Ohio Securities Bulletin

A Quarterly Publication of the Ohio Division of Securities

George V. Voinovich
Governor of Ohio

Donna Owens
Director of Commerce

Thomas E. Geyer
Commissioner of Securities

The Redoubtable Ohio Control Share Acquisition Act

Statute Upheld in Recent Federal Court Decision

by Thomas E. Geyer, Esq.

On July 30, 1996, Judge James L. Graham of the federal District Court for the Southern District of Ohio upheld the Ohio Control Share Acquisition Act (the "OCSAA") in litigation filed by United Dominion Industries Limited in connection with its takeover bid for Youngstown-based Commercial Intertech Corp. [1] This decision came on the heels of Judge Graham's ruling in March 1995 in *Luxottica Group S.p.A. v. The United States Shoe Corporation*[2] that the OCSAA was preempted by the federal Williams Act, [3] and his suggestion in an order issued in July 1996 in *Danaher Corporation v. Acme-Cleveland Corporation*[4] that the Ohio General Assembly should consider amending the OCSAA to resolve "serious issues relating to the interpretation of certain provisions of the [OCSAA]."[5] Despite these prior rulings, Judge Graham refused to declare the OCSAA unconstitutional and further refused to grant an injunction against its operation in the *United Dominion* case. Instead, Judge Graham recognized the procedure that the target company, Commercial Intertech, had put in place to comply with the OCSAA and noted from the bench the "the procedure presented here . . . is sufficiently fair." Consequently, it appears that future litigation under the OCSAA will turn on the facts of the particular case, rather than the constitutionality *vel non* of the OCSAA.

Before discussing the recent litigation involving the OCSAA, this

Continued on page 2

The Securities Investor Protection Act

by Troy Grigsby, Esq.

History And Basic Concepts Of SIPA

During the late 1960's, the securities industry found itself in a period of crisis. Serious and persistent financial problems caused the voluntary liquidations, mergers, receiverships, or bankruptcies of numerous broker-dealers. Small investors lost confidence in the capital markets, creating a significant threat to the viability of those markets. At the time, the existing legal remedies available to customers of the failed broker-dealers were found under section 60e of the former Bankruptcy Act, 11 U.S.C. §96(e) (Repealed 1979). However, these remedies proved to be insufficient to meet the problems of the period. Trust funds, such as those created by the New York Stock Exchange and other exchanges, provided some, but not enough, protection to customers whose funds were held by some brokers. Customer exposure to investment loss mounted when the rate of broker-dealer failures accelerated in 1969 and 1970. Congress responded in 1970 by enacting the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa

Continued on page 8

OHIO
DEPARTMENT OF
COMMERCE
DIVISION OF
SECURITIES

Ohio Securities Bulletin

Issue 96:3

Table of Contents

Share Acquisition Act

Continued from page 1

article will first note the general purposes and requirements of the OCSAA. Next, the initial constitutional challenges to the OCSAA will be described. Then, this article will discuss the trilogy of recent challenges to the OCSAA, focusing primarily on the most recent case, *United Dominion*.

Enacted in 1982, the OCSAA consists of substantive provisions set out in R.C. 1701.831 and unique "legislative findings" set out in R.C. 1701.832. The OCSAA is not a part of the Ohio Securities Act, R.C. Chapter 1707, but rather is part of Ohio General Corporation Law, R.C. Chapter 1701. Nonetheless, the OCSAA is often implicated in change in control efforts regulated by the Division of Securities pursuant to the Ohio Control Bid Statute, R.C. 1707.041 *et seq*. because the OCSAA's jurisdictional predicate of "issuing public company," defined in 1701.01(Y),[6] is similar to the Ohio Control Bid Statute's jurisdictional predicate of "subject company" defined in R.C. 1707.01(Y).[7]

The general purpose of the OCSAA is to ensure that those who hold shares in a corporation before a takeover bid is announced have a sufficient opportunity to both consider and vote upon the proposal. R.C. 1701.832 recognizes that takeovers impact the fundamental corporate control and corporate affairs issues upon which shareholders have the right to vote under Ohio corporate law.[8] The statute also notes the coercive nature and time constraints of takeovers effected through tender offers.[9] These factors compel special procedures to ensure that shareholders are afforded the rights provided to them by Ohio corporate law. Consequently, in enacting the OCSAA, the Ohio General Assembly believed:

> that it is in the public interest for Ohio securities law to provide evenhanded protection of offerors and shareholders from fraudulent and manipulative transactions arising in connection with control acquisitions.[10]

Unless an issuing public corporation has opted out of the protection of the OCSAA, the statute provides that any "control share acquisition," as defined in R.C. 1701.01(Z), of an issuing public corporation shall be made only with the prior authorization of the shareholders of such corporation in accordance with R.C. 1701.831.[11]

Functionally, the OCSAA sets out three requirements: (i) a potential acquiror must deliver to the principal executive offices of the issuing public corporation an "acquiring person statement" that sets forth certain minimum information about the acquiror and the proposed acquisition;[12] (ii) within ten days after receipt of an acquiring person statement, the directors of the issuing public corporation must call a special meeting of shareholders for the purpose of voting on the proposed control share acquisition (the "831 meeting");[13] and (iii) special quorum and voting standards are imposed at the 831 meeting. The concept of "interested shares," defined in R.C. 1701.01(CC),[14] is used to set the special quorum and voting standards. While the purpose of the interested shares notion is to disqualify shares acquired after the announcement of a control shares acquisition from the special quorum and voting standards, as a practical matter the interested shares definition has been the Achilles Heel of the OCSAA.

Professor Howard Friedman has noted that, "[i]nitial tests of the constitutionality of [the OCSAA] in the lower courts suggested that it would not survive constitutional scrutiny."[15] Indeed, in June 1986, in *Fleet Aerospace Corporation v. Holderman*,[16] Judge John D. Holschuh of the federal District Court for the Southern District of Ohio held that the OCSAA was unconstitutional on both supremacy clause (preemption) and commerce clause grounds. Specifically, Judge Holschuh found three flaws with the OCSAA: (i) it delayed the pur-

OHIO SECURITIES BULLETIN

Desirée T. Shannon, Esq., Editor

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.

Ohio Division of Securities

77 South High Street, 22nd Floor • Columbus, Ohio 43215

http://www.securities.state.oh.us

All listings are area code (614)

Receptionist 644-7381	Enforcement 466-6140
Broker-Dealer 466-3466	Examination......... 644-7467
Records........................ 466-3001	Registration.......... 466-3440

chase of tendered shares beyond the time frame permitted under the Williams Act; (ii) it undermined the Williams Act's policy of evenhandedness between acquiring companies and target companies by creating a period of delay during which incumbent management could strengthen its defense; and (iii) it altered the Williams Act's focus on informed individual decision making to a collective decision making process.[17]

Two weeks after the *Fleet Aerospace* decision was filed, it was affirmed by the Sixth Circuit Court of Appeals.[18] However, in April 1987, the United States Supreme Court reversed and remanded the case[19] for further consideration in light of the Supreme Court's decision in *CTS Corp. v. Dynamics Corp. of America*.[20] In *CTS*, the Supreme Court upheld the Indiana control share acquisition statute, rejecting both supremacy clause and commerce clause argument.

The *CTS*, the Supreme Court first noted that the Indiana statute in question differed in major respects from the Illinois control share acquisition statute that it had struck down in 1982 in *Edgar v. MITE Corp.*,[21] the landmark case limiting state regulation of interstate takeovers.[22] Specifically, the *CTS* court rejected the supremacy clause argument, finding that the maximum delay period of fifty days imposed by the Indiana statute (the same maximum delay period imposed by the OCSAA), was reasonable.[23] The court also rejected the commerce clause claim, noting that the statute applied only to corporations incorporated under Indiana law and recognizing the state's strong and legitimate interest in protecting shareholders of its domestic corporation.[24]

