you to arrange a mutually acceptable time for the examination. The examination will go much more smoothly if you have all of the required materials available for our review.

The author, a graduate of the Ohio State University, is a C.P.A. and the Supervisor of the Examination Section of the Ohio Division of Securities.

Legislative Report

by William E. Leber

Two bills which would amend the Ohio Securities Act have been introduced in the 119th Ohio General Assembly, and a third proposal is being prepared by the Ohio State Bar Association.

House Bill 346 was introduced by Representative John Bara of Elyria in April. As currently drafted, the bill would require all securities dealers and salesmen licensed in Ohio to be registered with the National Association of Securities Dealers, the New York Stock Exchange, or the American Stock Exchange.

H.B. 346 has received two readings in the House Financial Institutions Subcommittee. The sponsor's office has indicated that the bill may be amended before being voted on by the Committee. Amendments to restate the interstate licensing requirement for Ohio dealers and salesman in terms of registration with the Securities and Exchange Commission rather than with a self-regulatory organization, and to specify the limited group of dealers for whom federal registration would not be required may be introduced.

In late July, a group of legislators sponsored House Bill 495 which would amend R.C. 1707.19 and enact new R.C. 1707.191, 1707.192, and 1707.193.

The bill would enact a variation of the federal "cold call" rule for penny stocks and establish a new classification of securities in Ohio law to be known as "section 191 securities." H.B. 495 proposes administrative penalties for engaging in a pattern of sales of "section 191 securities" in violation of the new provisions. The bill would also codify variations of approximately 25 current rules of the Division.

The Securities Law Subcommittee of the Ohio State Bar Association (OSBA) has developed a legislative proposal which would address the question of SEC registration for all Ohio retail securities licensees, both interstate and intrastate, and other broker-dealer issues. The OSBA has

not yet determined whether the Securities Law Subcommittee draft will be proposed as an OSBA-sponsored Bill.

The Division of Securities has not yet taken a position with respect to either bill or the Securities Law Subcommittee proposal.

Mr. Leber is the Counsel to the Commissioner of Securities.

Division Enforcement Orders

Congress Holding Company

The Division ordered that the Congress Holding Company of Akron cease and desist from the sale of securities in violation of the Ohio Securities Act. The Division Order charged that Congress had paid more than $25,000 in commissions for the sale of non-exempt, unregistered securities. The Order also charged that Congress was not licensed to sell securities in Ohio at the time of the sales. On April 22, 1991 the Division and Congress entered into an agreement consenting to the Division Order. **Division Order Number 91-076.**

Liverpool Shoes, Inc, and Alfred S. Fricano, President

On April 18, 1991, the Division declared that the Form 3-0 filed by Alfred S. Fricano of East Liverpool, Ohio on behalf of Liverpool Shoes, Inc., also of East Liverpool, was null and void. The Division Order declaring the invalidity of the claim of exemption reported that Fricano filed a single form 3-0 on September 19, 1988, but that sales of the Liverpool Shoes shares were made during a period from July 13, 1988 through March 21, 1989. The Division Order further reported that Fricano had failed to file an additional claim of exemption within sixty days of the sale of Liverpool Shoes securities. **Division Order Number 91-078.**

Liberty First Securities, Inc.

The suspension of the license as an Ohio Dealer of Securities of Liberty First Securities, Inc. of Columbus, Ohio was ordered by the Division on April 24, 1991 (See "Dealer Suspensions Continue" in this issue of the *Ohio Securities Bulletin* for further information.). The Division issued an Order revoking the Dealer's license on May 30, 1991. **Division Order Numbers 91-083 and 91-101.**

Purdy L. Sisson, Sisson International, Associated Refineries Corp., Sisson International of California, and Dale O. Smith

Purdy L. Sisson, Sisson International, and Associated Refineries Corp. of Paducah, Kentucky, Sisson International of California of San Diego, California, and Dale O. Smith of Akron, Ohio were ordered to cease and desist from further violations of the Ohio Securities Act by Order of the Division on April 29, 1991. A Final Cease and Desist Order was issued by the Division on June 13, 1991. The Division charged that Smith, as agent for Purdy Sisson and the companies, sold unregistered securities consisting of notes and "credit guarantees" to Ohio residents in 1988. **Division Order Numbers 91-087 and 91-121.**

