

# OHIO SECURITIES BULLETIN

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Governor

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Director of Commerce

Mark V. Holderman  
Commissioner of Securities

## The Statute of Limitations for Implied Causes of Action Under Section 10(b)

by Craig N. Meurlin, Esq. and Thomas C. Daniels, Esq.

Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 111 S. Ct. 2773 (1991).

Prior to the Supreme Court's decision in Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 111 S. Ct. 2773 (1991), the majority of federal courts had consistently borrowed the most analogous state law statute of limitations for claims alleging securities fraud under Section 10(b) of the Exchange Act. In most circuits, this resulted in a choice between the state blue sky or common law fraud limitations period. In addition, the filing period for litigants with Section 10(b) claims was extended even further in several jurisdictions under general principles of equitable tolling: the Federal courts held that the state statutes of limitations did not begin to run until litigants knew or should have known of the fraud.

In recent years, however, certain federal circuit courts began to question the borrowing of the state statute of limitations for claims brought under Section 10(b) and began to adopt a uniform statute of limitations period based on the limitation periods of other sections of the federal securities laws. See In re Data Access Systems Securities Litigation, 843 F.2d 1537 (3d Cir.), cert. denied, 488 U.S. 849 (1988); Short v. Belleville

Shoe Mfg. Co., 908 F.2d 1385 (7th Cir. 1990), cert. denied, 111 S. Ct. 2887 (1991); and Ceres Partners v. GEL Assoc., 918 F.2d 349 (2d Cir. 1990).

In an effort to resolve this split in the circuits, the Supreme Court heard Lampf. The Lampf case involved investments made between 1979 and 1981 in limited partnerships formed to develop computer hardware and software. In connection with their investment in these partnerships, the investors expected to realize certain federal income tax benefits. The partnerships failed, and in 1982 and 1983, the Internal Revenue Service ("IRS") notified the plaintiffs of its investigation of the partnerships. In 1985, the IRS disallowed the investors' deductions, ruling that the partnership had overvalued its assets and that the partnership did not have a motive to make a profit as required under the applicable provisions of the Internal Revenue Code.

On November 3, 1986 and June 4, 1987, plaintiffs filed their claims in the United States District Court for the District of Oregon alleging violations of Section 10(b) because they were induced to invest in the partnerships by misrepresentations in the offering memorandum. The district court borrowed the most analogous Oregon stat-

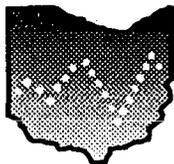
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### Table of Contents

The Statute of Limitations for Implied Causes of Action	1
Enforcement Reports	4
3-O & 3-G Comparisons	9
Examination Report	10
1992 Securities Conference	10
Registration Statistics	11
Licensing Statistics	11
Public Notice	11
Venture Capital Forums	12
Important Subscriber Notice	12



ute of limitations, which provided for a two-year limitations period, and concluded that the plaintiffs' claims were time-barred even with the application of the principles of equitable tolling, because plaintiffs had notice of the fraud by at least 1982. On appeal, the Ninth Circuit reversed the lower court's ruling, holding that the issue of when the plaintiffs had notice of the fraud was a question for the jury to decide.

In support of their position before the Supreme Court, the Lampf plaintiffs argued that the general practice of borrowing analogous state statute of limitations should be continued. The defendants argued that the statute of limitations applicable to the express causes of action under the federal securities laws should be applied. Finally, the Solicitor General, appearing on behalf of the Securities and Exchange Commission, urged that the five-year statute of repose specified in Section 20A of the Exchange Act, a provision which was added to the '34 Act in the Insider Trading and Securities Fraud Enforcement Act of 1988, should be applied.

In the Supreme Court's majority decision, Justice Blackmun began his discussion by recognizing the general rule of borrowing the time period in state statutes of limitations when Congress failed to specify a statute of limitations for a federal cause of action. The Court, however, recognized that the general practice of applying state statutes of limitations was complicated by the nontraditional origins of the implied right of action under Section 10(b). The Court explained that "(i)n a case such as this, we are faced with the awkward task of discerning the limitations period that Congress intended courts to apply to a cause of action it really never knew existed." Un-

der these circumstances, the Court held that when "the claim asserted is one implied under a statute that also contains an express cause of action with its own time limitation, a court should look first to the statute of origin to ascertain the proper limitations period." Lampf at 2780.

Accordingly, the Court adopted the limitation period in Section 9(e) of the Exchange Act as the statute of limitations for Section 10(b) claims and held that litigation instituted pursuant to Section 10(b) and Rule 10b-5 must be commenced within one year after discovery of the facts constituting the violation, and in any event within three years after such violation.

In response to the plaintiffs' argument that the limitations period must be subject to the doctrine of equitable tolling, the Court again recognized the general applicability of the principle and, without explicitly adopting a reasonableness test, explained that the one-year period, by its terms, began to run after the discovery of the facts giving rise to the violation, thereby making tolling unnecessary.

The Court then concluded that equitable tolling was fundamentally inconsistent with the three-year period of repose contained in Section 9(e). Accordingly, because the three-year limitation serves as a cut-off, the Court held that equitable tolling principles do not apply. The Court then concluded that since there was no dispute that the plaintiffs had failed to file their claims within three years of the alleged misrepresentations, their claims were untimely and should be dismissed.

