OHIO SECURITIES BULLETIN

Ted Strickland
Governor of Ohio

Kimberly Zurz
Director of Commerce

Andrea Seidt
Commissioner of Securities

Seidt Named Ohio Securities Commissioner

Kimberly Zurz, Director of the Ohio Department of Commerce, has named Andrea Seidt of Pickerington, Ohio as the Commissioner of Securities. Seidt began serving as Commissioner on October 13, 2008.

Seidt most recently served as Deputy Chief Counsel for the Office of the Ohio Attorney General, where she worked on investor and consumer protection litigation. She also served as the lead counsel for the Attorney General Office's subprime lending investigations and coordinated Ohio's efforts with other Attorney General offices across the country.

Seidt began her legal career after graduating from the Ohio State University College of Law in 1998 with honors. Before graduating, she served as a Research Assistant at the Federal Judicial Center in Washington, D.C., where she provided research for the second edition of the Reference Manual on Scientific Evidence, which was published in 2000. After graduation, she accepted a position as an associate at the Jones Day law firm's Columbus office, and remained there until 2007. She provided broad-based counsel and litigation defense in nearly all areas of law, including securities law.

In serving as Securities Commissioner, Seidt is overseeing the Division's Enforcement, Registration, Licensing and Examination sections. The Division of Securities regulates Ohio's 167,000 securities brokerage firms, securities salespersons, investment adviser companies and their representatives.

Department of Commerce

Division of Securities

http://www.com.ohio.gov/secu
Investor Protection Hotline 1-800-788-1194
TTY/TDD - 1-800-750-0750

INSIDE THIS ISSUE...

Schneiders Plead Guilty to Securities Counts and Are Sentenced

Joanne Schneider pleaded guilty to thirteen felony counts relating to the sale of securities tied to what was characterized by the Cuyahoga County Prosecutor as a massive real estate scheme. Schneider sold promissory notes on behalf of the Cornerstone Project, which was to raise money to develop a real estate complex containing shopping, dining, entertainment and apartments.

Schneider pleaded guilty to one count of engaging in a pattern of corrupt activity, a first degree felony; five counts of securities fraud, a first degree felony; one count of securities fraud, a second degree felony; one count of false representation in the sale of securities, a first degree felony; one count of false representation in the sale of securities, a second degree felony; two counts of the sale of unregistered securities, a first degree felony; one count of theft, a second degree felony; and one count of money laundering, a third degree felony. Schneider's husband, Alan, had pleaded guilty to six felony charges and was sentenced to community control sanctions. Joanne Schneider was sentenced to three years in prison on March 12, 2008 after entering her plea. The Cuyahoga County Prosecutor's Office is appealing this sentence in the Eighth District Court of Appeals, maintaining it does not conform with sentencing guidelines required for first-degree felonies that are part of a pattern of corrupt activity. These cases carry a minimum sentence of 10 years.

In May 2004, the Ohio Division of Securities issued a Cease and Desist Order against Joanne Schneider for selling unregistered promissory notes. The Division later obtained a preliminary injunction against Schneider in December 2004. In February 2005, it was determined that she had violated the injunction by continuing to sell securities without the permission of the court and a court-appointed Special Master. A court-appointed receiver eventually took possession of the joint assets of the Schneiders, as well as their individual assets. The criminal cases against the Schneiders originated from a criminal referral by the Division to the Cuyahoga County Prosecutor's office.

Criminal Cases

James A. Stamp of Norton, Ohio, was indicted on January 14, 2009, by a Summit County grand jury on 13 felony counts. The indictment stems from a referral from the Ohio Division of Securities to the Summit County Prosecutor's Office. Stamp was a certified public accountant before his license was revoked by the Accountancy Board of Ohio in 2007. He was indicted on three counts of selling unregistered securities; three counts of securities fraud; three counts of false representations in the sale of securities; three counts of deception to secure documents; and one count of grand theft. The charges relate to Stamp's sale of $20,000 in securities to three Summit County investors. The securities were characterized as membership certificates in Shema Capital Partners LLC.

