

OHIO SECURITIES BULLETIN

George V. Voinovich
Governor

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Mark V. Holderman
Commissioner of Securities

The More Things Change...

State v. Gill (1992) 63 Ohio St. 3d 53

By William E. Leber

Finding a safe harbor in a sea of regulations is difficult enough when the waters are clearly charted. A recent Ohio Supreme Court decision presents an additional obstacle for those attempting to navigate the nuances of statutory language in Ohio.

The headnote for State v. Gill (1992) 63 Ohio St. 3d 53 describes it as a criminal law case regarding the illegal use of federal food stamps. Upon closer review, however, it is apparent that Gill considers an issue of much broader application: When does an Ohio statutory reference to federal law violate the Ohio Constitution as an unlawful delegation of state legislative authority?

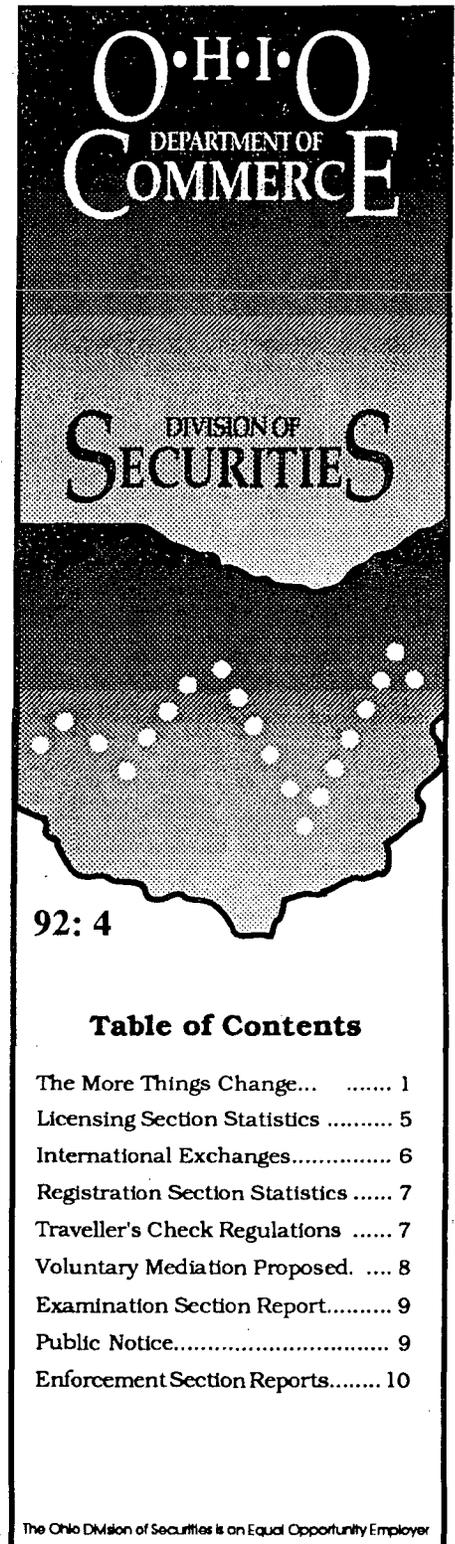
Incorporation by reference, the process of including the provisions of one document in another by referring to it, rather than by repeating all of its terms, is a drafting technique used throughout the American legal system. In Gill, the Ohio Supreme Court considers an attempt by the Ohio General Assembly to incorporate a federal statute by reference into the Ohio Revised Code. The decision deals specifically with just two phrases commonly used by legislatures to incorporate federal law by reference, but it has impact on the various permutations of language used by legisla-

tors to coordinate state and federal statutes and programs. As a result, in our modern context, where innumerable state government functions require symmetry with federal standards, Gill may have direct impact on a wide range of Ohio statutes. For Ohio's Blue Sky Statute, the Ohio Securities Act, with its specific instruction to "achieve maximum uniformity...wherever practicable" with the Securities and Exchange Commission and the other states, an extended series of references to federal law may be affected.

In Gill, the court rejected a challenge to the constitutionality of the term "as amended," but only after substantially limiting its meaning. Of equal significance, the court serves notice that, in the future, it will not support incorporations by reference that would automatically include future changes in federal law.

Prior to Gill, most lawyers and laymen would have interpreted a reference to federal law followed by the term "as amended" to mean that subsequent amendments to the federal law would also be incorporated into the Ohio law. The Ohio Supreme Court rejected that interpretation, and sent the clear message that statutory lan-

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guage which incorporates federal law amendments in advance will be in jeopardy of being declared unconstitutional.

