

# OHIO SECURITIES BULLETIN

A QUARTERLY PUBLICATION OF THE OHIO DIVISION OF SECURITIES

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Governor of Ohio

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## R.C. 1707.12: A Shield, not a Sword

*State ex rel. Dublin Securities, Inc.  
v. Ohio Division of Securities*

By Robert A. Zimmerman, Esq.

As the administrative agency responsible for enforcing Ohio securities law, the Ohio Division of Securities maintains vast documentation and other information about the securities industry in Ohio. As part of the Ohio Securities Act, the General Assembly promulgated Revised Code ("R.C.") 1707.12,<sup>1</sup> which specifically regulates access to documents and other information in possession of the Division. R.C. 1707.12 was originally enacted in 1929 and has since been substantially amended. See 113 Ohio Laws 229. Nevertheless, the statute had never been the subject of a reported opinion in state or federal court. But a Division investigation of an Ohio broker-dealer resulting in both administrative and criminal law en-

forcement action against the company yielded an unexpected result: an Ohio Supreme Court case interpreting R.C. 1707.12.

In *State ex rel Dublin Securities, Inc. v Ohio Division of Securities*, 68 Ohio St. 3d 426 (1994), the Ohio Supreme Court interpreted R.C. 1707.12 for the first time. The Court held R.C. 1707.12, not R.C. 149.43, the general public records statute, is solely applicable to documents and information in possession of the Division. The Court also denied the target of a Division investigation access to the Division's documents pertaining to the investigation. The decision provides a legal framework to evaluate docu-

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## Legislation Amends Ohio Securities Act

*S.B. 74 Allows for Limited Liability Companies;  
H.B. 488 Requires Dealer Registration with SEC and  
Eliminates 02(B) and 03(O) Filings*

By William E. Leber, Esq.

Two bills passed by the Ohio General Assembly will substantially amend the Ohio Securities Act. In total, eleven sections of the Securities Act will be revised by the two bills.

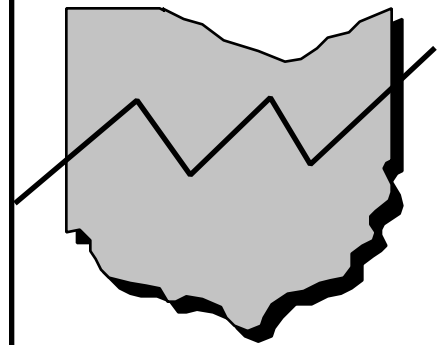
Substitute Senate Bill 74, effective July 1, 1994, generally provides for Limited Liability Companies under Ohio law, and adds references to Limited Liability Com-

panies to various provisions of the Securities Act. In particular, the Bill amends R.C. 1707.01(B) to include "membership interests in limited liability companies" in the definition of "security."

On June XX, 1994, Governor George V. Voinovich signed Amended Substitute House Bill 488,

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## OHIO DEPARTMENT OF COMMERCE DIVISION OF SECURITIES



Ohio Securities Bulletin

Issue 94:2

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## R.C. 1707.12

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ments requests upon the Division. More importantly, the Court's decision in *State ex rel. Dublin* enhances the Division's ability to enforce Ohio securities law to the benefit of the investing public.

Dublin Securities, Inc. ("Dublin") had been the subject of an ongoing investigation by the Division and a special prosecutor appointed by the Franklin County prosecuting attorney. On April 15, 1994, a special Franklin County Grand Jury returned a 327 count indictment against Dublin, one affiliated company and five individuals. See p.5.

During the Division's investigation in the spring of 1991, Dublin made several requests upon the Division to inspect the Division's investigatory records pertaining to Dublin and its affiliates. These document requests included all solicited and unsolicited complaints regarding Dublin. The Division asserted that except for registration filings, salespersons' applications, and dealer financial statements, the requested records were exempt from disclosure as confidential law enforcement investigatory records and trial preparation records under R.C. 1707.12(C) and could only be released to law enforcement agencies. Dublin filed a complaint for a writ of mandamus in the Franklin County Court of Appeals seeking disclosure of the requested information.

The Court of Appeals held that much of the documentation was exempt from disclosure under R.C. 1707.12(C). However, the Court of Appeals did order the release of a flow chart identifying the relationship between certain broker/dealer firms, documents obtained from witnesses affiliated with Dublin, a complaint letter from a securities firm regarding Dublin forwarded to the Division by the National Association of Securities Dealers, Inc., documents regarding Dublin forwarded to the Division by a local

police department, solicited and unsolicited complaint letters regarding Dublin, broker/dealer examinations of Dublin and correspondence between the Division and a law firm regarding Dublin. *State of Ohio, ex rel. Dublin Securities, Inc., v Ohio Division of Securities, et al.*, No. 91AP782 (Franklin Cty. Ct. App. Dec. 31, 1992). The Division appealed the Court of Appeals' decision to the Ohio Supreme Court.<sup>2</sup>

The Ohio Supreme Court agreed with the Division and in a 6-1 decision reversed the judgment of the Court of Appeals and held that none of the information requested by Dublin was subject to disclosure under R.C. 1707.12.

Writing for the majority, Justice Wright first confronted the issue of whether, and to what extent, R.C. 1707.12 prevails over R.C. 149.43. The Division argued R.C. 1707.12 governed Dublin's request, while Dublin asserted R.C. 149.43 was the applicable statute. In determining which statute regulated Dublin's request, the Court relied upon its decision in *State v Chipendale*, 52 Ohio St.3d 118 (1990),

where the Court stated that when a general statute and a specific statute involve the same subject matter, R.C. 1.51 must be applied. R.C. 1.51 states:

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

R.C. 149.43 grants the public access to records maintained by the state of Ohio and its agencies subject to six narrowly defined exceptions. The Court concluded that R.C. 149.43 is a general provision on the subject of public records. The Court stated further:

By contrast, R.C. 1707.12 applies only to documents filed with or obtained by the Division through any investigation. It is a specific statute enacted as part of an overall

## OHIO SECURITIES BULLETIN

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The *Ohio Securities Bulletin* is a quarterly publication of the Ohio Department of Commerce, Division of Securities. The primary purpose of the *Bulletin* is to (i) provide commentary on timely or timeless issues pertaining to securities law and regulation in Ohio, (ii) provide legislative updates, (iii) report the activities of the enforcement section, (iv) set forth registration and licensing statistics and (v) provide public notice of various proceedings.

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 the Editor 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

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*All listings are area code (614)*

Receptionist .....	644-7381	Enforcement .....	466-6140
Broker-Dealer .....	466-3466	Examination .....	644-7467
Records .....	466-3001	Registration .....	466-3444

statutory scheme that authorizes the Ohio Division of Securities to investigate alleged violations of Ohio's securities laws.

State ex rel. Dublin, supra, at 430. As such, the Court applied R.C. 1.51 to R.C. 149.43 and R.C. 1707.12.