After a three-day bench trial in Portage County Common Pleas Court, **Louis Peter Olcese** was found guilty on September 4, 2008, on a first-degree count of aggravated theft. Olcese was sentenced on September 29, 2008 to five years' incarceration with credit for time already served. On August 25, 2008, Olcese was indicted by a Portage County grand jury on a supplemental indictment that included one count of theft and one first-degree count of engaging in a pattern of corrupt activity with one of the predicate acts being a violation of RC 1707.44(B)(5), or false representations in conjunction with advising for compensation about the sale of securities, and the other predicate act being a money-laundering offense. Olcese, who never held a license to provide investment advice in Ohio, used an investment scheme to obtain $1.4 million from a Rootstown, Ohio, couple over a 3½ year period. Olcese was originally indicted on one count of aggravated theft in 2005. However, he fled the U.S. and lived in Panama until his arrest in June 2008 during a layover in an Atlanta airport.

The Ohio Securities Bulletin is a quarterly publication of the Ohio Department of Commerce, Division of Securities.

The Division encourages members of the securities community to submit for publication articles on timely or timeless issues pertaining to securities law and regulation in Ohio. If you are interested in submitting an article, contact Desiree Shannon at desiree.shannon@com.state.oh.us for editorial guidelines and publication deadlines. The Division reserves the right to edit articles submitted for publication.

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Ohio Division of Securities
77 South High Street, 22nd Floor
Columbus, Ohio 43215-6131
http://www.com.ohio.gov/secu

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Division Obtains Preliminary Injunction Against James D. Powell and Others, Along with Appointment of a Receiver

The Ohio Division of Securities obtained a Preliminary Injunction against James D. Powell, Capital Investments, Great Miami Real Estate, LLC and Great Miami Debenture, LLC, all of Hamilton, Ohio. Butler County Common Pleas Court Judge Patricia Oney issued the injunction on February 4, 2009, and appointed attorney Steven R. Watts of Dayton as receiver to manage and operate Capital Investments, Great Miami Real Estate, LLC and Great Miami Debenture, LLC. The Division maintains that all of these companies are controlled by Powell, and that Powell had others sell securities issued by his companies. The most prolific salesman was the late David L. Colwell, also of Hamilton, Ohio. Colwell did business under the name of Midwest Marketing. Colwell was found dead in Indiana in March 2008.

The Division had previously secured an agreed preliminary injunction in December 2008 against Kevin Miller of Fairfield, Ohio, Hubert Jackson Rials of Cunningham, Kentucky and Stephen Chatsworth Jacobs of Hamilton, Ohio, all of whom, along with Colwell, sold securities issued by Powell's companies. Judge Oney's action stemmed from the Division's earlier request for a preliminary and permanent injunction against Powell, the Estate of David L. Colwell, Midwest Marketing, Capital Investments, the Great Miami companies and the above-named salesmen, along with the appointment of a receiver to manage and operate Capital Investments, the Great Miami companies, Midwest Marketing and their subsidiaries. A receiver has the authority to liquidate the assets of the companies for the benefit of investors and creditors. The Division obtained a temporary restraining order on December 30, 2008 against the defendants who did not agree to a preliminary injunction.

The Division alleges that the defendants sold unregistered securities, sold securities without a license and misrepresented to investors that the investments were safe, risk-free and backed by the FDIC or otherwise insured. The Division also alleges that the Defendants failed to disclose to investors that they were not licensed, that the securities being sold were unregistered and that Colwell and Miller had previously been issued cease and desist orders by the Division of Securities.

The preliminary injunction bars the defendants from, among other things, selling securities, engaging in deceptive, fraudulent or manipulative acts and buying, selling or transferring any real or personal property without the court's prior approval. The defendants subject to the preliminary injunction are also barred from destroying or altering records as well as dispersing any assets derived from the sale of securities.