The Food Stamp Cases

The specific Ohio Revised Code provision considered in Gill is section 2913.46(A), "Trafficking in or illegal use of food stamps," which provides: "No individual shall knowingly possess, buy, sell, use, alter, accept, or transfer food stamp coupons in any manner not authorized by the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C.A. 2011, *as amended*." (emphasis added)

In May of 1990, Shinder K. Gill was indicted in Summit County, Ohio for violation of R.C. 2913.6(A), trafficking in food stamps. Later that month, a motion was filed to dismiss the indictment based on a challenge to the constitutionality of R.C. 2913.46. When the trial court overruled the motion, she entered a plea of no contest, and, after conviction, the trial court decision was appealed to the Court of Appeals for Summit County.

The Ninth District Court of Appeals determined that R.C. 2913.46 was unconstitutional as a violation of Section I, Article II of the Ohio Constitution because it allowed the federal Congress to effectively "redefine, alter or even repeal" the Ohio crime of trafficking in food stamps without any action by the Ohio General Assembly. Because it found

that its decision in Gill was in conflict with the Cuyahoga County (Eighth District) Court of Appeals decision in State v.

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Bolar (1987), 39 Ohio App.3d 194, 530 N.E.2d 940, the Summit County Court of Appeals then certified the record to the Ohio Supreme Court for review and final determination.

State v. Bolar had earlier considered the language of R.C. 2913.46(A), following a trial court decision which had found that provision unconstitutional. Although the Cuyahoga County Court of Appeals found the statute to be constitutional and reversed the trial court's action, the Bolar decision provided a roadmap for the later constitutional challenge in Gill.

The Bolar trial court had based its unconstitutionality ruling on a different rationale than that proposed in Gill. Presenting both the majority opinion and a dissent, Judge Richard M. Markus of the Cuyahoga County Court of Appeals wrote, "The trial court apparently concluded that the federal Act preempted any state legislation, so the Supremacy Clause precluded this Ohio statute. All members of this panel disagree with that conclusion."

In the dissenting portion of his opinion, Judge Marcus reiterated the court's unanimous view that R.C. 2913.46(A) was not unenforceable merely

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because it referred to a federal statute, but he also voiced his individual view that the Ohio Revised Code provision violated the Ohio Constitution, "as an unlawful delegation of legislative authority." Judge Marcus then reviewed the limited circumstances under which the Ohio General Assembly can delegate elements of its legislative authority, and concluded that R.C. 2913.46(A) did not meet those standards. "The legislature can properly authorize another governmental agency to promulgate rules or regulations which further define an offense and thereby implement the legislative purpose. . . . However, those rules and regulations must conform to an intelligible principle which the General Assembly established through a stated legislative policy and fixed standards. . . . Additionally, there must be a procedure for judicial review to assure that the delegated action confirms to that principle."

Judge Markus reasoned that R.C. 2913.46(A) was unconstitutional because it failed to identify Ohio legislative policy or fixed standards, and no judicial review could determine whether the federal Congress considered any Ohio legislative principles in amending the food stamp laws: "Congress has the power to repeal this Ohio statute by repealing the federal Act, or to change any element of this Ohio crime." Nonetheless, because the other members of the panel did not agree with the Chief Judge's arguments to adopt a rationale not presented at the trial court, they concurred only in the judgement. As a result, the appeals court reversed the trial court's declaration of unconstitutionality in Bolar.

Writing for the Ohio Supreme

Court majority in Gill, Justice Andy Douglas started his analysis from the "well-settled principle that all enactments enjoy a strong presumption of constitutionality," and he then reviewed the legislative history of both the federal and state food stamp laws. He noted that when R.C. 2913.46(A) became effective on July 1, 1983 the federal Food Stamp Act had already been revised following its initial enactment in 1964. As a result, he concluded that the General Assembly simply intended to incorporate the

"A legion of our sister states have held that any attempt to incorporate future enactments of Congress into state criminal statutes is an unlawful delegation of legislative power."

Justice J. Craig Wright

federal food stamp law as it existed on the date R.C. 2913.46(A) was enacted. "Given its common and plain meaning, the language "as amended" does not anticipate amendments to the food stamp law after July 1, 1983."