The Aftermath of Lampf: The Court did not discuss the prospective or retroactive application of the new

federal rule, and, after the Lampf decision, the issue created turmoil for many litigants, the securities bar and Congress.

Until recently, Chevron Oil Co. v. Huson, 404 U.S. 97 (1971) had clearly set forth the standard with respect to the retroactive application of newly announced federal rules. However, the Supreme Court implicitly questioned the continuing validity of Chevron in James B. Beam Distilling Co. v. Georgia, 111 S. Ct. 2439 (1991), a case decided the same day as Lampf. In Beam, the Court held that if the Supreme Court applies a new rule of constitutional law retroactively to one set of litigants, the same rule must be applied to all other litigants as a matter of equality and stare decisis. Accordingly, based on Lampf and Beam, courts have applied the new federal limitations period retroactively and dismissed Section 10(b) claims which were not timely under the one-year/three-year period, even though they had proceeded through discovery, motion practice and in some cases reached final judgment, but were on appeal. Such cases included Welch v. Cadre Capital, 946 F.2d 185 (2d Cir. 1991); Boudreau v. Deloitte Haskins & Sells, 942 F.2d 497 (8th Cir. 1991); Anixter v. Home-Stake Production Co., 939 F.2d 1420 (10th Cir. 1991); Geisenberger v. John Hancock Distributors, Inc., 774 F. Supp. 1045 (S.D. Miss. 1991); and Stern v. Grossman, (1990- 1991 Transfer Binder) Fed. Sec. L. Rep. (CCH) 1 95,756 (S.D.N.Y. Dec. 26, 1990).

In response to the retroactive application of Lampf, several bills were introduced by Congress primarily to negate the retroactive effect of this decision. In recent testimony during hearings on Senate Bill 1553, SEC Chairman Richard Breeden stated that the effect of the Lampf decision will be to make it

considerably harder for innocent public investors to obtain a remedy under Federal Law when they have been the victims of an intentional scheme of fraud. The Chairman reiterated the views of Justice Kennedy, as set forth in his dissent in Lampf, that an absolute, three year bar on Section 10(b) claims simply tips the scale too far in favor or wrongdoers. In support of Justice Kennedy's statement, Chairman Breeden noted that approximately one-half of the Drexel Burnham cases, a large number of the BCCI cases, and the entire E.F. Hutton check-kiting case would have been barred under the three year statute of limitations established in Lampf. Accordingly, Chairman Breeden continued to argue the position presented in the Commission's amicus brief in Lampf: that the period established by Congress in 1988 in Section 20A of the Exchange Act for insider trading cases, two years after discovery of the fraud and in no event longer than five years after the alleged violation, was also the appropriate period for Section 10(b) claims.

Congress passed, and on December 19, 1991, the President signed the Federal Deposit Insurance Corporation Improvement Act of 1991 which added Section 27A to the Exchange Act to reverse only the retroactive effect of Lampf. Under Section 27A, the statute of limitations for any implied cause of action under Section 10(b) that was commenced on or before June 19, 1991, the day before the Court decided Lampf, are the limitations periods provided by the laws applicable on June 19, 1991 in the jurisdiction in which the lawsuit is pending, including principles of retroactivity. In addition, Section 27A provided that any action that was commenced on or before June 19, 1991 which was dismissed as time-barred and which would have been filed timely under the applicable limitations period on June 19, 1991 could be reinstated by a motion filed on or before February 17, 1992.

After the enactment of Section 27A of the Exchange Act, certain federal district courts have concluded that Section 27A is unconstitutional and, accordingly, have applied the statute of limitations established by Lampf to proceedings instituted prior to the Lampf decision. In Ayres v. Sutcliffe, (Current Binder) Fed. Sec. L. Rep. (CCH) ¶ 96,552 (S.D. Ohio Feb. 11, 1992), the district court, in considering the constitutionality of Section 27A, concluded that the statute furthers the legitimate legislative purposes of allowing plaintiffs to pursue litigation for securities fraud claims under the then-applicable laws of Ohio. In determining that Section 27A was constitutional, the court held that for those plaintiffs who filed claims prior to Lampf, the law was changed "in the middle of the game" and a reasonable basis existed for applying Section 27A only to those claims. Accordingly, the United States District Court for the Southern District of Ohio has allowed litigants who instituted their cases prior to Lampf to proceed under the then-applicable Ohio four year statute of limitations.

Although the Lampf decision still may create inconsistent statute of limitations between causes of action based on the federal securities laws and the state securities laws, the Lampf decision has resulted in creating an uniform federal statute of limitation for violations of Section 10(b) and Rule 10B-5 of the Exchange Act. In certain instances, litigants may pursue causes of action based on violations of state securities laws to take advantage of

longer limitation periods, such as the two year/four year statute of limitations under the Ohio state securities laws. However, if an action is instituted for violations of Section 10(b), the proceeding must be brought within one year of discovery of facts giving rise to any violation or within three years of the violation.

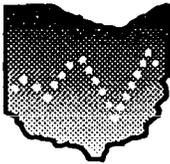


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# OHIO SECURITIES BULLETIN

## Enforcement Section Reports

### Criminal Cases

**Sheldon Strauss**  
**Shearson Lehman Brothers, Inc.**  
**Stephen Weinberg**

On April 15, 1991, Sheldon Strauss of South Euclid, Ohio pled guilty in Cuyahoga County Common Pleas Court to four counts of attempted securities law violations, first-degree misdemeanors. Cuyahoga County Common Pleas Judge Lillian Greene sentenced Strauss to six months probation. Additional charges against Strauss were dropped.