In applying R.C. 1.51 to R.C. 149.43 and R.C. 1707.12, the Court initially concluded that the two statutes are irreconcilable since R.C. 1707.12 appears intended to be an exception to R.C. 149.43. Id. at 430-431. The Court also noted that R.C. 149.43 was enacted in 1963 and thus subsequent to R.C. 1707.12. Id. at 431. The Court stated:

Consequently, pursuant to R.C. 1.51, the subsequent general provision (R.C. 149.43) prevails over the special provision only if "the legislature enacts or amends the general provision later in time and manifests its intent to have the general provision apply co-extensively with the special provision..."

Id., quoting Chippendale, supra, at 120-121. The Court stated that the General Assembly never manifested its intent that R.C. 149.43 and 1707.12 apply co-extensively. As such, the Court concluded that R.C. 1707.12 is solely applicable to information in possession of the Division.

Next, the Court considered whether Dublin was entitled to the records ordered released by the Court of Appeals under R.C. 1707.12. The Court stated that R.C. 1707.12 provides a three-tier inquiry for assessing information requests.

First, under R.C. 1707.12(A):

[a]ll applications and other papers filed with the division of securities shall be open to inspection at all reasonable times, except for unreasonable or improper purposes.

Id. The Court held this provision to be the least restrictive of R.C. 1707.12 and that it applies to documents routinely filed with the Division.

Second, pursuant to R.C. 1707.12(B):

Information obtained by the division through any investigation shall be retained by the division and shall not be available to inspection by persons other than those having a direct economic interest in the information or the transaction under investigation, or by a law enforcement officer pursuant to the duties of his office.

Id. at 431-432 (Emphasis added).

Finally, under R.C. 1707.12(C):

Confidential law enforcement investigatory records and trial preparation records of the division of securities or any other law enforcement or administrative agency which are in the possession of the division of securities shall in no event be available to inspection by other than law enforcement agencies.

Pursuant to R.C. 1707.12(C), even if the party requesting investigatory documents has an economic interest in the documents under R.C. 1707.12(B), the party will not be afforded access to the documents if they are confidential law enforcement investigatory records and/or trial preparation records under R.C. 1707.12(C), unless the requesting party is a law enforcement agency.

The Division argued that Dublin did not have an economic interest in the documents ordered released by the Court of Appeals, and, as previously discussed, that the documents at issue were confidential law enforcement investigatory records and trial preparation records. Dublin asserted that it had a direct economic interest in the Division's files because of its responsibility to self-regulate under Ohio Administrative Code 1301:6-3-15. Dublin stated that it needed access to the Division's investigatory files in order to address complaints filed against it with the Di-

vision. The Court of Appeals never considered whether Dublin had the required economic interest in the requested information pursuant to R.C. 1707.12(B).

The Supreme Court rejected Dublin's argument that its duty to self-regulate vested Dublin with an economic interest in the documents it requested to inspect. The Court held:

[p]ersons with a 'direct economic interest' should generally be limited to consumers who, for example, may wish to file a civil suit against a dealer where the Division investigated the consumer's complaint but chose not to proceed against the dealer.

Id. at 432. The Court stated further that:

[t]he General Assembly specifically intended to provide a right of inspection to consumers with a direct economic interest in the information, not to the target of an investigation.

Id. (Emphasis in original). Thus, the Court concluded that Dublin did not have the requisite economic interest in the requested information under R.C. 1707.12(B) and as such, Dublin was not entitled to access to any of the documentation the Court of Appeals ordered released to Dublin. Consequently, the Court never considered whether the documents were confidential law enforcement investigatory records and/or trial preparation records under R.C. 1707.12.

The Ohio Supreme Court's decision in State ex rel. Dublin is important because it removes the uncertainty as to which statute governs information requests upon the Division. The Court stated definitively that document requests upon the Division are exclusively regulated by R.C. 1707.12. The Court's decision will assist both parties seeking information from the Division

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## **R.C. 1707.12**

*Continued from page 3*

and the Division itself in evaluating records requests.

However, the significance of the Court's holding that R.C. 1707.12 and not R.C. 149.43 applies to information requests upon the Division goes beyond a simple choice of law issue. In its decision, the Court recognized that R.C. 1707.12 is part of an overall statutory scheme that empowers the Division to investigate and enforce Ohio securities laws and is intended to protect Ohio consumers. This recognition must guide the Division and any party seeking to inspect information in possession of the Division.

The Division's investigatory powers are extensive. In fact, the Division has been likened to a "police agency" by the courts. Republic Oil Co. v Columbus Accounting and Tax Service, Inc., et al., No. 85CV-11-681, slip op. at 6 (Franklin Cty. Ct. Com. Pl. June 1, 1989). R.C. 1707.36 creates the position of attorney-inspector who is empowered to investigate alleged securities law violations, and to represent the Division in any prosecutions of alleged securities laws violators. Pursuant to R.C. 1707.23(B) and (C), the Division may conduct investigative hearings of broker/dealers to determine if securities laws have been violated. Under R.C. 1707.23(D) and (E), the Division also has the authority to suspend or revoke licenses and to initiate prosecutions. In addition, the Division may seek to enjoin violations of Ohio securities law under R.C. 1707.26.

Unlike R.C. 149.43, R.C. 1707.12 is part of an overall statutory scheme intended to regulate the Ohio securities industry and to protect consumers. In Worthington Investments, et al. v Terry McGill, et al. No. C-2-91-659 (S.D. Ohio Feb. 12, 1992). Magistrate Judge Abel noted R.C. 149.43 and R.C. 1707.12 share similar wording, but are not identical and represent different

policy considerations. These different policy considerations are reflected in R.C. 1707.12.

R.C. 1707.12 is intended to provide broader protection from disclosure than R.C. 149.43, which simply defines what is and is not a public record. Republic Oil, supra, at p. 3. R.C. 1707.12 requires that a party requesting investigatory documents have an economic interest in the requested documentation. R.C. 149.43 has no such requirement.

Also, the trial preparation records exception defined in R.C. 1707.12(E)(2) is broader than that stated in R.C. 149.43(A)(4). Whereas R.C. 149.43(A)(4) exempts from disclosure trial preparation for only civil and criminal proceedings, R.C. 1707.12(E)(2) also exempts trial preparation for quasi-criminal and administrative actions or proceedings. In addition, R.C. 149.43(A)(4) states trial preparation records include only documents containing the independent thought processes and personal trial preparation of an attorney. R.C. 1707.12(E)(2) states trial preparation records include but are not limited to documents containing the independent thought processes and personal trial preparation of an attorney. Lastly, R.C. 149.43(A)(4) protects only the trial preparation of an attorney. R.C. 1707.12(E)(2) exempts from disclosure the trial preparation of an attorney and division personnel, their notes, diaries and memoranda. Because the court concluded that Dublin did not have an economic interest in the information it requested, the Court never considered the confidential law enforcement investigatory records exception or the trial preparation records exception as defined by R.C. 1707.12(E)(1) and (2).