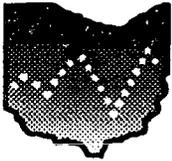
Justice Douglas suggested further that the General Assembly had alternatives available to it if it had intended to incorporate future amendments to the federal law into the Ohio statute. The incorporation language in R.C. 2915.01(AA) was presented as a contrast to the Ohio food stamp statute. R.C. 2915.01(AA) is a provision of the Ohio Gambling Offenses Law that defines "Internal Revenue Code" as "the "Internal Revenue Code of 1986". . . . as

now or hereafter amended." (emphasis added). The comparison led to the clear implication that the Gambling Offenses language would not be constitutionally protected.

By limiting the Ohio reference to the federal law "as amended," to the federal statute at the time the Ohio law was enacted, Justice Douglas established a strong rationale for supporting the constitutionality of that provision. But the majority opinion presented an equally strong rationale for not protecting language such as the example in the Gambling Offenses Law.

The reasoning in Gill is not a unique Ohio view on incorporation by reference. In his dissent to the majority opinion in Gill, Justice J. Craig Wright noted, "A legion of our sister states have held that any attempt to incorporate future enactments of Congress into state criminal statutes is an unlawful delegation of legislative power." He concurred with the majority view that incorporations by reference which are not limited to the terms of the federal law at the date of the Ohio Revised Code enactment are unconstitutional. However, he differed with the majority decision on the question of whether or not the General Assembly intended incorporations with the "as amended" language to include future federal amendments. "There is no question in my mind that the court of appeals was correct in holding that the words "as amended" meant that the statute was intended to apply to future as well as past federal laws and regulations."

Both the majority and minority opinions acknowledged that because the federal food stamp



law had been changed since the enactment of the coordinating Ohio statute "some present lawful recipients would commit an Ohio crime by obtaining food stamps." However, the court merely offered that "the General Assembly may update and revise (Ohio law) to incorporate amended versions of the federal...law." Both opinions noted that the activities of thousands of Ohioans would be criminalized by the flashback application of the previous federal law, but they both suggested that the General Assembly "update and revise."

Implications for the Ohio Securities Act

The recent attention of the Ohio Supreme Court has direct implications for interpretation of Ohio Statutes:

1. Incorporations by reference of federal law into the Ohio Revised Code accompanied by the language "as now or hereafter amended" have a substantially different meaning than incorporations followed by the language "as amended. Only incorporations which include "as now or hereafter amended" or similar language will be interpreted as intended to follow subsequent changes in the referenced federal law.

2. Incorporations which include the "as now or hereafter amended" language or similar language intended to keep Ohio law in step with federal law will almost assuredly be considered to be in violation of the Ohio Constitution.

There are similar implications for interpretation of the Ohio Securities Act;

1. Provisions of the Ohio Securities Act which had been understood to mean that they would automatically keep in step with referenced federal standards may now be locked in to the terms of the federal

Provisions of the Ohio Securities Act which had been understood to mean that they would automatically keep in step with referenced federal standards may now be locked in to the terms of the federal law at the time when the Ohio Revised Code provision was enacted.

law at the time when the Ohio Revised Code provision was enacted.

2. Incorporations by reference of federal standards into the Ohio Revised Code which are not limited to the terms of the federal law at the date of the Ohio Revised Code enactment may be invalid and unenforceable.

The Ohio Securities Act contains at least five different forms of reference to federal laws

• In § 1707.01(T), the Securities Act of 1933, the Securities

Exchange Act of 1934, and the Internal Revenue Code of 1954 are referred to by name and cited, and are then defined to "mean the federal statutes of those names as amended before or after July 20, 1978." Section 1707.01 was most recently amended on April 11, 1990.

• In § 1707.03(S), the Securities Act of 1933 is again referred to and cited, but is merely referenced with the language "as amended." Section 1707.03 was most recently amended on September 11, 1985.

• In § 1707.03(W)(1), Rule 252 of Regulation A under the '33 Act is referred to without any qualifying language.

• In § 1707.041(H)(1), the Public Utility Holding Company Act of 1935 is referenced by "as amended" but in the next paragraph, § 1707.041(H)(2), the Bank Holding Company Act of 1956 is referenced by the language "and subsequent amendments thereto." Section 1707.041 was most recently amended on April 11, 1990.

• In § 1707.091(A), Regulation A under the 1933 Securities Act is cited differently than its reference in § 1707.03(W)(1) and the referenced is qualified with "as amended before or after the effective date of this section." Section 1707.091 was most recently amended on July 30, 1979.