In an associated matter, twenty one counts of making false representations in the sale of securities were dropped against Shearson Lehman Brothers, Inc. and Stephen Weinberg on April 18, 1991. Weinberg was the former branch manager of the Cleveland office of Shearson Lehman Brothers, Inc. where Strauss had been a salesman.

The case was referred to the Office of Cuyahoga County Prosecuting Attorney Stephanie Tubbs-Jones by Mary Spahia-Carducci, Enforcement Section Staff Attorney.

**Joseph Krantz, dba National Investment Services**

On July 22, 1991, in Crawford County Common Pleas Court, Joseph Krantz of Bucyrus, Ohio was sentenced to 18 months imprisonment on each of four

counts of unlicensed sales of securities, to be served concurrently. Judge N. Kimerlin ruled that the sentence be suspended and that Krantz be placed on three years probation. As a condition of his probation, Krantz was required to serve 90 days in the county jail and pay a \$250 fine.

The prosecution charged that Krantz had sold mutual fund shares of the Financial Programs Group, while unlicensed as a securities salesman, and that he charged unwarranted commissions on those sales. Krantz failed to disclose to investors that they could invest in the fund directly without paying commissions.

This case was referred to the Office of Crawford County Prosecutor Russell B. Wiseman by Enforcement Section Staff Attorney Robert Holodnak. (See Enforcement Division Order Report, below)

**Jack Everett Harper**

Jack Everett Harper of Euclid, Ohio was sentenced to a total of three and one half years imprisonment on August 27, 1991 by Cuyahoga County Common Pleas Judge William Aurelius. Harper's sentence was based on his being found guilty of the following charges: twelve counts of theft, nine counts of securing writings by deception, five counts of forgery, five counts of uttering forged documents, and twelve violations of the Ohio Securities Act.

He received a definite sentence of two years for each theft and se-

curing writings by deception charge, and a definite sentence of one and one half years for each of the forgery, uttering forged documents, and Ohio Securities Act violations charges, all to be served concurrently. He also received a definite sentence of one and one half years on one of the Ohio Securities Act violations which is to run consecutively to the other sentences.

Harper sold interests in various entities, including Sound and Sight Studios, Inc., Harper Manufacturing Corp. and NiteKlub, Inc., to five Ohio investors. The indictment charged that Harper opened shell corporations which ostensibly dealt in computers, and he then helped victims to secure money for investment in promissory notes using the fictitious computers as collateral. After he received the investment money he disappeared. Information available to the Division indicated that Harper operated this investment scheme in both Ohio and Texas.

Mary Spahia-Carducci, Enforcement Section Staff Attorney, assisted the Office of Cuyahoga County Prosecutor Stephanie Tubbs-Jones in the preparation of the case.

**John H. Davis**

On September 13, 1991, John H. Davis of Cuyahoga Falls, Ohio was sentenced to a total of four to fifteen years imprisonment by Summit County Common Pleas Court Judge Frank J. Bayer. Davis' sentence is based on three to fifteen years imprisonment on

one count of aggravated theft and four counts of violations of the Ohio Securities Act.

Davis, president of Sports Enterprises, Inc., a company based in Munroe Falls, Ohio, raised approximately one million dollars from more than two hundred investors throughout Ohio to develop indoor horseshoe-pitching complexes. Investors who bought unregistered stock, unregistered promissory notes, or both were informed that their investments were "risk-free." In addition, investors were not informed that Davis, Donald E. Roberts, Sports Enterprises, Inc., and eleven salespeople were ordered by the Division on October 23, 1987, to cease and desist from unregistered and unlicensed sales of securities.

This case was referred to the Office of Summit County Prosecutor Lynn C. Slaby by Karen Terhune, Enforcement Section Assistant Supervisor. (See also Donald E. Roberts, below)

#### **Darrell R. Muncy**

On October 3, 1991, Darrell R. Muncy of Kettering, Ohio was found guilty by a Montgomery County Common Pleas jury on ten felony counts, which included securities law violations, grand theft, and theft-related charges. He was sentenced on October 3, 1991, by Judge John M. Meagher to a total of three years imprisonment.

The charges against Muncy arose from investor complaints of unfulfilled promises by Muncy which prompted an investigation into the allegations raised.

The Office of Montgomery County Prosecutor Lee C. Falke was as-

sisted by Karen Terhune, Enforcement Section Assistant Supervisor, in the preparation and presentation of the case against Muncy.

#### **Wesley Allen Douglas Campbell**

On October 7, 1991, Wesley Allen Douglas Campbell of Upper Arlington, Ohio was indicted on 22 counts, including ten counts of making false statements regarding the value of securities, one count of engaging in a pattern of corrupt activity, and eleven counts of theft and forgery.

The charges against Campbell arose out of complaints by investors who discovered that monies allegedly were not invested as promised by Campbell.

The Office of Franklin County Prosecutor Michael Miller was assisted by Robert Holodnak, Enforcement Section Staff Attorney, in the preparation of the case.