R.C. 1707.12 contains another significant restriction not present in R.C. 149.43. Under R.C. 1707.12, if a document contains confidential information, the entire document is not subject to disclosure. However, under R.C. 149.43, if a document contains confidential information,

the confidential information may be redacted, but the remainder of the document is subject to disclosure. Worthington Investments, supra, at p. 8.

R.C. 149.43(B) states the public records act is to be liberally construed to facilitate broad access to public records. In National Broadcasting Co. v City of Cleveland, 38 Ohio St.3d 79 (1988), the Ohio Supreme Court stated that the exceptions to the public records act are to be strictly interpreted, with doubt as to the applicability of an exception being resolved in favor of disclosure. In construing R.C. 1707.12, the Court took the opposite view in State ex rel Dublin. The Court took cognizance of the role of R.C. 1707.12 in the Division's statutory responsibility to investigate possible violations of Ohio securities law. Accordingly, the Court strictly construed the meaning of "economic interest" as it applied to Dublin, the target of a Division investigation. The court stated:

In a word, it was hardly the legislative intent of R.C. 1707.12 to place investigatory files in the hands of the subject under investigation.

State ex rel. Dublin, supra, at 432. The Court stated it was the intent of the General Assembly to provide a right of inspection of the Division's information to consumers, not to the target of a Division investigation. Id. Although the court did not consider whether the information requested by Dublin constituted confidential law enforcement investigatory records and trial preparation records under R.C. 1707.12(C), the Division will continue to apply those exceptions consistently with the court's opinion that the Division was intended to exercise broad investigatory power.

The General Assembly created the Division of Securities to regulate the securities industry in Ohio. The General Assembly provided the Division with broad investigatory

and enforcement powers. Pursuant to the Ohio Supreme Court's decision in *State ex rel. Dublin*, R.C. 1707.12 is a shield in the hand of the Division to protect its investigatory work product. Since the mission of the Division is to protect Ohio consumers, only consumers have the economic interest in the Division's investigatory documentation required to inspect the documentation. The Ohio Supreme Court will not permit R.C. 1707.12 to be a sword used by the target of a Division investigation seeking information about the investigation.

### **Endnotes**

<sup>1</sup>The text of R.C. 1707.12 is as follows:

**1707.12 Documents open to inspection**

(A) All applications and other papers filed with the division of securities shall be open to inspection at all reasonable times, except for unreasonable or improper purposes.

(B) Information obtained by the division through any investigation shall be retained by the division and shall not be available to inspection by persons other than those having a direct economic interest in the information or the transaction under investigation, or by a law enforcement officer pursuant to the duties of his office.

(C) Confidential law enforcement investigatory records and trial preparation records of the division of securities or any other law enforcement or administrative agency which are in the possession of the division of securities shall in no event be available to inspection by other than law enforcement agencies.

(D) All public records shall be prepared and made available promptly to any member of the general public at all reasonable times for inspection. Upon request, the custodian of public records shall make copies of the records available at cost, within a reasonable period of time. To facilitate public access,

the division shall maintain public records in such a manner that they can be made available pursuant to this section.

(E) As used in this section:

(1) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, provided that release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality reasonably has been promised;

(b) Information provided by an information source or witness to whom confidentiality reasonably has been promised, which information reasonably would tend to disclose his identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product.

(2) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a criminal, quasi-criminal, civil, or administrative action or proceeding, including, but not limited to, the independent thought processes and personal trial preparation of an attorney and division personnel, their notes, diaries and memoranda.

<sup>2</sup>First, the flow chart was prepared by Division personnel in connection with the investigation of Dublin and therefore constituted a confidential law enforcement investigatory record under R.C. 1707.12(E)(1)(a) because its release would reveal the identity of suspects under investigation but not yet charged. The flow chart was also protected by R.C. 1707.12(E)(1)(c) since it represented specific confidential investigatory techniques and work product. Fur-

ther, the flow chart was a trial preparation record protected under R.C. 1707.12(E)(2) because it was specifically compiled in reasonable anticipation of administrative and criminal action and contained the independent thought process of Division personnel.

Second, the documents obtained from the witnesses during confidential interviews constituted confidential law enforcement investigatory records under: R.C. 1707.12(E)(1)(a) because release would identify suspects not yet charged; R.C. 1707.12(E)(1)(b) because confidentiality had been reasonably promised; and R.C. 1707.12(E)(1)(c) because release would reveal specific investigatory work product. Similarly, documents obtained from witnesses during hearings conducted pursuant to R.C. 1707.23(C) qualified as confidential law enforcement investigatory records under R.C. 1707.12(E)(1)(a) and 1707.12(E)(1)(b). In addition, the documents obtained from witnesses pursuant to both confidential interviews and hearings conducted pursuant to R.C. 1707.23(C) constituted trial preparation records under R.C. 1707.12(E)(2) since they were specifically gathered in reasonable anticipation of administrative or criminal action.

Third, the documents forwarded to the Division from other law enforcement agencies qualified as confidential law enforcement investigatory records under R.C. 1707.12(E)(1)(a) because release of such documents would reveal the identity of suspects then under investigation but not yet charged.

Fourth, complaint letters received by the Division were protected from disclosure under different theories depending on whether they were "solicited" or "unsolicited." Solicited complaints were those written complaints that the Division received on a "Complaint Form" completed by the complainant (the Division would forward a Complaint

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## **Incorporated**

On January 21, 1994, the Division issued Division Order No. 93-120, a Cease and Desist Order against Prudential Securities Incorporated of New York, New York. The Order resulted from violations of R.C. sections 1707.44(B)(4) and 1707.44(G) pertaining to sales of limited partnership units from 1980 to 1990. Prudential entered into a Consent Agreement and also paid a penalty of \$500,000 to the State of Ohio.

As described in *Ohio Securities Bulletin* Issue 93:2, the settlement resulted from negotiations involving Ohio, the North American Securities Administrators Association, the Securities and Exchange Commission and the National Association of Securities Dealers, Inc. The settlement established an unprecedented open-ended claims fund of \$330 million, in which Ohio investors may be eligible to participate.

### **Adtel Six Group, Inc. and Harry Klinger**

On January 26, 1994, the Division issued a final order, Division Order No. 94-009, which ordered Adtel Six Group, Inc. and Harry Klinger, the company's principal agent, both of Dublin, Ohio, to cease and desist from selling unregistered securities. The Division had previously issued Division Order No. 93-103, which provided Adtel and Klinger with notice of the Division's allegations and an opportunity to request an administrative hearing on the matter. Notice of Division Order 93-103 was published in the Columbus newspaper The Daily Reporter.

Klinger established Adtel Six Group to advertise and market "opoly" games dealing with trivia about major U.S. cities, such as "Columbusopoly." Klinger sold three units representing interests in Adtel Six Group to an Ohio resident without registering such units with the Division, or seeking a proper claim of exemption.

After Adtel Group Six and Klinger failed to timely request an administrative hearing, the Division issued the Cease and Desist Order, notice of which was also published in The Daily Reporter.