Based on Gill, it appears that, if challenged, unqualified references to federal law in the Ohio Securities Act and references

qualified by the term, "as amended" would be limited to the federal law in effect at the time the Ohio Securities Act provision was enacted, and more expansive references intended to incorporate future changes in the federal law would be declared unconstitutional. As a result, the Supreme Court's proposal to "update and revise" may be in order. It may also be worthwhile to consider amending those provisions of the Ohio Administrative Code that refer to federal statutes.

On the other hand, because Gill specifically considers just one term that incorporates federal law into the corresponding Ohio criminal law provision, it may not affect every instance of incorporation by reference in the Ohio Securities Act. It appears more likely, however, that the handwriting on the wall, like the 1983 federal food stamp law in Gill, will not change.

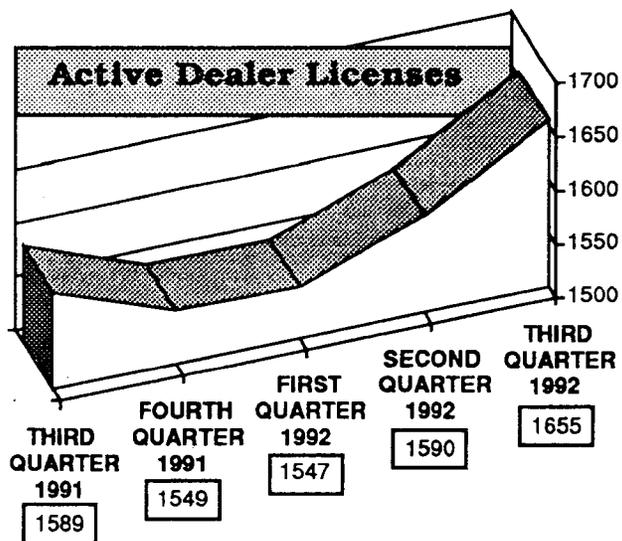
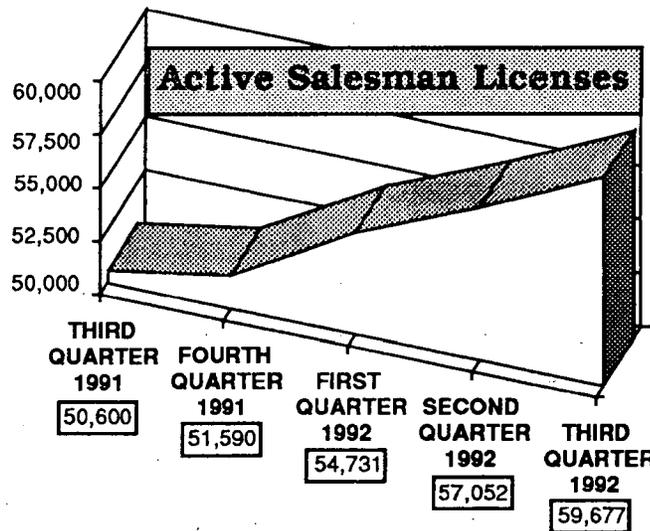
William E. Leber is the Counsel to the Ohio Commissioner of Securities. He received a Bachelor of Arts degree from The Ohio State University and a Juris Doctor degree from the Capital University Law School. Mr. Leber is admitted to the practice of law in the states of Ohio, Massachusetts, and South Carolina.

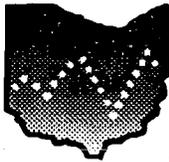


Licensing Section Statistics

Securities Dealer and Salesman Totals Continue to Increase

The totals for dealers and salesman licensed by the Ohio Division of Securities continued to increase substantially during 1992. Both categories of licenses issued by the Division increased during the period from September 30, 1991 (Third Quarter 1991) and September 30, 1992 (Third Quarter 1992). The number of active Dealer licenses grew from 1,589 to 1666, an increase of four per cent. The total number of active salesman licenses expanded from 50,600 to 59,677, an increase of eighteen per cent.





The Division Exchanges International Perspectives

International exchange has become more than a catchphrase at the Ohio Division of Securities in 1992. In recent months, Commissioner Mark V. Holderman and the staff of the Division have shared their perspectives on securities regulation with representatives of the Japanese and Polish Securities Bars. The attorneys from Tokyo and Chiba, Japan and Warsaw, Poland visited the Division in conjunction with exchange programs coordinated by the Capital University Law and Graduate Center. The Polish and Japanese perspectives represent a world of difference: Poland's securities markets are in their infancy, while Japan's securities industry is fully developed.