#### **Donald E. Roberts**

In Summit County Common Pleas Court, Donald E. Roberts of Cuyahoga Falls, Ohio, who had initially been charged with five felony counts of theft relating to securities sales, pled guilty to one count of the lesser offense of the unauthorized use of property on December 4, 1991.

Roberts, the secretary-treasurer of the National Horseshoe Pitchers Association, was formerly the national operations director for Sports Enterprises, Inc., a Munroe Falls-based company. Summit County Common Pleas Judge Frank J. Bayer sentenced Roberts to a 30-day suspended sentence and imposed a fine of \$100.

The charges against Roberts arose out of an investigation in which it was determined that more than two hundred Ohioans invested close to one million dollars for the development of indoor horseshoe-pitching complexes.

The case was referred to the Office of Summit County Prosecutor Lynn C. Slaby by Karen Terhune, Enforcement Section Assistant Supervisor. (See also John H. Davis, above)

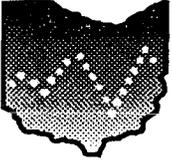
#### **Bruce Sams**

On December 9, 1991 Bruce Sams, whose last known address was Dublin, Ohio, was indicted by the Franklin County Grand Jury on six counts of selling unregistered securities and four counts of theft by deception.

The indictment stemmed from charges that Sams received \$150,000 from at least four investors who in return received promissory notes in B & B Core Buyers, a company for which Sams had claimed to be President. It was alleged that a friend of Sams had formed B & B Core Buyers, but that when the business failed, the founder left the business and Sams continued to use the company name and claimed to be its President.

A warrant has been issued for Sams arrest. The Franklin County Prosecutor's office believes Sams is no longer in Ohio. The case was referred to the Office of Franklin county Prosecutor Michael Miller by Erwin J. Dugas, Jr., Enforcement Section Staff Attorney.

**Enforcement Section Reports continued on next page.**



## Enforcement Section Reports

### Paul Dieter

On February 4, 1992, Paul Dieter of Shaker Heights, Ohio was indicted by the Cuyahoga County Grand Jury on a total of twenty five felony counts. The indictments included five counts of theft, five counts of unlicensed sales of securities, five counts of selling unregistered securities, five counts of making misrepresentations in the sale of securities, and five counts of securities fraud. The charges against Dieter arose out of the sale of interests in a Mexico-peso exchange program to six Cleveland area investors during 1989.

The indictment charged that Dieter introduced the investors to a scheme whereby they would tender \$5,000 to an organization identified as FLH Group which was to place the funds in a pool of money that was accumulated from investors nationwide. The pooled money was then to be used to purchase Mexican pesos at a discount. The pesos were then to be exchanged for US dollars, at which time the investors were to receive a 12% return on their investment. The indictment charged that the investors lost all their funds in the program. Information available to the Division indicates that the FLH principals are in a Texas jail.

The case was referred to the Office of Cuyahoga County Prosecutor Stephanie Tubbs-Jones by Mary Spahia-Carducci, Enforcement Section Staff Attorney.

### John W. Paparella

On February 27, 1992, a two count bill of information was filed against John W. Paparella of Norton, Ohio, in United States District Court in Cleveland. Paparella was charged with and agreed to plead guilty to one count of conspiracy to commit securities fraud and mail fraud, and one count of securities fraud in connection with providing and causing to be provided false information to state and federal regulatory agencies concerning the financial condition of First Ohio Securities Company (FOSC).

FOSC was an Ohio-based broker-dealer which had offices in Akron, Cleveland, Chicago and New Jersey. FOSC had a nationwide clientele and customers of the firm were located throughout Ohio. FOSC was one of eight firms nationwide taken over by the Securities Investor Protection Corporation in 1990.

Karen Terhune, Enforcement Section Assistant Supervisor, and E.J. Dugasz, Jr., Enforcement Section Staff Attorney, assisted the Office of Joyce J. George, United States Attorney for the Northern District of Ohio with this matter.

### Kenneth A. Jackson

On March 10, 1992, felony charges were filed against Kenneth A. Jackson of Wooster, Ohio, the former principal of two Wooster-

based corporations, one day after a Wayne County Grand Jury returned a 112-count indictment against him. Jackson was charged with 112 felony securities violations, including 28 counts each of selling unregistered securities, the unlicensed sale of securities, misrepresentations in the sale of securities and securities fraud.

The charges relate to investments made by investors throughout the state with Jackson and his companies, Blazo Corporation and Vision Television Network, Inc. Investors were allegedly sold investment units including television air time and were promised high returns on their investments. Some investors were allegedly told that their money would double within 60 days.

This case was referred to the Office of Wayne County Prosecutor Keith A. Shearer by Karen Terhune, Enforcement Section Assistant Supervisor.

### John Gus Berns Thomas Reese

At the close of its March term, on March 27, 1992, the Putnam County Grand Jury indicted John Berns of Boca Raton, Florida and Thomas Reese of Indianapolis, Indiana for violations of the Ohio Securities Act.

Berns was charged in a fifteen count indictment for his part in the illegal sale of the securities of Cervantes Mining Group and Alliance Fuel Corporation to three

Putnam County residents in 1989. The Indictment asserted that neither security was registered or qualified for exemption from the registration requirements of the Ohio Securities Act, that Berns acted as a dealer of securities without being licensed, and that he made misrepresentations in the sale of the securities.