### **Holland Energy Co, Inc.;** **The F. Joe Holland Co.;** **Larry Ebenkamp;** **Terry Wall**

On February 9, 1994, the Ohio Division of Securities issued Division Order No. 94-020, a Cease and Desist Order against the Holland Energy Co. Inc., The F. Joe Holland Co., a related entity, and two salesmen working for Holland Energy, Larry Ebenkamp and Terry Wall (collectively, the "respondents"). Division Order No. 94-020 ordered Holland Energy and Holland Co. to cease and desist from selling unregistered securities and using unlicensed securities salespeople, such as Ebenkamp and Wall, to do so. The Division had previously issued Division Order No. 93-081, on September 16, 1993, which provided respondents notice of the Division's allegations and an opportunity to request an administrative hearing on the matter. Notice of this Order was published in local newspapers where the respondents last resided.

Holland Energy and Holland Co. were "boiler room" operations located in Indiana that sold interests in oil wells to residents in Indiana and other states. Sales were typically made over the phone by unlicensed salespeople, as was the case when an Ohio resident was sold an interest in a Kentucky oil well. There was no evidence that drilling of this well ever took place.

After respondents failed to timely request an administrative hearing, the Division issued the Cease and Desist Order, notice of which was also published in local newspapers where the Respondents were last known to reside. Securities authorities in Indiana, Wisconsin and Penn-

sylvania have issued similar orders against these companies.

### **Holovision Systems, Inc.;** **Mark Imboden**

On February 14, 1994, the Division issued Division Order No. 94-014, a final order that declared null and void an exemption under R.C. section 1707.03(Q) sought by Holovision Systems Inc., of Toledo, Ohio. The Order also ordered that Holovision cease and desist from selling unregistered securities and using an unlicensed salesman to do so. In connection with the Order, Holovision entered into a Consent Agreement.

The Division also issued a related Order, Division Order No. 94-015, against Mark Imboden, of Columbus, Ohio, who sold unregistered securities for Holovision and was not licensed as an Ohio Securities Salesman, ordering Imboden to cease and desist from selling unregistered securities without a license.

Holovision is a company that specializes in the development and application of hologram technology. It employed Imboden for several months during late 1991 and early 1992 to sell shares to Columbus-area investors. Most of these shares were not registered with the Division, and Holovision did not seek a proper claim of exemption for their sale. Holovision did request a 3-Q exemption in July 1991, for an earlier security sale transaction. However, an examination by the Division revealed that the transaction occurred more than 60 days before the 3-Q exemption form was actually filed. Therefore, the Division declared this claim of exemption null and void.

### **William Milton Donald** **DeArman**

The Ohio Division of Securities refused to grant an Ohio Securities Salesman License to William Milton Donald DeArman by issuing a final order, Division Order No. 94-025, on February 15, 1994.

On June 19, 1991, the Division received DeArman's application for an Ohio Securities Salesman License from the National Association of Securities Dealers' Central Registration Depository. On June 8, 1992, the Division issued Amended Division Order No. 92-023, which provided DeArman with notice that the Division intended to deny his application on the ground that DeArman was not of "good business repute," as that phrase is used in the Ohio Securities Act and Rules. The Division based its determination on, among other things, the fact the DeArman had been the subject of disciplinary proceedings by both the Securities and Exchange Commission and the State of Oklahoma Division of Securities, and had been a principal of Fitzgerald, DeArman & Roberts, Inc., an Oklahoma securities firm that became insolvent, filed for bankruptcy and had its Ohio Dealer License revoked.

As permitted by Amended Division Order No. 92-023, DeArman timely requested an administrative hearing. The administrative hearing was held on August 25, 1992, before hearing officer Robert M. Wasyluk. On December 9, 1993, the hearing officer issued his report which recommended that the Division grant an Ohio Securities Salesman License to DeArman, based on the hearing officer's interpretation of the phrase "good business repute," as that phrase is defined in sources other than the Ohio Securities Act and Rules.

Division Order No. 94-025 disapproved of the hearing officer's recommendation and refused to grant an Ohio Securities Salesman License to DeArman. The Order and Memorandum in Support represented the Division's determination that DeArman was not of "good business repute" as that term is defined in the Ohio Securities Act and Rules.

On March 1, 1994, DeArman filed a Notice of Appeal with the Franklin County Common Pleas Court.

## **The Unisco Corporation**

On February 2, 1994, the Ohio Division of Securities issued Division Order No. 94-017, which ordered The Unisco Corporation, of Fort Lauderdale, Florida, to Cease and Desist from selling securities in the State of Ohio which were neither registered nor exempt and selling without a license in violation of R.C. sections 1707.44(A) and 1707.44(C)(1). On October 4, 1990, the Division had issued Division Order No. 90-187, a Notice of Opportunity for Hearing to Unisco, Ultrasound Income Group and Robert Kelly. Unisco timely requested an administrative hearing.

The administrative hearing was held on January 28, 1991. The Division presented evidence that in or around August 1989, Kelly made an unsolicited telephone call to an Ohio resident. Kelly identified himself as an associate of Unisco, and offered to sell to the Ohio resident an interest or interests in Ultrasound, which Kelly described as a Florida general partnership. Kelly then sent to the Ohio resident literature describing Ultrasound as a general partnership that would be formed to purchase a medical diagnostic scanner and then employ Unisco to install, operate and maintain the scanner. In subsequent telephone calls, Kelly stated the Unisco had substantial experience in this type of venture and Unisco would serve as the "custodian" of this venture. The Division also presented evidence establishing that the proposed investment in the Ultrasound investment did not grant managerial control to the investor.

In reviewing the case, the hearing officer first noted that Kelly and Ultrasound must be removed as respondents in the matter because there was no evidence that they received a copy of Division Order No. 90-187, which would have provided them with notice of the Division's allegations.

Next, the hearing officer considered whether the interests in Ultrasound were "securities" despite the

fact that the interests were marketed as interests in a general partnership. The hearing officer noted that although interests in general partnerships are not included in the definition of "security" in R.C. section 1707.01(B), "investment contracts" are included within such definition, and further noted that substance must be considered over form.

The hearing officer then applied the four prong "investment contract" analysis established by the court in *State v. George*, 50 Ohio App. 2d 297 (Franklin Cty. Ct. App. 1975) and determined that the interests in Ultrasound were "investment contracts" and consequently "securities" under Ohio law. Specifically, the hearing officer found that the investor furnished initial value, such initial value was subject to the risks of the enterprise, the investment was induced by the representation of future financial gain and that the investor was not granted any management control.

The hearing officer's report and recommendation was completed on December 10, 1993. The findings of fact and conclusions of law of the hearing officer were accepted by the Commissioner. After Unisco failed to file objections to the report and recommendation, the Division issued the final order on February 2, 1994.

## **E. Lamont Hardiman, Jr.**

On March 4, 1994, the Division issued a final order, Division Order No. 94-039, ordering E. Lamont Hardiman, Jr., of Columbus, Ohio, to Cease and Desist from knowingly making or causing to be made false representations concerning a material and relevant fact in an application for the purpose of procuring an Ohio Securities Salesman License. The Cease and Desist order was entered after Hardiman failed to timely request an administrative hearing as was permitted by Division Order No. 93-112, which was issued against Hardiman on January 14, 1994 and notified Hardiman of the Division's



intention to take administrative action.