Marek Wierzbowski, an attorney, Law professor, and consultant to the Polish Securities and Exchange Commission, showed great interest in the American system of both state and federal securities regulation, despite the fact that the State-Federal distinction has no corollary in the Polish securities industry. Mr. Wierzbowski reported that, in Poland, the framework for raising venture capital is still in a state of elementary development. As a result, the establishment of capital markets, where none existed before, is clearly a higher priority to the government than issues of investor protection.

Mr. Wierzbowski underscored the need for an efficient equity capital market in Poland in view of the 40% rate of annual inflation there, a factor that results in bank lending rates at 48%. Mr. Wierzbowski is currently a visiting professor at the Capital University Law School.

Masako Wakana, Ikuko Deguchi, Kiyoshi Horie, Akihisa Hayashi visited Columbus after

The Polish and Japanese perspectives represent a world of difference: Poland's securities markets are in their infancy, while Japan's securities industry is fully developed.

completing an international legal exchange program for Japanese attorneys offered by the Capital University Law and Graduate Center in Tokyo. They visited the Division to exchange perspectives on the application of securities laws in the established capital markets of their two countries. Ms. Deguchi is a professor and a practicing attorney. Mr. Wakana is an active member of the Securities bar in Tokyo, and Ms. Horie and Mr. Hayashi occasionally deal with securities issues. Because Japan has a relatively small number of

attorneys in comparison to the United States, few Japanese attorneys specialize to the extent that Americans do. Most Japanese practitioners have a diverse scope of practice and deal with securities issues as they arise without restricting the scope of their practice.

The Japanese system of securities regulation, which was put in place in Japan under the postwar Status of Forces Agreement, is modeled after the American system. However, cultural, political and economic differences have led to substantially different practices in the application and enforcement of Japanese Securities laws. Securities law enforcement is pursued in Japan on the United States' model, but Japanese government enforcement efforts appear much less vigorous than those of American Blue Sky agencies and the SEC. The Japanese Ministry of International Trade and Industry (MITI), an agency with no specific American counterpart, helps shape securities regulation policy, and is closely affiliated with business and the securities industry. The Japanese securities industry is currently recovering from the tremors of a scandal which resulted in the resignation of top industry and Securities firm management.

*Susan K. Nagel
William E. Leber*



Registration Section Statistics

FORM TYPE	THIRD QUARTER 1991	THIRD QUARTER 1992	1992 TO DATE
02B	331	364	1,098
03O	2,579	2,668	8,600
03Q	293	292	952
03W	35	38	87
O4	0	1	2
O41	1	0	1
O5A	1	0	0
06A1	50	29	134
06A2	15	17	47
06A3	9	10	24
06A3OG	0	0	0
06A4	23	10	51
O9	415*	144*	442
09OG	0	0	0
O91	289*	677*	1,907
39	25	27	82
391/09	0	2	5
391/091	0	3	10
391/3O	195	183	603
391/3Q	34	24	103
391/3W	2	1	3
391/6A1	1	2	2
391/6A2	1	1	1
391/6A3	0	0	1
391/6A4	0	0	0
TOTAL	4,299	4,491	14,155

* Variations in Form 09 and Form 09 quarterly totals result, in part, from changes in the Division's classification of filings made under R. C. 1707.09.

Regulation of Traveler's Checks and Money Orders Transferred to Ohio Division of Banks.

Effective October 6, 1992, by operation of House Bill 332, the 119th Ohio General Assembly transferred responsibility for the regulation of "money transmitters" (Ohio's statutory term for issuers of travelers checks and money orders) to the Ohio Superintendent of Banks. In conjunction with that transfer of supervision, the Ohio Division of Banks will assume responsibility for the examination and regulation of money order companies which had previously been conducted by the staff of the Ohio Division of Securities on behalf of the Ohio Director of Commerce.

The transfer to the Division of Banks represents only minimal change in the substantive standards for regulation of the travelers check and money order industry; both the Division of Securities and the Division of Banks are agencies of the Ohio Department of Commerce. For further information regarding the regulation of money transmitters and the administration of Ohio Revised Code 1310., contact Judy Middendorf of the Ohio Division of Banks at (614) 644-7511, or write to the Ohio Division of Banks at 77 South High Street, 21st Floor, Columbus, Ohio 43266-0549.