Reese was charged with twelve counts of violation of the Ohio Securities Act for his part in the sale of Cervantes Mining Group securities to those same three Putnam county residents in 1989. The Reese Indictment also asserted that the securities were not registered or qualified for exemption from the registration requirements of the Ohio Securities Act, that Reese acted as a dealer of securities without being licensed, and that he made misrepresentations in the sale of those securities.

Daniel R. Gerschutz, Putnam County Prosecuting Attorney, reported that the Berns and Reese cases were the first indictments based on the Ohio Securities Act in Putnam County during his tenure as Prosecuting Attorney, but that the amount of money lost in the illegal securities sales in the county, one hundred and five thousand dollars, demanded action. William E. Leber, Counsel to the Commissioner, assisted the Putnam County Prosecuting Attorney in the preparation of the case for presentation to the Putnam County Grand Jury.

### **Enforcement Administrative Orders**

#### **Venture Capital Partners**

On July 1, 1991, Venture Capital Partners ("VCP") of Monclovia, Ohio was ordered to cease and desist from further violations of

the Ohio Securities Act, and entered into a Consent Agreement with the Division. The Division found that VCP had sold approximately sixty units of limited partnership interests from November 14, 1986 until April 13, 1988 without registering those units or perfecting an exemption from registration. The Division also declared the filing of a Form 391/3(Q) null and void with respect to five units of VCP which were the subject of an untimely exemption filing. The Division also established that VCP was not licensed as a securities dealer or salesman at the time of the unregistered sales. (Division Orders 90-030 and 91-129) The case was prepared by William D. Henry, Enforcement Section Staff Attorney.

#### **Paul Barras**

On August 13, 1991, in Division Order 91-140, the Division ordered that Paul Barras of Pickerington, Ohio cease and desist from further violations of the Ohio Securities Act. The Division found that Barras sold shares of common stock in Adada Corporation (of which he was a principal) to two Ohio residents. Those shares were neither registered under the Ohio Securities Act nor exempt from registration. It was further charged that Barras was not licensed as a securities dealer or salesman at the time of the unregistered sales. The case was prepared by Mary Spahia-Carducci, Enforcement Section Staff Attorney.

#### **Rachel Stewart dba Sweet Creature Productions, Inc.**

The Division issued a final Cease and Desist Order, Division Order 91-144, on September 27, 1991, ordering that Rachel Stewart of Geneva, Ohio, dba Sweet Crea-

ture Productions, Inc., cease and desist from further violations of the Ohio Securities Act. The Division found that Stewart had sold a debenture which was neither registered under the Ohio Securities Act nor exempt from registration. It was further determined that Stewart was not licensed as a securities dealer or salesman at the time of the unregistered sales. Sidney J. Silvian, Enforcement Section Staff Attorney, prepared the case.

#### **Philip Yeary**

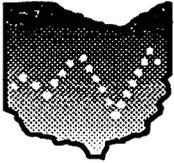
On October 9, 1991, Philip Yeary of Cincinnati, Ohio was ordered to cease and desist from the sale of unregistered securities, the unlicensed sale of securities and false representations in the sale of securities. The Division alleged that Yeary, a minister, had advised his parishioners that R.V. Investments was paying 50% to 250% returns on investments. The charges against Yeary are set forth in Division Orders 90-297 and 91-145. This case was prepared by Enforcement Section Staff Attorney Robert Holodnak.

#### **Joseph Krantz Joseph Krantz dba National Investment Services, Inc.**

On December 11, 1991, in a final Cease and Desist Order, Division Order Number 91-156, Joseph Krantz and Joseph Krantz dba National Investment Services, Inc. of Bucyrus, Ohio were ordered to cease and desist from further violations of the Ohio Securities Act.

The Division charged that Krantz had sold mutual fund shares of the Financial Programs Group while he was not licensed as a

**Enforcement Section Reports  
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## Enforcement Section Reports

securities dealer or salesman. It was further charged that Krantz had made false representations and engaged in other violations of the Ohio Securities Act in the sale of Financial Programs Group mutual fund shares. Division Order Number 91-156 represented the final order in response to charges raised in Division Order 90-110.

This case was prepared by Enforcement Section Staff Attorney Robert Holodnak. (See Criminal Case Report, above)

**Hartford Energy, Inc.  
Grand Slam No. 2 Joint Venture  
Glen E. Chambers**

On January 9, 1992, the Division issued Division Order 92-001, ordering Hartford Energy, Inc., Grand Slam No. 2 Joint Venture, and Glen E. Chambers, of Bedford, Texas, to cease and desist from future violations of the Ohio Securities Act. In the Notice of Opportunity for Hearing, Order No. 91-154, the Division provided Hartford, Grand Slam and Chambers with an opportunity for a hearing to contest the allegations by the Division that Hartford, Grand Slam and Chambers had violated the Securities Act by offering unregistered joint venture interests in an offset oil and gas well located in Texas by means of an unlicensed telephone solicitation to a former employee of the Division.

Hartford, Grand Slam and Chambers failed to request a hearing

within the thirty days provided by the Notice of Opportunity for Hearing.

The case was prepared by William D. Henry, Enforcement Section Staff Attorney.