The Division Adopts NASAA Senior Designation Rule and Amendments to Current Administrative Rules

Effective January 15, 2009, the following administrative rules were amended: 1301:6-3-01, 1301:6-3-03, 1301:6-3-06, 1301:6-3-09, 1301:6-3-15, 1301:6-3-15.1, 1301:6-3-19 and 1301:6-3-44. The Division also adopted a new rule, 1301:6-3-09.3, for electronic notice filings for offerings of "covered securities."

This series of amendments and the adoption of a new rule significantly updated the Division's administrative rules and added a new investor protection with the adoption of the North American Securities Administrators Association's ("NASAA") Model Rule on the Use of Senior Specific Certifications and Professional Designations. The Division, NASAA and the Securities and Exchange Commission ("SEC") have all recognized that securities fraud frequently targets our seniors with "free lunch" investing seminars and fraudulent designations to create a false sense of security. By including the NASAA Model Rule in Ohio Administrative Code 1301:6-3-44, the Division's enforcement section has additional authority to bring actions against persons using fraudulent professional designations to lure seniors into putting their money into scams and Ponzi schemes.

The regulatory sections of the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange ("NYSE") have merged into the Financial Industry Regulatory Authority ("FINRA"). As the largest non-governmental regulator for securities firms in the United States, FINRA is subject to review by the SEC. The amendments to the Division's administrative rules replaced references to the NASD and NYSE with a reference

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NASAA Senior Designation Rule and Rule Amendments continued...

to FINRA. This authorizes the Division to share confidential enforcement records with FINRA to pursue actions against securities salespersons and dealers for securities violations. Individual investment advisers, investment adviser representatives and securities salespersons must take examinations offered by FINRA to demonstrate their knowledge of securities laws and regulations to satisfy the requirements for a license to do business in the State of Ohio.

With the uniformity mandate of the National Securities Market Improvement Act of 1996, references to FINRA regulations in the Division's administrative rules will limit industry regulatory costs. The Division will also be able to pursue enforcement actions based on violations of FINRA regulations.

To improve the Division's oversight of investment advisers, firms are required to file Part Two of their Form ADV electronically on the IARD system with their initial application and renewals. Amendments to Part Two of the Form ADV will also be filed electronically. Part Two of the Form ADV provides the essential disclosures about the investment adviser, including experience, fees, disciplinary history, and investment objectives, to clients and prospective clients. By requiring electronic filing of Part Two of the Form ADV, the Division will be able to monitor the firm's disclosures to clients and bring prompt actions for deficiencies.

Additional amendments include: (1) the incorporation of federal statutes and rules "as amended" pursuant to R.C. 1707.20(A), (2) confirmation that "covered securities" listed on the NASDAQ Global Markets and the NASDAQ Capital Market are exempt under R.C. 1707.20(A), and (3) technical corrections.

With the SEC accepting Form D filings electronically on a voluntary basis beginning September 15, 2008, and mandating electronic Form D filings by March 15, 2009, the Division adopted a new rule, Ohio Administrative Code 1301:6-3-09.3. The new rule authorizes the Division to accept both electronic Form D filings and electronic Form NF filings by investment companies. The new rule was adopted under section 1707.09.3 of the Revised Code. The Division's goal is to reduce both the regulatory costs for the securities industry and the Division's costs related to the issuance of certificates and file storage.

The Division's rules, including the amendments and the new rule, are available on the Division's website at www.com.ohio.gov/secu/ under "Laws, Rules and Guidelines." A summary of the amendments to each rule is listed below.

OAC 1301:6-3-01; 1301:6-3-12; 1301:6-3-14.2; 1301:6-3-15; 1301:6-3-16; and 1301:6-3-16.3
The amendments deleted the references to the "National Association of Securities Dealers." With the merger of the regulatory sections of the National Association of Securities Dealers, Inc. and the New York Stock Exchange into the Financial Industry Regulatory Authority, these administrative rules now refer to the "Financial Industry Regulatory Authority."