On or about March 5, 1992, M. C. Capital Corporation submitted an application for a salesman license on behalf of Hardiman. In considering the application, the Division determined that Hardiman falsely indicated under oath that he had no record of any arrest, indictment, or conviction upon charge of a felony or a misdemeanor.

### **Geiger, Becker, Thomas & King, Inc. and Craig Geiger**

On March 10, 1994, Division issued a final order, Division Order No. 94-042, which ordered Geiger, Becker, Thomas & King, Inc., and Craig Geiger of Columbus, Ohio, ("Respondents") to Cease and Desist from selling securities in Ohio without being licensed to do so and from selling unregistered securities. The order was issued after Respondents failed to timely request an administrative hearing on the matter as permitted by Division Order No. 94-012, which was issued against Respondents on January 27, 1994.

In March 1993, Respondents placed an advertisement in The Columbus Dispatch soliciting investors to purchase preferred shares of Geiger, Becker, Thomas & King, Inc., for \$1,000 per share. Respondents were not licensed to sell securities in Ohio. At least one Ohio investor responded to this advertisement and subsequently received written offering materials from Geiger. This solicitation constituted a "sale" under Revised Code section 1707.01(C). Because the Respondents were unlicensed and the preferred shares were neither registered nor exempt from registration, the transaction constituted the unlicensed sale of unregistered securities in violation of Revised Code sections 1707.44(A) and (C)(1).

### **Robert L. Jones**

On March 22, 1994, the Division issued a Cease and Desist Order, Division Order No. 94-060, ordering Robert L. Jones of Warren, Ohio, to Cease and Desist from violating the provisions of Revised Code sections 1707.44(A) and 1707.44(C) (1), prohibiting the unlicensed sale of securities and the sale of unregistered, non-exempt securities.

The Division found that units of J.H. and Associates 1986-1, Kuhn #1, a joint venture, were sold to Ohio investors. J.H. and Associates, a general partnership formed between Jones and another party sold these units to Ohioans. A Notice of Opportunity for a Hearing was issued to Jones through Division Order 89-081. Jones pled guilty to 16 felony counts of securities violations in Stark County in connection with the sale of these units, and was sentenced January 10, 1990 to 18 months incarceration. His sentence was suspended and he was placed on 5 years probation, ordered to perform 700 hours of community service and provide restitution to the investors.

### **Herbert L. Sugerman and S.G.P., Inc.**

On April 12, 1994, the Division issued a final order, Division Order No. 94-083, ordering Herbert L. Sugerman, of Beachwood, Ohio, and S.G.P., Inc., of Lorain, Ohio ("Respondents"), to Cease and Desist from making unlicensed sales of unregistered securities and making false representations concerning material and relevant facts for the purpose of selling securities in the State of Ohio. The Cease and Desist order was issued after the Respondents failed to timely request an administrative hearing in accordance with Division Order No. 94-038, a Notice of Opportunity of Hearing issued on March 4, 1994

Sugerman formed S.G.P. in March 1991 to replace Specialty Grain Products, Inc., a company previously

formed by Sugerman, because Sugerman believed that the shares of Specialty may have been sold illegally. However, Respondents sold shares of S.G.P. that were neither registered nor exempt to at least three Ohio residents in March 1991, without being licensed to do so. The Division also found that Respondents made false representations in connection with such sales. Specifically, in connection with the sale of the S.G.P. shares, Respondents represented that S.G.P. would be the same as Specialty and that the stockholder equity would remain the same. In fact, however, Respondents used the proceeds from the sale of the S.G.P. shares to pay for the rescission of the sale of the Specialty shares. Consequently, the Division determined that Respondents violated Revised Code sections 1707.44(A), (B)(4) and (C)(1) and issued the final order after no hearing was requested.

### **Bekhor Securities Corporation dba First Affiliated Securities, Inc.**

On April 25, 1994, the Division issued a final order, Division Order No. 94-088, ordering Bekhor Securities Corporation, of LaJolla, California, doing business as First Affiliated Securities, Inc., to Cease and Desist from selling securities in Ohio without being licensed to do so. The final order adopted the report and recommendation of the hearing officer issued following an administrative hearing on the matter. The hearing officer found that by December 31, 1990, Bekhor failed to timely request a renewal of its Ohio Securities Dealer License. Subsequently, Bekhor filed an application for renewal and the Division issued an Ohio Securities Dealer License to Bekhor on January 14, 1991. However, during the period Bekhor was not licensed, January 1 to January 13, 1991, it made nine sales of securities in Ohio.

On June 7, 1991, the Division issued Division Order No. 91-110 notifying Bekhor that the Division in-

tended to take administrative action ordering Bekhor to cease and desist from the unlicensed sale of securities. Bekhor timely requested an administrative hearing, which was held on July 26, 1991. At the administrative hearing, Bekhor conceded that it engaged in the unlicensed sale of securities during the period January 1 to January 13, 1991. Consequently, the hearing officer found that Bekhor violated Revised Code section 1707.44(A) and recommended that the Division issue an order ordering Bekhor to cease and desist from the unlicensed sale of securities in Ohio.

### **Nutritional Rehabilitation Limited Partnership and Mitchel R. Dukov**

On April 26, 1994, the Division of Securities issued Division Order No. 94-079, a Cease and Desist Order and Consent Agreement regarding this case. The Consent Agreement was entered into between the Division and Mitchel R. Dukov in his individual capacity and as a general partner on behalf of Nutritional Rehabilitation Limited Partnership. The Cease and Desist Order ordered Dukov and Nutritional Rehabilitation Limited Partnership to cease and desist from the sale of unregistered securities. The Division had previously issued a Notice and Opportunity for a Hearing to Dukov and Nutritional Rehabilitation Limited Partnership on January 31, 1994.

Nutritional Rehabilitation Limited Partnership is engaged in the development, marketing and management of programs for the treatment of chemical dependency. The programs are administered contractually through independent hospitals and health care facilities. Dukov sold two partnership units in May and June of 1991 without registering them with the Division or seeking a claim of exemption, thereby violating R.C. section 1707.44 (C)(1).

In the Consent Agreement, the Division, Dukov and Nutritional Rehabilitation Limited Partnership stipulated to the findings, conclusions and orders set forth in the Cease and Desist Order, and Dukov and Nutritional Rehabilitation Limited Partnership waived their right to appeal pursuant to R.C. section 112.12.

### **The Cranston Group, Inc.**

On May 13, 1994, the Division issued Division Order No. 94-097, a Final Order of Suspension against The Cranston Group, Inc., of Columbus, Ohio. On April 13, 1994, the Division had issued Division Order No. 94-084, a Notice of Suspension against Cranston. The action was based on the Division's concerns over the financial viability of Cranston.