**Lyle E. Clarno**

On February 3, 1992, the Division issued Order 92-008, ordering the immediate suspension of Lyle E. Clarno of Columbus, a salesman licensed with Worthington Investments, Inc., notifying him of the Division's intent to revoke his Ohio Securities Salesman License, and advising him of his opportunity to request a hearing. The Division Order alleged that Clarno had continued to sell securities knowing that in previous sales the certificates had not been delivered, in violation of Ohio Revised Code section 1707.19. The Order also alleged that the salesman failed to meet minimum investor suitability standards in the sales, that he inducing trading which was excessive in size and frequency, and that he was in violation of the Division's good business repute rules and Ohio Revised Code section 1707.19.

The case was prepared by D. Michael Quinn, Enforcement Section Staff Attorney.

**Carmen R. Arcadi dba  
COMSPEC Distributors, Inc.**

On February 11, 1992, the Division issued Division Order No. 92-010, ordering Carmen R.

Arcadi of Painesville, Ohio, doing business as COMSPEC Distributors, Inc., to cease and desist from future violations of the Ohio Securities Act

In the Notice of Opportunity for Hearing, Division Order No. 91-151, Arcadi was provided with an opportunity for a hearing to contest the allegation by the Division that he had sold an unregistered security and had not been licensed to sell securities in Ohio. Arcadi did not contest the Division's Final Order. The case was prepared by Sidney J. Silvian, Enforcement Section Staff Attorney.

**Rockwell Financial, Inc.**

On February 25, 1992, the Division issued Order 92-018, ordering the suspension of Rockwell Financial, Inc. of Los Angeles, California, notifying that entity of the Division's intent to revoke its Ohio Securities Dealer License, and advising the dealer of its opportunity to request a hearing. The Order resulted from the apparent failure of the dealer to file Annual Statements of Financial Condition for fiscal year 1990.

The case was prepared by Carol L. Barnum, Enforcement Section Staff Attorney.

**Timothy E. Mehlman dba Tri-Sports, Inc.**

On March 23, 1992, the Division issued Division Order 92-022, ordering Timothy E. Mehlman, doing business as Tri-Sports, Inc. of Cincinnati, Ohio, to cease and

desist from future violations of the Ohio Securities Act.

In the Notice of Opportunity for Hearing, Order No. 92-013, Mehlman was provided with an opportunity for a hearing to contest the Division's allegations that he had sold unregistered securities and had not been licensed to sell securities. Mehlman did not contest the Division's Final Order.

The case was prepared by Sidney J. Silvian, Enforcement Section Staff Attorney.

### Salem Hills Associates.

On March 26, 1992, the Division issued Division Order 92-029, ordering Salem Hills Associates, Inc. of Salem, Ohio, to cease and desist from future violations of the Ohio Securities Act, and declaring Null and Void certain sales. In the Notice of Opportunity for Hearing, Order No. 92-011, the Division provided Salem Hills with an opportunity for a hearing to contest the allegation that Salem Hills violated the Ohio

Securities Act by failing to report certain sales on three Forms 3-Q within the sixty days provided by Section 1707.03(Q), and that the attempted claims of exemption made on the Forms 3-Q be Null and Void with reference to the securities which were the subject of the late filing. Salem Hills failed to request a hearing within the thirty days provided by the Notice of Opportunity for Hearing.

The case was prepared by William D. Henry, Enforcement Section Staff Attorney.

Judge Farmer dismissed Plus Gold's claim that its primary purpose was to sell products rather than distributorships: "The very heart of the program was not the selling of goods but the making of money for introducing other persons into the program."

The court granted a permanent injunction against Plus Gold, and fined the firm \$100,000. Judge Farmer also dismissed a \$1.7 million counterclaim against the Ohio Attorney General filed by Plus Gold in November, 1991.

The Division assisted the Ohio Attorney General's office in presenting the case against Plus Gold. Mary Spahia-Carducci and Erwin J. Dugas, Jr., Enforcement Section Staff Attorneys, gathered evidence and testified as witnesses for the State.

## Civil Litigation

### Plus Gold, Inc.

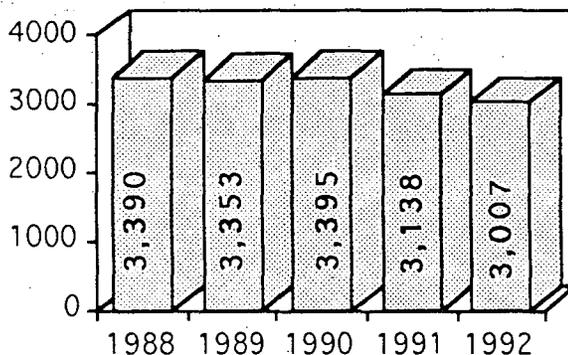
On March 27, 1992, Judge Shelia Farmer of the Stark County Common Pleas Court ruled that Plus Gold, Inc., a Canton-area multi-level marketing plan with approximately 7,500 "distributors", was an illegal pyramid in violation of Ohio's Pyramid Sales Plans Act.