Comment Requested on Proposed Voluntary Mediation Program

The Ohio Division of Securities (Division) is soliciting comment regarding the proposed establishment of a voluntary mediation program for disputes between investors and licensed dealers and salesmen.

A significant number of misunderstandings between investors and brokers escalate into formal disputes without producing a resolution of the problem. Mediation will be offered as a voluntary alternative, rather than as a mandatory substitute for the rights and remedies available under the Ohio Securities Act. It is not intended that mediation will supplant the Division's responsibility to enforce the Securities Act.

Historically, "mediation" was a process that was employed only in the context of labor negotiations. More recently, however, mediation and principled negotiation have been used to facilitate the efficient resolution of a variety of disputes in government, business, education, and communities. The Ohio Commission on Dispute Resolution and Conflict Management (OCDRCM) defines mediation as "An informal, structured process in which a neutral third party, called a mediator, helps disputing parties generate and evaluate options for reaching a mutually acceptable agreement. The mediator does not have the power to impose a decision on the parties."

With the assistance of OCDRCM, the Division intends to establish

mediation guidelines in the Division Rules to offer an alternative to litigation or administrative action in response to investment disputes. OCDRCM was created in 1989 by the Ohio General Assembly to serve as a catalyst for the promotion of alternative methods of dispute resolution

Mediation: An informal, structured process in which a neutral third party, called a mediator, helps disputing parties generate and evaluate options for reaching a mutually acceptable agreement. The mediator does not have the power to impose a decision on the parties.

and conflict resolution in Ohio's state and local government, courts, schools, universities, and communities. The Commission itself is comprised of members appointed by the three branches of Ohio government: the Governor, the Chief Justice of the Supreme Court, and the General Assembly.

Specific features of the Division's proposal will be discussed at the November 17, 1992 meetings of the Division of Securities Advisory Committees, held in conjunction with the 1992 Ohio Securities Conference. It is antici-

pated that a Division-sponsored investor mediation program will incorporate the following:

- The mediation program will be completely voluntary. Any party to a potential mediation will be able to opt out of the mediation process at any time, without prejudicing their claims or positions before the Division. A Division-sponsored mediation will only proceed with the voluntary participation of the parties.

- The mediators will be trained volunteers with Securities experience, who are not on the staff of the Division. The Division will provide mediation training under the direction of the OCDRCM for all potential mediators.

- All Division-sponsored mediation will be confidential. Discussions, settlement offers, and negotiations arising out of the mediation will not be recorded and will remain confidential through agreement of the parties.

A future issue of the *Ohio Securities Bulletin* will present a more formal statement of the Division proposal, but if you have any comments or suggestions regarding a proposed Division of Securities investor mediation format, or if you are interested in serving as a mediator under the mediation program, please contact William Leber, Counsel to the Commissioner, at the Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43266-0548.



Examination Section Report

National Association of Securities Dealers Examiner Training Program

Richard Pautsch, C.P.A. represented the Ohio Division of Securities at the National Association of Securities Dealers (NASD) examiner training program held at the NASD operations center in Rockville, Maryland. The three week course, held from July 13 to July 31, 1992 covered selected SEC rules and selected NASD rules of fair practice.

The SEC net capital rule (15c3-1) and the SEC customer protection rule (15c3-3) were reviewed. These rules, also known as the Financial Responsibility Rules were covered in depth in the examiner training class held in February 1992.

The NASD rules of fair practice, including cases involving the

interpretation of certain of these rules were discussed. Cases involving suitability, mark-ups, fraud, discretionary accounts and supervision of sales representatives were the highlights of this area of the course.

Sales practices and market surveillance was the next major area of discussion. Specific subjects discussed in this area included market manipulation techniques, conducting investigations of market manipulation and investigating excessive mark-ups in the sale of securities. The market surveillance department of the NASD produces a variety of reports showing trading activity on the NASDAQ quotation system on a real time basis. Price or volume activity exceeding certain pre-

determined parameters may indicate a need to halt trading in that security.

Options terminology and several options trading strategies were discussed. Material on direct participation programs, an overview of the Securities Acts of 1933 and 1934 and Regulation D concluded the course.

The course provided an excellent opportunity to gain a better understanding of the policies and practices of the NASD in Broker-Dealer examinations. The standards applied by the Division of Securities and the NASD differ in their particulars, but the examination staffs of both organizations share the goal of protecting investors.