An examination by the Division of the audited financial information of Cranston as of December 1993 indicated that the liabilities of the Cranston were \$498,719 and the assets were \$126,084. Based on this information and testimony taken from the parties who prepared the financial information, the Division found Cranston to be insolvent for purposes of R.C. section 1707.19(C). When Cranston failed to timely request an administrative hearing as was permitted by the Notice of Suspension, the Division issued the Final Order.

### **Civil Cases** \_\_\_\_\_

#### ***Peter James DaPuzzo v. State of Ohio***

On August 27, 1993, the Ohio Division of Securities issued Order No. 93-075, which denied Peter James DaPuzzo of Wilton, Connecticut a securities salesman's license in the State of Ohio. On July 8, 1993, the Division issued Order No. 93-063 giving DaPuzzo notice of the Division's intent to issue an order to deny his application for an Ohio securities license and notice of opportunity for a

hearing based on his lack of "good business repute". The Division found that a New York Stock Exchange Hearing Panel had censured and fined DaPuzzo \$100,000 and suspended him for four months from the New York Stock Exchange. DaPuzzo failed to request a hearing and later appealed the Division's Final Order to the Franklin County Court of Common Pleas. The Court of Common Pleas entered an Order on February 3, 1994, in which it dismissed DaPuzzo's appeal based on his failure to exhaust his administrative remedies.

#### ***Worthington Investments, Inc. v. Ohio Division of Securities***

On September 11, 1992, the Division issued Division Order No. 92-052 which revoked the Ohio Dealer of Securities License of Worthington Investments, Inc. ("WII") because of WII's failure to maintain adequate books and records as required by Ohio Administrative Code ("OAC") Rule 1301:6-3-15(F)(1), its failure to furnish documents to the Division in violation of R.C. sections 1707.19(D), (F) and (J), and its failure to maintain minimum net worth in accordance with the requirements of OAC Rule 1301:6-3-15(D). The revocation order was issued after an administrative hearing had been held on the matter.

On September 25, 1992, WII filed in Franklin County Common Pleas Court a motion to stay the Division's revocation order, which was granted by Judge Cain on September 28, 1992. Worthington Investments, Inc. v. Ohio Division of Securities, No. 92CVF-097664 (Franklin Cty. Ct. Com. Pl. Sept. 28, 1992). Based on new evidence, the Division filed a motion for reconsideration of the stay on October 28, 1992. WII responded with a motion to strike the reconsideration, filed on November 28, 1992. The Division filed a motion contra to the motion to strike on December 4, 1992.

On January 6, 1993, the court modified the stay order by requiring WII to post a \$100,000 surety bond within five days of the order. On January 13, 1993, WII filed for bankruptcy under Chapter 7 of the federal bankruptcy code. In re Worthington Investments, Inc., No. 29350205 (Bkrtcy. S.D. Ohio filed Jan. 13, 1993).

In July 1993, the Division reached a settlement agreement with the bankruptcy trustee, which included the dismissal of pending litigation. The Bankruptcy Court approved the settlement agreement in October 1993 and dismissals were entered in December 1993.

### ***Columbus Skyline Securities, Inc. v. Mark Holderman, Commissioner of Securities***

On September 8, 1992, the Division issued Division Order No. 92-051 which revoked the Ohio Securities Dealer License of Columbus Skyline Securities, Inc. ("CSS"). The revocation order was based on CSS's continual sale of securities at a price not reasonably related to the market price and was issued after an administrative hearing had been held on the matter. On September 30, 1992, The Franklin County Court of Common Pleas granted CSS's motion to stay the Division's action until an appeal was heard, provided that CSS filed a monthly report of all buy and sell transactions with the Division.

On April 28, 1993, the Franklin County Court of Common Pleas rendered a written decision which affirmed the revocation order and vacated the stay order against execution of the revocation. Columbus Skyline Securities, Inc. v. Mark V. Holderman as Commissioner of Securities, No. 92CVF09-7516 (Franklin Cty. Ct. Com. Pl. Apr. 28, 1993). After reviewing evidence that CSS sold shares of FiberCorp to retail customers at markups ranging from 300% to 567%, Judge Johnson concluded that CSS engaged in sales at prices not

reasonably related to the market price. Judge Johnson considered analogous federal case law and the NASD's 5% markup guideline and noted that although CSS was not a member of the NASD, "a comparison of the 5% guideline to [CSS]'s markup of 300% or more should suggest to [CSS] that its markup was subject to challenge." *Id.*, slip op. at 5. Judge Johnson also found that such excessive markups supported the Division's determination that CSS was not of "good business repute" as that phrase is used in the Ohio Securities Act and Rules.

CSS appealed to the Tenth District Court of Appeals and the appellate court rendered a written opinion on May 19, 1994. Columbus Skyline Securities, Inc. v. Mark V. Holderman, Commissioner of Securities, No. 93AP-790 (10th Dist. Ct. App. May 19, 1994). The Court of Appeals reversed the lower court, holding that Division's reliance on federal markup standards failed to give CSS adequate notice of what markup standards applied and therefore violated CSS's substantive due process rights.

On July 7, 1994, the Division filed a notice of appeal with the Ohio Supreme Court.

### ***Nancy Chiles, Director, Ohio Department of Commerce and Mark V. Holderman, Commissioner, Ohio Division of Securities v. M. C. Capital Corp. and Wayne Meadows***

On March 1, 1993, the Division filed an action in the Franklin County Court of Common Pleas seeking to enjoin M.C. Capital from the non-exempt sale of unregistered securities in violation of the Ohio Securities Act. The action arose after the Division determined that M.C. Capital's sale of shares of Premier Broadcasting to the public were neither registered nor exempt from registration.

M.C. Capital counterclaimed and filed a motion for removal, and the case was removed to the Court of Claims.

The Division's investigation revealed that in December 1992, Premier had filed with the Division a Form 6(A)(1) to register fifty units, each unit consisting of one preferred share, one common share and three warrants to purchase common shares. Premier completed the sale of the fifty units to Ohio investors and then declared a 1,000 to 1 forward stock split in January 1993. Subsequent to the stock split, Wayne Meadows, the president and sole shareholder of M.C. Capital, learned of Premier's offering.

In mid-January 1993, M.C. Capital telephoned potential buyers to gauge interest in the Premier shares. On January 29, 1993, after concluding that sufficient demand existed, M.C. Capital contacted the initial unit purchasers and offered to purchase their warrants for \$.50 each. However, before purchasing the warrants from the initial unit purchasers, M.C. Capital sold shares of Premier to the public at \$5.00 per share. After making these sales, M.C. Capital purchased warrants from the initial unit purchasers. M.C. Capital then exercised the warrants at \$1.25 per share and instructed Premier to issue shares to the respective purchasers.

M.C. Capital claimed such "short" sales were exempt from registration under R.C. 1707.03(M). However, the Division took the position that the R.C. 1707.03(M) exemption was not available because the shares of Premier sold to the public were not "issued and outstanding" before the sale as required by the language of the exemption.