*Some Enforcement Section Reports which were initially scheduled for publication in issue 92:1 of The Ohio Securities Bulletin appear in this issue because of space limitations in issue 92:1.*

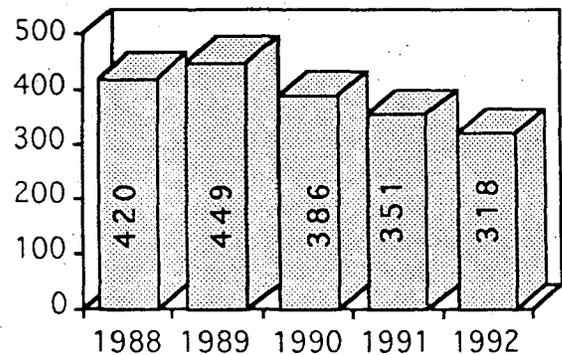
## First Quarter Registration Statistics

Applications for Exemption under R.C 1707.03 (O) and 1707.03 (Q) received during the First Quarter (January 1 through March 31) for the years 1988 through 1992:

Form O3(O)



Form O3(Q)





## Examination Section Report

### Interstate Dealer Examination Training

The Ohio Division of Securities was represented at the National Association of Securities Dealers examiner training program held at the NASD operations center in Rockville, Maryland by Rich Pautsch, CPA. The three week course, held from February 17 to March 6, 1992 covered the basics of the NASD's examination techniques, and focused on three areas of the SEC rules regulating Broker-Dealers: Books and Records, Net Capital, and Customer Protection.

The first major topic of discussion and instruction was Broker-Dealer books and records. SEC Rule 17a-3, which describes the books and records which Broker-Dealers are required to maintain, and SEC Rule 17a-4, which establishes how long the records are to be kept, were considered in detail, with emphasis on the interrelationships between the required books and records. As an examination technique, the NASD staff places great importance on the interlocking nature of good Broker-Dealer books and records - both as a series of checks and balances and as a source of information about the true financial condition of the regulated company.

The SEC Net Capital Rule, 15c 3-1, was covered next. Discussion of the rule included a review of the minimum net capital requirements, the definition of aggregate indebtedness, the definition of allowable and non-allowable assets, securities haircuts, and subordination agreements. For NASD examiners, the starting point for computing net capital is

the difference between Total Assets and Total Liabilities as shown on the company's balance sheet. That number is then adjusted in accordance with the rule in order to arrive at net capital. The basic premise of the adjustments is to establish a liquidation value for the Broker-Dealer.

The SEC Customer Protection Rule, 15c 3-3, was also considered at length. Originally effective in January 1973, the Customer Protection Rule was promulgated in response to a loss of investor confidence in the securities markets when the volume of transactions overcame the capacity of Broker-Dealers to keep track of those transactions during the paperwork crunch of the late 1960's and early 1970's. Specific issues considered in the discussion of the Customer Protection Rule included the definition of "customer", the concepts of possession and control, and the required Special Reserve Bank Account for the Exclusive Benefit of Customers.

In addition to the topics discussed above, The program also provided a review of SEC Rule 17a-5, Financial Reporting Requirements. The rule requires the filing of monthly and quarterly FOCUS reports and describes in detail the requirements of the annual audit report to be prepared by an independent CPA for NASD Broker-Dealers.

The course provided an excellent opportunity to gain a better understanding of the policies and practices of the NASD in Broker-Dealer examinations, especially

with regard to the application of books and records requirements, net capital standards, and customer protection considerations under the SEC Rules. The program also provided perspective on both the similarities and differences in the roles of the Division and the NASD, and the importance of the cooperative relationship between the two. The standards applied by the Division and the NASD differ in their particulars, but the examination staffs of both organizations share the goal of providing accurate information about the financial condition of securities firms for the protection of investors.

*Richard A. Pautsch*



### 1992 Ohio Securities Conference

The Ohio Securities Conference, Inc. and the Ohio Division of Securities have announced that the 1992 Ohio Securities Conference will be held on November 16 & 17, 1992 at the Columbus Marriott North.

On Monday, November 16, as in previous years, the Ohio Securities Conference will present a seminar program featuring pertinent topics of interest to the Ohio Securities community, and, on Tuesday, November 17, the Ohio Division of Securities will hold meetings of its Advisory Committees. Ohio CLE credit will be offered for the seminar program.

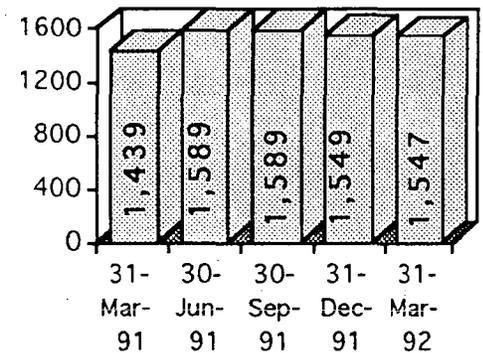
## Registration Section Statistics

FORM TYPE	FIRST QUARTER 1991	FIRST QUARTER 1992	YEAR END 1991
2[B]	277	189	1,214
3[O]	3,138	3,007	10,895
3[Q]	351	318	1,211
3[W]	20	19	125
04	1	0	1
041	0	1	3
05A	0	0	1
6[A][1]	41	49	189
6[A][2]	13	15	60
6[A][3]	4	6	32
6[A][3][OG]	0	0	2
6[A][4]	18	13	65
9	152	429	1,404
9[OG]	0	0	1
091	637	256	1,475
39	33	31	125
391/09	1	4	7
391/091	4	0	1
391/3[O]	218	193	774
391/3[Q]	42	50	161
391/3[W]	0	3	5
391/6[A]1	1	1	2
391/6[A]2	0	0	1
391/6[A]3	1	0	0
391/6[A]4	0	1	1
<b>TOTALS</b>	<b>4,952</b>	<b>4,585</b>	<b>17,755</b>