Richard Pautsch, C.P.A.



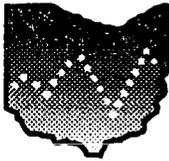
PUBLIC NOTICE

At 10:00 a.m. on March 19, 1992 the Ohio Division of Securities will hold a hearing in the Ohio Division of Securities Conference Room, 22nd Floor, 77 South High Street, Columbus, Ohio 43215 regarding proposed changes to O.A.C. Rules 1301:6-3-01 and 1301:6-3-03. The Division of Securities has proposed the following amendments to its rules:

Rule 1301:6-3-01 will be amended to specify that "Qualified Institutional Buyers will be included in the definition of Institutional Investor in R. C. 1707.01.

Rule 1301:6-3-03 will be amended to establish exemptions for qualified charitable remainder trusts, charitable lead trusts, and charitable gift annuities, and to define those terms and the terms internal revenue code, pooled income trust, and qualified charity.

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



Enforcement Section Reports

Criminal Case Reports

KENNETH A. JACKSON

On August 27, 1992, Kenneth A. Jackson of Wooster, Ohio was sentenced to a 37 to 47 year prison term by Wayne County Common Pleas Judge Mark K. Wiest. A Wayne County jury returned a guilty verdict on August 25, 1992, after deliberating for one and a half days, after a trial that lasted over three weeks and included 90 witnesses and over 300 exhibits. Following the jury's verdict, Judge Wiest ordered that Jackson be held on a \$2 million cash-only bond.

Jackson was found guilty of 38 counts of passing bad checks, 1 count of aggravated theft, 1 count of perjury, 1 count of theft, and 19 counts each of securities fraud, misrepresentations in the sale of securities, unlicensed sale of securities and selling unregistered securities.

Jackson, the former president, chairman of the board, chief executive officer, and director of Blazo Corporation, and its wholly-owned subsidiary, Vision Television Network, Inc. (VTN), promised investors returns as high as 200 per cent within 60 days to solicit their purchase of air time on low-power cable television stations from VTN.

The case was referred to the Office of Wayne County Prosecuting Attorney Keith A. Shearer by the Division, and was tried by Assistant Prosecutor John Williams. Karen Terhune, Enforcement

Section Assistant Manager, assisted the Prosecutor's Office during the trial and in the preparation of the case. On September 22, 1992, Jackson appealed the

Enforcement Division Orders

Worthington Investments, Inc.

On September 11, 1992, the Ohio Division of Securities issued Division Order 92-052 which revoked and confirmed the suspension of the license as a dealer of securities of Worthington Investments, Inc. (WI). WI is an intrastate securities dealer with its main office in Worthington, Ohio. On August 9, 1991, the Division had suspended WI's license and provided the dealer with notice of its intention to revoke the license and of its opportunity for a hearing in accordance with the Ohio Administrative Code. The August 9, 1991 order, Division Order 91-141 charged that WI had failed to maintain adequate books and records, failed to maintain sufficient net worth, and failed to comply with subpoenas, examination requests, and document production requirements of the Division.

In Division Order 92-052, Commissioner of Securities Mark V. Holderman modified the December 17, 1991 Report of Hearing Examiner William E. Leber which had recommended that the license of WI be suspended for thirty days and that the license remain inactive until WI could demonstrate to the Division that

it had established adequate books and records, and procedures to maintain those records. The Hearing Examiner's Report and Recommendation followed thirteen days of hearings which extended from September 5 to November 5, 1992 due to continuances requested by WI and the State. A motion to stay the Division action until the appeal is heard was granted by the Franklin County Court of Common Pleas on September 28.

Columbus Skyline Securities, Inc.

Michael Eberle
Sharon Fizer
Sandra Freeman
Allen Herman
Bruce Lanehirt
James Rapp

On September 8, 1992 the Division ordered the revocation of the Ohio Securities Licenses of Columbus Skyline Securities, Inc. (CSS), a dealer in securities, and of Michael Eberle (Eberle), Sharon Fizer, Sandra Freeman (Freeman), Allen Herman, Bruce Lanehirt, and James Rapp, securities salesmen (collectively referred to as "the salesmen"). CSS is an intrastate securities dealer with its main office in Columbus, Ohio.