Pilgrim Prime Rate Trust

Pilgrim Prime Rate Trust of Los Angeles, California was ordered to cease and desist from further violations of the Ohio Securities Act, and entered into a Consent Agreement with the Division on May 5. 1991. The Division charged that Pilgrim's failure to "sticker" its mutual fund prospectus in accordance with the terms of the registration Order for its shares constituted the sale of unregistered securities. **Division Order Number 91-094.**

Nationwide Tax-Free Fund

On May 17, 1991, Nationwide Tax-Free Fund and the Division entered into a Consent Agreement whereby the investment company consented, stipulated, and agreed to the terms of the Division's Order that Nationwide cease and desist from further violations of the Ohio Securities Act. The Division charged that Nationwide had sold unregistered securities to 267 Ohio residents during the period from July 18, 1990 to March 2, 1991. **Division Order Number 91-094.**

Shearson Lehman Brothers, Inc.

On May 20, 1991, the Division and Shearson Lehman Brothers, Inc. entered into a Consent Agreement whereby the Division ordered that Shearson Lehman cease and desist from further violations of the Ohio Securities Act as detailed in the Order. Shearson Lehman was charged in the Division Order with failing to supervise, through its branch manager, Stephen Jack Wineberg, the activities of Sheldon Strauss of Cleveland who allegedly effected a series of unauthorized transactions in customer accounts, unauthorized purchases of securities on margin for customers, and failure to exercise transactions requested by customers. As an element of the Consent Agreement, the Division agreed to provide Shearson Lehman with a simultaneous waiver of any disqualifications that might otherwise result from the Division Order, contingent upon continued compliance by Shearson Lehman's Cleveland office with revised procedures initiated by the dealer. **Division Order Number 90-144.**

Bob Oren and BAO Oil Corporation

A final Order to Cease and Desist was issued by the Division against Bob Oren and BAO Oil Corporation of Los Angeles, California on June 12, 1991. The Report and Recommendation of Hearing Examiner James F. Hunt finding that the respondents had violated the Ohio Securities Act by engaging in the unlicensed and unregistered sale of oil and gas leases, investment contracts, in Ohio was confirmed by the Order of the Division. **Division Order Number 91-118.**

Michael McKenzie

Michael McKenzie of Naples, Florida was issued a license as a securities salesman following the issuance of a final Order in the matter of the Division's Notice of its intention to deny his application. The Division

confirmed the Report and Recommendation of Hearing Examiner William E. Leber to issue a license to McKenzie in its final Order dated June 20, 1991. **Division Order Number 91-123.**

The case was referred to the Summit County Prosecutor by Karen Terhune, the Assistant Manager of the Division's Enforcement Section.

Criminal Case Report

Guilty Pleas Entered In Two Cases Referred By the Division

Joseph Krantz

On July 21, 1991, Joseph Krantz of Bucyrus, Ohio pleaded guilty in Crawford County Common Pleas Court to 4 counts of unlicensed sales of securities. A presentence investigation was ordered by the Court.

The charges against Krantz arose out of the sale of mutual fund shares of the Financial Programs Group of Denver, Colorado during 1987, 1988, and 1989. Mr. Krantz operated National Investment Services of Bucyrus, Ohio during that time.

The case was referred to the Crawford County Prosecutor, Russ Wiseman, by Robert Holodnak, Enforcement Staff Attorney.

John H. Davis

On July 25, 1991, John H. Davis pleaded guilty in Summit County Common Pleas Court to 1 count of each of aggravated theft, securities fraud, unlicensed sales of securities, sale of unregistered securities, and misrepresentations in the sale of securities. Sentencing is scheduled for September 12, 1991, after the completion of a presentence investigation.

Public Notice

At 2:00 p.m. on October 1, 1991 the Ohio Division of Securities will hold a hearing regarding proposed changes to rules of the Division. The hearing will be held in Salon A of the Columbus Marriott North, 6500 Doubletree Avenue, Columbus, Ohio 43229-1145.

The Division of Securities has proposed the following amendments to the indicated rules:

O.A.C. Rule 1301:6-3-01 has been amended to incorporate the following change: ¶ C defining "Division" has been added.