OAC 1301:6-3-02
The amendment confirms that securities listed on the NASDAQ Global Markets and the NASDAQ Capital Market tiers of the NASDAQ Stock Market, LLC are exempt from registration in the State of Ohio under R.C. 1707.02(E). Securities listed on the NASDAQ Global Markets and the NASDAQ Capital Market tiers are "covered securities" under section 18(b)(1)(A) of the Securities Act of 1933 and Rule 146(b) adopted by the SEC pursuant to section 18(b)(1)(B) of the Securities Act of 1933.

OAC 1301:6-3-03 and 1301:6-3-04.1
Each incorporation by reference of a federal statute, rule, or form now reads "as amended" to include any future amendments to the federal statute, rule, or form pursuant to R.C. 1707.20(A)(2).

OAC 1301:6-3-09
The amendment deleted the "as in effect as of March 21, 2005" language from each incorporation of a federal statute or rule. Each incorporation by reference of a federal statute, rule, or form will now read "as amended" to include any future amendments to the federal statute, rule, or form pursuant to R.C. 1707.20(A)(2).

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NASAA Senior Designation Rule and Rule Amendments continued...

OAC 1301:6-3-09.3
Pursuant to R.C. 1707.09.3, the Division adopted an administrative rule authorizing the electronic filing of forms and documents. This rule permits issuers relying on Rule 506 of Regulation D and R.C. 1707.03(X) to file a Form D with the Division electronically. The SEC began accepting electronic Form D filings on a voluntary basis beginning September 15, 2008. Effective March 15, 2009, the SEC will require Form D to be filed electronically. This rule is intended to permit the Division to coordinate with the SEC on electronic Form D filings. The rule also permits investment companies registered, or in the process of being registered, under the Investment Company Act of 1940 to electronically file notice filings on Form NF with the Division.

OAC 1301:6-3-15.1.
The amendment deleted the references to the "National Association of Securities Dealers." With the merger of the regulatory sections of the National Association of Securities Dealers, Inc. and the New York Stock Exchange into the Financial Industry Regulatory Authority, these administrative rules now refer to the "Financial Industry Regulatory Authority." Additionally, Investment advisers are now required to electronically file Part Two of Form ADV with the Division via IARD.

OAC 1301:6-3-44
This amendment adopted the North American Securities Administrators Association's ("NASAA") Model Rule on the Use of Senior Specific Certifications and Professional Designations. The amendment prohibits persons from using misleading or fraudulent designations implying special training or certifications in advising senior citizens or retirees about investments.

Rules Governing Investment Advisers Amended

Effective January 15, 2009, Rules governing investment advisers were amended to include a requirement that all investment advisers electronically file Part II of the Form ADV through Web IARD, along with Part 1. See O.A.C. 1301:6-3-15.1(B)(1)(a) and (B)(6). The Rule change also includes a duty to promptly file updates and amendments to Part II of the Form ADV electronically.

- Prior to this Rule amendment, investment advisers licensed in Ohio were not required to file Form ADV Part II in hard copy or electronic form. Part II was considered to be "filed" with the Division when each adviser completed or updated the form and placed a copy in its files.

- As of January 15, 2009, all new investment advisers seeking licensure with the Division will not be able to submit their application via the Web IARD system unless they file ADV Part II along with Part 1. Similarly, all currently-licensed investment advisers wishing to amend Part 1 of Form ADV via Web IARD will not be able to submit those changes without electronically filing Part II.

- All currently-licensed Ohio investment advisers must have Part II of Form ADV electronically filed through Web IARD no later than July 31, 2009. Please note that failure to be in full compliance with the rules may subject an investment adviser to enforcement action, including but not limited to, license suspension and revocation. There will be no extensions granted for additional time to comply.

- For ease of reference, below are some useful links, which include access to the electronic forms and additional information regarding the filing process. For filing assistance, licensees may contact the IARD Call Center at (240) 386-4848.

- http://www.nasaa.org

From the home page, click on "Industry and Regulatory Resources" at the top of the page. Once you are to the next page, on the left side of the screen, click on "Uniform Forms." Once you are to the next page, scroll down and select "Form ADV – A Guide for Electronic Filing of the ADV Part II."