On September 23, 1991, in Division Order 91-142, the Division had charged that CSS and the salesmen had sold shares of FiberCorp International, Inc. (FiberCorp.), formerly known as NSC Service Group, at prices not reasonably related to the market price, that they did not inform their customers of the market price, and that they did not inform their customers that they

were selling FiberCorp shares at prices not reasonably related to the market price. Division order 91-142 also suspended the licenses of CSS and the salesmen, notified them that the Division intended to revoke their licenses, and provided them with notice of opportunity for a hearing on the charges.

Following an extended hearing that commenced on October 3, 1991, Hearing Examiner James F. Hunt, Jr. issued his Report and Recommendation of April 24, 1992. Commissioner of Securities Mark V. Holderman modified the recommendation of the Hearing Examiner who had proposed alternative recommendations for Division action and ordered that the licenses of CSS and the salesmen be revoked. In Division Order 92-051, the Division concluded that, in the administrative process, "The Division's only remedy against violations of the Revised Code is to either suspend or revoke a dealer's or salesman's license. In this case, the Division has determined that to protect the investing public, it is necessary to revoke all of the Respondent's licenses."

The Division found that all of the respondents violated the Ohio Securities Act and the Rules of the Division by selling FiberCorp shares "at such variation from the existing market as to be unconscionable," during the period from December, 1990 to March, 1991. In particular, the Division found that they sold FiberCorp shares to the public at a price of \$1.00 per share while the highest price in evidence for either dealer-to-dealer trades or contemporaneous trades during that same period was \$.25 per share. CSS, Eberle, as the president of CSS, and Freeman, as the secretary of CSS, were additionally found to have failed to have met their supervisory responsibilities with

respect to the FiberCorp sales. A motion to stay the Division action until the appeal is heard, subject to monthly reporting to the Division by CSS, was granted by the Franklin County Court of Common Pleas on September 30.

EPAC, Limited Partnership

On August 10, 1992, the Division declared the claim of exemption represented by form 3-Q, file number 393046, filed by EPAC, Limited Partnership (EPAC) of Columbus, Ohio null and void. In Division Order 92-049, the Division charged that EPAC had sold forty-one (41) units of limited partnership interest at a price of \$25,000 per unit more than 60 days before it filed its form 3-Q in August, 1989. In a consent agreement dated August 12, 1992, EPAC and its general partner, Investment Assurance, Inc., agreed to not contest or appeal the issuance of Division Order 92-049.

Hibbard Brown and Company, Inc.

On July 17, 1992, Hibbard Brown and Company, Inc. (H-B), a Nevada Corporation of New York, New York, entered into a Consent Agreement with the Division whereby H-B agreed to the findings, conclusions, and orders embodied in Division 90-246, dated November 16, 1990, and to the issuance of Division Order 92-045, dated July 17, 1992. The Consent Agreement and Division Orders arose out of the circumstances which gave rise to the suspension of H-B salesman Steven Goodman (Division Order 92-059).

Under the terms of the Consent Agreement, H-B agreed to inform its salesmen of the substance of the Division's Cease and Desist Order, and to conduct training sessions in its Cincinnati and

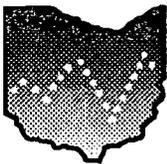
Pittsburgh offices that will include review of the procedures to properly disclose bid and ask information, and of the procedures for compliance with SEC rules 15(c)(g) and 10b-10. H-B will also send memoranda to all of its salesmen reminding them of the proper procedures to be followed in disclosing bid and ask price information to prospective customers. H-B also agreed to repay lost principal and interest to the Mentor, Ohio investor whose complaints led to the actions against H-B and Steven Goodman.

The Consent Agreement specifies that H-B's license as a dealer of securities will be suspended for thirty (30) days if it fails to comply with the Agreement's terms within ninety (90) days of the issuance of Division Order 92-045.

Steven Goodman

The Division ordered a 15 day suspension for Steven Goodman of Natrona Heights, Pennsylvania, a securities salesman licensed with Hibbard Brown and Company. On September 25, 1992, in Division Order 92-059, the Division charged that Goodman had made misrepresentations in the sale of securities to a Mentor, Ohio investor in 1989. In particular, the Division found that Goodman had misrepresented the value of the common stock in question, failed to disclose the bid price, misrepresented the terms of his compensation for sales of the stock, and falsely represented that the issuer of the stock was a good takeover possibility put together by Donald Trump. Goodman consented to the findings, conclusions, and orders included in Division Order 92-059.





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Ohio Division of Securities
22nd Floor
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