O.A.C. Rule 1301:6-3-02 has been amended to incorporate the following changes: Language has been improved throughout the rule, and the rule has been reorganized. The Chicago Board of Options Exchange has been included in the exchange exemption, and the availability of an exemption for commercial paper and promissory notes has been expanded in ¶ C of the rule

O.A.C. Rule 1301:6-3-03 has been amended to incorporate the following changes: Language has been improved throughout the rule, and the rule has been substantially reorganized. Revised definitions are now consolidated in ¶ A, the time period for determining the date of sale for a form 3-O or form 3-Q claim of exemption has been amplified, and references to additional exemptions have been updated to reflect changes in federal law.

O.A.C. Rule 1301:6-3-06 has been amended to incorporate the following changes: Language has been improved throughout the rule, and the rule has been substantially reorganized. A delivery requirement for offering circulars has been added, and reporting requirements prior to and during the effectiveness of a registration by description have been specified.

O.A.C. Rule 1301:6-3-08 has been amended to incorporate the following changes: A maximum period of effectiveness for registrations by description, after good cause is shown, of twenty four months has been established.

O.A.C. Rule 1301:6-3-09 has been amended to incorporate the following changes: Language has been improved throughout the rule, and the rule has been substantially reorganized. Reporting requirements, investment company filing procedures, and limitations on use of proceeds have been revised for increased uniformity. Issuers relying on Rule 504 or Regulation D of the SEC must now deliver an offering circular to purchasers of its securities.

O.A.C. Rule 1301:6-3-15 has been amended to incorporate the following changes: Language has been improved throughout the rule, and the rule has been substantially reorganized. Provisions defining dealer amd salesman good business repute have been moved to O.A.C. 1301:6-3-19. Language providing greater specificity of application, examination, financial, record-keeping and reporting requirements has been added, and branch office and inactive status requirements are increased.

O.A.C. Rule 1301:6-3-16 has been amended to incorporate the following changes: Language has been improved throughout the rule, and the rule has been reorganized. License examinations and application forms

acceptable to the Division have been specified.

O.A.C. Rule 1301:6-3-19 has been amended to incorporate the following changes: Language has been improved throughout the rule, and the rule has been reorganized. Prohibitions against specific sales practices in the areas of Penny Stocks, dealer supervision, out-of-state dispute resolution, and self-dealing have been added. The definition of "good business repute," which previously appeared in O.A.C.1301:6-3-15, has been placed in ¶D of this rule and has been amplified.

O.A.C. Rule 1301:6-3-23 has been amended to incorporate the following changes: Language has been improved throughout the rule. The requirement that a transcript be prepared for every hearing held under R.C. 1707.23 has been eliminated from the rule.

O.A.C. Rule 1301:6-3-391 has been amended to incorporate the following changes: Language has been improved throughout the rule, and the rule has been substantially reorganized. The definition of "excusable neglect" has been restated. Time periods for the acceptance of filings under R.C. 1707.391 have been changed, and the previous limit on the number of filings under R.C. 1707.391 which could be made by a law firm has been eliminated.

Copies of the proposed rules may be obtained by contacting the Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43266-0548

Broker-Dealer Report

The numbers of dealers and salesmen licensed by the Division fell slightly from July 6, 1990 to July 5, 1991. July 1991 totals show 1,548 dealers, down from 1,597 a year ago, and 54,895 salesmen, down from 56,772 in July 1990.

Registration

Form	4-1-91 to 7-31-91	4-1-90 to 7-31-90	1-1-91 to 7-31-91	1-1-90 to 12-31-91
02B	413	331	600	984
02E	0	2	0	3
03O	3,673	3,849	6,678	11,512
03Q	395	423	712	1,262
03W	47	50	66	134
04	0	0	0	1
041	0	0	1	1
06A1	67	83	116	231
06A2	11	26	26	75
06A3	8	16	14	38
06A3OG	2	1	2	3
06A4	28	18	41	50
09	568	558	997	1,711
091	361	355	617	1,090
39	50	37	81	110
391/09	2	4	6	15
391/091	0	0	0	2
391/3O	262	273	454	818
391/3Q	33	50	83	152
391/3W	0	1	3	6
391/6A1	1	2	2	3
391/6A2	1	0	1	0
391/6A3	0	1	1	4
Final Totals:	5,922	6,080	10,501	18,205