- http://www.iard.com/part2instructions.asp

Enforcement Advisory Committee Meeting - November 14, 2008

The Enforcement Advisory Committee Meeting was attended by members of the Division of Securities' Enforcement Staff and Attorney General's Office as well as individuals from the securities industry.

The meeting began with an introduction of the Division of Securities' Enforcement Staff and attendees and a brief overview of the role of the Enforcement Section.

The meeting continued with a discussion of the Division's investigatory timeline, including the kinds of investigatory tools the Division utilizes and time frame in which the Division carries out its investigations. Special mention was made of the Division's five-year statute of limitations set forth in R.C. Section 1707.28. In addition, the Division indicated that it recently implemented the use of a "no action letter" to be sent upon conclusion of a Division investigation. The no action letter, modeled after a letter used by the Securities and Exchange Commission (SEC), also states that the Division will consider reopening the matter upon receipt of additional evidence.

The attendees had a lengthy discussion concerning the difference between R.C. Section 1707.23 (investigatory) and Chapter 119 (public) hearings. The Enforcement Staff explained that a R.C. Section 1707.23 hearing is held pursuant to the Division's enforcement powers of investigation. It is not a deposition and is not a public hearing; any testimony and evidence obtained is not available for public inspection. Witnesses are placed under oath and are apprised of legal rights pertaining to the hearing, and the information gathered can be used in a later civil or criminal action. Chapter 119 hearings, on the other hand, are open to the public and are requested by respondents whom the Division has issued a Notice of Opportunity for Hearing alleging violations of the Ohio Securities Act. During Chapter 119 hearings, the Division is represented by the Attorney General's Office and Division personnel provides testimony and submits evidence. A Hearing Officer hears the case, rules on objections during the hearing, and issues a report and recommendation following the hearing. Each party has the right to file objections to the Hearing Officer's Report. Finally, the Commissioner of Securities issues his or her decision in a final appealable order.

A short discussion followed concerning the appeals process depending upon where an appeal is filed. For example, the 10th District Court of Appeals requires that an original notice of appeal be filed with the agency and a copy with the court within 15 days. The 2nd District Court of Appeals, however, requires that the original appeal be filed with the agency and a copy time-stamped by the agency must be filed with the court. A fax is not acceptable in either court.

The meeting concluded with a short question and answer session.

Licensing Advisory Committee Meeting - November 14, 2008

Anne Followell, Acting Supervisor, Licensing Section, welcomed everyone to the meeting at approximately 12:30 p.m. She extended a special welcome to those persons who attended the New Investment Adviser Orientation session held earlier that morning.

Ms. Followell then discussed some new additions and developments to the Division's staffing. In October 2008, Director Kimberly Zurz named Andrea L. Seidt as Commissioner of Securities. Commissioner Seidt participated in a portion of the meeting and introduced herself to the meeting attendees. Ms. Followell also mentioned that since January 2008, she has been serving as the Acting Supervisor of the Licensing Section. Finally, in October 2008, Linda Stevenson, of the Licensing section, left the Division of Securities to pursue other endeavors.

Ms. Followell discussed that the Division of Securities hosted a day-long Central Registration Depository ("CRD") training session in July 2008. The session was conducted by members of the Financial Industry Regulatory Authority ("FINRA"), the North American Securities Administrators Association ("NASAA"), and the Nebraska Division of Securities. The session began with broad level topics for the entire Division, and focused on more specific topics and techniques for the Licensing section as the day progressed.

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Licensing Advisory Committee Meeting continued...

Ms. Followell then discussed the quarterly New Investment Adviser Orientation sessions being held by the Division of Securities. She discussed the topics covered at those sessions as well as the feedback received. William Pultinas, a field examiner with the Division of Securities, and frequent presenter at the New Investment Adviser Orientation sessions, commented on his thoughts and feedback from the orientations. The meeting attendees then discussed ways to improve and expand investment adviser outreach programs. They also discussed how the Division can communicate topics of interest to investment advisers via the anticipated quarterly bulletins and monthly newsletters.