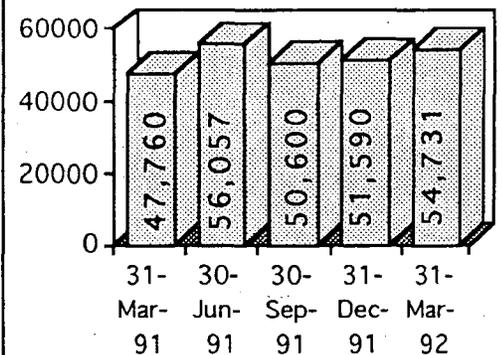
## Licensing Section Statistics

Active Dealer and Salesman Licenses by Quarter: 1991 & 1992

### Dealers



### Salesmen



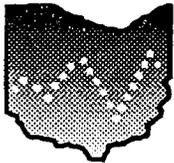
## PUBLIC NOTICE

At 10:00 a.m. on June 30, 1992 the Ohio Division of Securities will hold a hearing regarding proposed changes to O.A.C. Rules 1301:6-3-03 and 1301:6-3-09 in the Ohio Division of Securities Conference Room, 22nd Floor, 77 South High Street, Columbus, Ohio 43215. The Division of Securities has proposed the following amendments to its rules:

Rule 1301:6-3-03 will be amended in accordance with R.C. 1707.03(V) to establish an exemption for pooled income funds which qualify as recipients of tax deductible contributions under section 642(c)(5) of the Internal Revenue Code.

Rule 1301:6-3-09 will be amended to incorporate the following changes: Printing errors in the final printed copy of the rule, effective on January 17, 1992, will be corrected; language removed in error from the final copy of the last line of Division (D)(12) of the rule regarding the suitability of certain investments by Investment Companies as defined in the Investment Company Act of 1940 will be replaced; Division (D)(12) of the rule will be amended to allow an increase from ten to fifteen percent of the investments by Investment Companies in restricted securities or the securities of issuers with less than three years of continuous operation; and Division (I) of the rule will be amended to enable the Division of Securities to accept form U-7 of the North American Securities Administrators Association, Inc. in conjunction with a form 9 filing made in reliance on rule 504 of Regulation D of the Securities and Exchange Commission.

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



## Venture Capital Forums

Organizations interested in sponsoring venture capital forums have recently contacted the Division of Securities about the exemption presented in R.C. 1707.431(B). That provision of the Ohio Securities Act was enacted by the General Assembly in 1985, and provides a framework for bringing potential investors and start-up companies together without imposing liability on the forum sponsor for having effected, participated in or aided the seller in making a sale or contract of sale of securities in violation of the Ohio Securities Act.

A venture capital forum may be sponsored by any natural person or entity, but the key element of the exemption is the prohibition against the forum sponsor receiving any commission, remuneration or other compensation based on the sale of securities by any issuer at the forum. The first paragraph of section 1707.431(B) presents the operative provisions of the exemption:

(B) Any person who brings any issuer together with any poten-

tial investor, without receiving, directly or indirectly, a commission, fee, or other remuneration based on the sale of any securities by any such issuer to any such investor. Remuneration received by such person solely for the purpose of offsetting the reasonable out-of-pocket costs incurred by the person shall not be deemed such a commission, fee, or other remuneration.

The second paragraph of 1707.431(B) presents a requirement that twenty one days in advance of the forum, the forum sponsor must notify the Division in writing of its intention to sponsor the forum. Failure to file the notice will not defeat the exemption claim, but compliance with the provision will provide the sponsor with comfort that all the terms of 1707.431(B) have been met.

It is equally important to recognize the limitations on the exemption. It only applies to the process of bringing investors and issuers together: it does not apply to brokerage sales or sales of securities by

anyone other than the issuer of the securities. The exemption does not limit any of the responsibilities of an issuer: registration and exemption requirements, prohibitions against misrepresentations and the other standards of the Ohio Securities Act are still applicable in full. Perhaps most significantly, a prospective forum sponsor should keep in mind that the Ohio Securities Act exemption does not limit the application of federal securities laws in any way: a forum with investors or issuers from outside Ohio or which otherwise involves interstate commerce must comply with the applicable federal standards as well as the standards of other states.

Section 1707.431(B) does not grant a blanket exemption from all the requirements of the Ohio Securities Act for all parties involved in the forum, but it does offer a means for a forum sponsor to present a forum without having to obtain a license as an Ohio Securities dealer.

William E. Leber



### IMPORTANT NOTICE

In order for the Ohio Division of Securities to continue to offer the *Ohio Securities Bulletin* without charge to subscribers, it will be necessary for us to confirm that subscribers want to continue to receive the Bulletin and that our mailing list is still accurate. If you wish to continue to receive the *Ohio Securities Bulletin* (and you did not return the form in Issue 92:1 of the *Ohio Securities Bulletin*), complete this form or a photocopy of the form and send it to:

**OHIO SECURITIES BULLETIN  
OHIO DIVISION OF SECURITIES  
22ND FLOOR  
77 SOUTH HIGH STREET  
COLUMBUS, OH 43266-0548**

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