The Court of Claims agreed with the Division, noting that although M.C. Capital could have exercised the warrants and had Premier issue the shares to it (at which point the shares would have been "issued and outstanding") and then sold those shares to the public, it instead sold the shares "short" to the public. The

court concluded that the shares sold "short" to the public had not been issued and were not outstanding. Therefore, the transactional exemption provided by R.C. 1707.03(M) was not available. Nancy Chiles, et al. v. M.C. Capital Corp., et al., No. 93-03781-PR (Ct. of Claims Sept. 21, 1993).

M.C. Capital appealed to the Tenth District Court of Appeals, which affirmed the decision of the Court of Claims in a written opinion rendered May 31, 1994. Nancy Chiles, Director Ohio Department of Commerce and Mark V. Holderman, Commissioner Ohio Division of Securities v. M.C. Capital Corp. and Wayne Meadows, No. 93API09-1317 (10th Dist. Ct. App. May 31, 1994).

## **Criminal Actions**

### **William Sahley**

On May 12, 1994, William Sahley of Richmond Heights, Ohio, was sentenced by Cuyahoga County Common Pleas Court Judge McMonagle to twelve months incarceration at the London Correctional facility.

Sahley, the founder and operator of five corporations including Supermaterials Manufacturing, Inc., Ceramics Corporation of America and Ceramics Tech, allegedly falsified financial data and credentials in the offering documents distributed to Ohio investors in order to sell stock in the companies.

On November 1, 1993, Sahley had been indicted by a Cuyahoga County Grand Jury on ten counts each of selling unregistered securities, selling securities without a license, making material misrepresentations in the sale of securities, securities fraud and theft.

Mary Spahia-Carducci, Enforcement Staff Attorney, assisted in the preparation of this case for referral.

### **Paul R. Schmidt**

On February 2, 1994, Paul R. Schmidt of Palm Beach Gardens, Florida, was indicted by a Cuyahoga County Grand Jury on one count of selling unregistered securities, one count of selling securities without a license, one count of making misrepresentations in the sale of securities, and one count of securities fraud. Schmidt sold a \$15,000 promissory note issued by his company, Kaizen, Inc. to an Ohio resident. An examination of Kaizen, Inc., determined that it was a mail drop located in Florida.

Mary Spahia-Carducci, Enforcement Staff Attorney, assisted in the preparation of this case for referral.

### **Herman Weigand**

On January 19, 1994, Herman Weigand of Dover, Ohio, was found guilty by a Tuscarawas County jury of sixteen counts of grand theft, one count of theft, one count of securities fraud, one count of selling unregistered securities and one count of selling securities without a license. Weigand was acquitted of one count of grand theft.

Weigand, former president and treasurer of WWES Inc. of New Philadelphia, Ohio, raised nearly \$300,000 through the unlicensed sale of unregistered securities for WWES Inc. between 1987 and 1990. Weigand filed for bankruptcy in 1990 and was released from paying back over \$500,000 in debts to individuals, banks and credit cards.

On April 12, 1994, Tuscarawas County Common Pleas Judge O'Farrell suspended twelve consecutive twelve month definite terms of imprisonment and Weigand was ordered to five years of formal, supervised probation. The following special terms and conditions of probation were imposed on the Weigand: payment of restitution to the victims of theft over the life of the five year probationary period, the total resti-

tution is \$222,800; payment of \$2,000 in fines; payment of court costs; and, performance of 250 hours of community service.

Mary Spahia-Carducci, Enforcement Staff Attorney, assisted in the preparation of this case for referral.

### **Stephen T. Strabala**

On April 7, 1994, Stephen T. Strabala of Salem, Ohio, was indicted on sixty-one felony counts by a special Columbiana County grand jury. Strabala is the son of the former Columbiana County Treasurer Ardel Strabala, who invested the county's funds through Stephen while his son was unlicensed as an Ohio securities salesman. Stephen Strabala allegedly invested the funds in stocks, stock options and diverted funds to his own use, and falsely represented that the funds would be invested in certificates of deposit and U.S. Treasury notes. Over \$6.7 million was lost, and another \$3 million was located and frozen at brokerage firms.

This indictment included seventeen counts each of securities fraud and making false representations in the sale of securities, sixteen counts of unlicensed sales of securities, two counts of making false records of securities transactions, two counts of aggravated theft and seven counts of theft. Ardel Strabala has pled guilty to one count of having an unlawful interest in a public contract and is serving an 18-month prison sentence.

Karen Terhune, Enforcement Section Assistant Manager, assisted in the preparation of this case for referral.

### **Editor's Note:**

This Issue of the *Ohio Securities Bulletin*, 94:2, follows *Bulletin* Issue 94:1. *Bulletin* Issue 94:1 was published for the quarter ending March 31, 1994.

If you did not receive *Bulletin* Issue 94:1 and would like a copy, please contact the Division.

# PUBLIC NOTICE

## Proposed Changes to the Administrative Rules of the Ohio Division of Securities

At 10:00 a.m. on xx xx, 1994 the Ohio Division of Securities will hold a hearing regarding proposed changes to rules of the Division. The hearing will be held in the offices of the Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43215.

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

**O.A.C. Rule 1301:6-1-05 will be amended to specify the days and times when the offices of the Division shall be open.**

**O.A.C. Rule 1301:6-3-01 will be amended to clarify the definitions of the following terms: Retail Securities Customer, revenues, and affiliation.**

**O.A.C. Rule 1301:6-3-02 will be amended to remove references to the requirement for filing a**

**form with the Division of Securities in conjunction with a claim of exemption under R.C. 1707.02(B).**

**O.A.C. Rule 1301:6-3-03 will be amended to remove references to the requirement for filing a form with the Division of Securities in conjunction with a claim of exemption under R.C. 1707.03(O).**

**O.A.C. Rule 1301:6-3-14 will be amended to change the title of the rule, to specify the basis upon which the Division of Securities will grant an exemption from the requirement of S. E. C. registration for dealers of securities, and to specify the time when the revenues and retail securities customers will be established.**

**O.A.C. Rule 1301:6-3-15 will be amended to specify additional**

**requirements in paragraph F of the rule regarding records required to be maintained by a dealer of securities.**

**O.A.C. Rule 1301:6-3-19 will be amended to incorporate provisions regarding the violation of specific federal law standards arising out of sections 15c and 15g of the Securities Exchange Act of 1934.**

**O.A.C. Rule 1301:6-3-391 will be amended to update references to the requirement for filing a form with the Division of Securities in conjunction with a claim of exemption under R.C. 1707.03(O).**

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

## Legislation

*Continued from page 1*

which revises the licensing, exemption and registration provisions of the Securities Act. House Bill 488 will be effective on September XX, 1994.

House Bill 488 amends the licensing provisions of the Securities Act by redefining the term "dealer," and requiring that Ohio dealers meeting certain revenue and customer minimums register with the SEC. The Bill also establishes criminal penalties under Ohio law for violating sections 15c and 15g of the federal Securities Exchange Act of 1934 or of the rules adopted under those sections.