Ms. Followell mentioned that over the past year, the Licensing section received numerous calls from industry members inquiring about the requirement that solicitors become licensed as investment adviser representatives. The concern appeared to arise from confusion over the licensing requirements in other states. The members discussed that true solicitors need not be licensed under the Ohio Securities Act. The meeting attendees also discussed restrictions on Ohio Certified Public Accountants accepting referral fees for referring certain clients.

Ms. Followell discussed that Ohio is a manual approval state for all of its securities and investment advising licensees, and that because of this, the approval process may take longer in Ohio than it does in other states.

Ms. Followell discussed that on October 31, 2008, the Ohio Division of Securities proposed amendments to its Rules. Details regarding the rule amendments can be found on the Division's website and above in this issue of the Ohio Securities Bulletin. Specifically, two rule amendments affect licensed investment advisers and investment adviser representatives. The first rule change requires investment advisers to electronically file Part II of the ADV, both initially as well as all material and annual updates. The second rule change addresses restrictions on the use of senior-specific certifications and professional designations. The meeting attendees discussed the impact of these rule changes.

Finally, Ms. Followell and Glenn Morrical, Partner, Tuck Ellis & West LLP, briefly discussed the topics they covered during the "Investment Adviser Update" at the Ohio Securities Conference. These topics included: (1) the proposed revisions to Form ADV Part II (Part 2); (2) the proposed changes to Regulation S-P; and (3) the proposed changes to FINRA's Forms U-4 and U-5. The meeting attendees were able to further discuss these topics and the potential benefits of the proposed changes.

Ms. Followell thanked everyone for coming to the meeting and contributing their ideas and suggestions. The meeting adjourned at 1:45 p.m.

Registration and Exemption Advisory Committee Meeting - November 14, 2008

The registration and exemption advisory committee held its meeting at the Ohio Securities Conference during the lunch break. The meeting was well attended by conference attendees who practice securities law throughout the state of Ohio. The attendees were interested in recent developments at the SEC and the Division.

The Division noted the new appointment of Commissioner Andrea Seidt who had met with the Registration Section. Commissioner Seidt maintains an open door policy and wants to be informed of any new developments or problem issues within the section. The Commissioner desires an efficient Registration Section to address the needs of issuers and investors in the state of Ohio.

The Division addressed the problem of issuers offering debt securities that have not satisfied the merit guideline requiring positive earnings to fixed charges for the last three years and interim time period. An issuer with a long established history is still required to satisfy this guideline. A poor operating history for a year may not be registered by the Division.

Registration and Exemption Advisory Committee Meeting continued....

The Division was asked if there had been any problems with the recent adoption of the electronic Form D. The Division noted that the old paper Form D or the electronic Form D could be filed with the Division until March 16, 2009. A few printed electronic Form D's have been received by the Division without incident. Form D problems have remained the same regardless of the method of filing. Those problems continue as: unlicensed dealers or finders, Internet-based advertising of the offering, failure to pay filing fees, failure to submit a Uniform Consent to Service of Process, and failure to disclose disciplinary information.

The Division addressed the issue of organizational and offering costs on failed offerings. The Division has requested additional disclosure for registration by description where a prior offering was unsuccessful and the expenses were later sought to be recouped from a second attempt at the offering. However, a sponsor of a public offering is not permitted to recoup prior organizational and offering expenses from a separate affiliated entity. The Division hopes that these incidents during the year are non-recurring.

The Division noted that any economic statistics used in sales literature should be updated. Economic conditions have changed rapidly over the last year. The Division will require sales literature that relies on old economic statistics for the years 2006 or 2007 to be updated to reflect current conditions in 2008.

The Division continues to receive public offerings of real estate, commodity pools and other direct participation placement offerings seeking to diversify investors against the volatility of listed stocks on major exchanges. The Division cautions investors to consider illiquidity risks and lack of an operating history prior to investing in such entities.

Attendees were encouraged to bring issues to the Division's attention as they arise during the course of the year.