In addition, House Bill 488 dramatically revises the securities exemption provisions of the Securities Act by eliminating the need for fil-

ing Form 02(B) or Form 03(O), and for paying a fee in connection with a claim of exemption under R.C. 1707.02(B) or 1707.03(O). The terms of those exemptions will not otherwise be changed.

The legislation also modifies the registration provisions of the Securities Act. The availability of registration by description under R.C. 1707.06(A)(1) will be greatly expanded: legal, accounting and printing fees will not be included in the three percent limitation on expenses for registration under Form 6(A)(1). The bill also puts an end to the requirement that three copies of prospectuses be filed with applications for registration by coordination under R.C. 1707.091.

Finally, House Bill 488 repeals the Bond Investment Company Act, Revised Code Chapter 3949, and the reference to Bond Investment Companies in R.C. 1707.37.

In its original form, including only the dealer registration provisions, House Bill 488 was introduced in the Ohio General Assembly by Representative Michael V. Verich on September 22, 1993. In February of 1994, House Bill 488 was merged with House Bill 569, dealing with the registration, exemption and Bond Investment Company issues. House Bill 569 had been introduced by Representative Robert L. Schuler on November 29, 1993.

*William E. Leber, Esq., is Counsel to the Commissioner of Securities.*

# 1994 OHIO SECURITIES CONFERENCE

November 7th and 8th, 1994

Columbus Marriott North

6500 Doubletree Ave

Columbus, Ohio 43229

## Conference Seminar

Monday, November 7, 1994, 8 am to 6 pm

### Topics

Asset-Backed Securities Offerings

Limited Liability Companies

Sale of Securities by Financial Institutions(Luncheon Speaker)

Securities Law Aspects of Bankruptcy and Reorganization

MD&A and Soft Disclosure Issues

Recent Developments at the Division

## Advisory Committee Meetings

Tuesday, November 8, 1994, 8am to 2 pm

(Includes complimentary buffet breakfast for Conference Seminar Attendees)

Enrollment Fee is \$125.00 per person in advance (\$150 at the door) and includes all activities and the Conference Seminar manual.

### 1994 OHIO SECURITIES CONFERENCE ENROLLMENT FORM

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

Firm/Organization: \_\_\_\_\_

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

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

Telephone: \_\_\_\_\_ Amount Enclosed: \_\_\_\_\_

Choice of Seminar Luncheon Entree: Beef  Chicken

Do you plan to attend an Advisory Committee Meeting? Yes  No

If "yes", which Advisory Committee? \_\_\_\_\_

Do you wish to attend only an Advisory Committee Meeting? Yes  No

If "yes", which Advisory Committee? \_\_\_\_\_

Note: You need not attend the Conference Seminar in order to attend an Advisory Committee meeting. There is no charge to attend only an Advisory Committee meeting. However, if you wish to attend only an Advisory Committee meeting and enjoy the full buffet breakfast before the meeting, please check here  and enclose \$8.00 per person for the breakfast.

For special accommodations, please contact Rich Pautsch at (614) 752-9448 before October 24, 1994.

Make checks payable to: "Ohio Securities Conference Committee, Inc." Send Enrollment Form and Payment to: Rich Pautsch, Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43266-0548. Enrollment Deadline is October 31, 1994.

## Registration Statistics

The table to the right sets out the number of registration filings received by the Division during the second quarter of 1994, compared to the number received during the second quarter of 1993, as well as the number of registration filings received by the Division in 1994 year to date, compared to the number received in 1993 year to date.

Form Type	Q1 94	Q1 93	YTD 94	YTD 93
.02(B)	279	311	279	311
.03(O)	3,504	3,266	3,504	3,266
.03(Q)	441	336	441	336
.03(W)	28	29	28	29
.04	1	0	1	0
.041	0	2	0	2
.06(A)(1)	36	45	36	45
.06(A)(2)	11	14	11	14
.06(A)(3)	4	7	4	7
.06(A)(4)	13	12	13	12
.09	159	139	159	139
.091	844	799	844	799
.39	35	22	35	22
.391/.09	2	0	2	0
.391/.091	4	1	4	1
.391/.03(O)	255	187	255	187
.391/.03(Q)	59	33	59	33
.391/.03(W)	2	1	2	1
.391/.06(A)(1)	0	0	0	0
.391/.06(A)(2)	0	0	0	0
.391/.06(A)(3)	0	0	0	0
.391/.06(A)(4)	0	0	0	0

## Licensing Statistics

The table below sets out the number of Salesmen and Broker/Dealers licensed by the Division at the end of the third and fourth quarters of 1993, compared to the same quarters of 1992, as well as the number of Salesmen and Broker/Dealers licensed by the Division at the end of the first and second quarters of 1994, compared to the same quarters of 1993.

	End of Q3 1993	End of Q3 1992	End of Q4 1993	End of Q4 1992	End of Q1 1994	End of Q1 1993	End of Q2 1994	End of Q2 1993
Number of Salesmen Licensed:	62,345	59,449	64,589	56,212	65,991	56,200	70,200	59,570
Number of Broker/Dealers Licensed:	1,812	1,640	1,800	1,573	1,778	1,678	1,842	1,750

## **R.C. 1707.12**

*Continued from page 5*

Form to a complainant after a complainant had made an unsolicited telephone call to the Division). The Division's correspondence to the complainant in connection with a Complaint Form stated "your complaint will be held in confidence except in those situations where your identification will facilitate an early resolution of your complaint." Consequently, since confidentiality was reasonably promised, such solicited complaints were protected for the same reasons as the second category of items, the documents obtained from witnesses, since the complaint letters constituted confidential law enforcement investigatory records under R.C. 1707.12(E)(1)(a)-(c) as well as trial preparation records under R.C. 1707.12(E)(2). In contrast, unso-

lited complaints were those written complaints that the Division received without any prior correspondence with the complainant. Although there was no promise of confidentiality in connection with these complaints, they were still protected from disclosure under R.C. 1707.12(E)(1)(a), because release of such documents would identify suspects then under investigation but not yet charged, and R.C. 1707.12(E)(2), because such documents were compiled in reasonable anticipation of litigation.

Fifth, the broker/dealer examinations conducted by the Division not only identified suspects not yet charged but also evidenced specific confidential investigatory techniques and work product, and were therefore protected under R.C. 1707.12(E)(1)(a) and (c). Since examinations serve as key building blocks in an enforce-

ment action, the examinations were also protected by R.C. 1707.12(E)(2).

Similarly, Division correspondence with a law firm was confidential law enforcement investigatory records under R.C. 1707.12(E)(1)(a) and (c) as well as trial preparation records under R.C. 1707.12(E)(2).

Robert A. Zimmerman, Esq., is an Assistant Attorney General for the state of Ohio. He represented the Division of Securities in the Dublin Securities case before the Franklin County Court of Appeals and the Ohio Supreme Court. He graduated with honors from The Ohio State University and also received his law degree from The Ohio State University College of Law. He is currently with the Attorney General's employment law section.

# OHIO SECURITIES BULLETIN

Ohio Division of Securities  
77 South High Street  
22nd Floor  
Columbus, Ohio 43266-0548

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