Upon remand of the *Fleet Aerospace* case to the Sixth Circuit, in June 1988 the appellate court in turn remanded the case to the District Court.[25] During the litigation, the tender offer had been completed and the target company had been merged into a subsidiary of Fleet Aerospace. On October 31, 1988, the District Court issued a consent order dismissing the case with prejudice. The order reflected the agreement of the parties that the District Courts' injunction should be dissolved and the declaratory judgment regarding the unconstitutionality of the OCSAA should no longer be maintained in effect.[26]

In addition to the Fleet Aerospace litigation, two other Ohio federal court decisions upheld the OCSAA against preemption and commerce clause challenges: *Ceic Holding Co. v. Cincinnati Equitable Insurance Co.*[27] and *Veere, Inc. v. Firestone Tire & Rubber Co.*[28]

Whether because of, in spite of, or without regard to, these rulings of constitutionality, in 1990, the Ohio General Assembly amended the OCSAA. Specifically, the legislature added a new section, R.C. 1701.01(CC)(2),[29] to create a new additional class of interested shares. The new section disqualified (from the special quorum and voting requirements) any shares acquired during the period beginning with the date of the first public disclosure of the proposed acquisition and ending on the date of the 831 meeting if the aggregate consideration paid for such shares exceed $250,000 or the number of shares acquired exceeded one-half of one percent of the outstanding shares of the corporation entitled to vote in the election of directors. The new provision was apparently intended to disqualify shares purchased by arbitrageurs because it was thought that arbitrageurs would usually align themselves with the offeror in voting to approve the acquisition.[30] However, it was this new provision that the litigants attacked in the recent trilogy of challenges to the OCSAA.

The first recent challenge arose in March 1995 when Luxottica Group commenced a cash tender offer for shares of Cincinnati-based U.S. Shoe. In connection with the takeover, Luxottica filed suit in the federal District Court for the Southern District of Ohio seeking a preliminary and permanent injunction against the application of R.C. 1701.01(CC)(2) at the 831 meeting. Luxottica claimed that R.C. 1701.01(CC)(2) was preempted by the federal Williams Act.

In examining the challenge, the court first reviewed the touchstone United States Supreme Court cases addressing state regulation of takeovers, *MITE*[31] and *CTS*.[32] The *Luxottica* court noted that the Illinois statute struck down in *MITE* imposed an unreasonable delay in the consummation of tender offers, in conflict with the William Act. However, the *Luxottica* court then recognized that in upholding the Indiana statute at issue in *CTS*, the Supreme Court stated:

> Nothing in *MITE* suggested that any delay imposed by state regulation, however short, would create a conflict with the Williams Act. The plurality argued only that the offeror should "be free to go forward without unreasonable delay."[33]

Considering the parameters set out in *MITE* and *CTS*, the *Luxottica* court held:

> This court concludes that unlike the Indiana statute under consideration in *CTS Corp.*, §1701.01 (CC)(2) of the Ohio Act imposes an unreasonable delay beyond the sixty day period established for the reinstitution of withdrawal rights under the Williams Act and that accordingly this provision of the Ohio law is preempted by the Williams Act.[34]

The *Luxottica* court continued:

Continued on page 4

Share Acquisition Act

Continued from page 3

> The court reaches this conclusion because it believes that there are two significant flaws in § 1701.01(CC)(2) which result in unreasonable delay. The first flaw is the definition of disqualification in terms of shares as opposed to persons. The second flaw is the provision ending the period for determining disqualification on the date of the 831 meeting instead of the record date for that meeting.[35]

The court explained the first flaw by noting that since the disqualification is determined in terms of shares and not persons, the information needed to make this determination would not be available to the inspector of election because over half of the U.S. Shoe shareholders held their shares in "street name." Consequently, neither U.S. Shoe nor the inspector of election could gather information regarding the beneficial owners and the shares held thereby, including purchase price and date, necessary to determine disqualification.

The court described the second flaw, continuing the disqualification period until the date of the 831 meeting, as rendering meaningless the record date for the 831 meaning since share transactions occurring after the record date would be considered for disqualification purposes. The court noted that the undisputed testimony in the case indicated that it would take at least four weeks after the date of the 831 meeting to solicit the shareholders who appeared at the 831 meeting (in person or by proxy) to obtain the information necessary to determine disqualification under R.C. 1701.01(CC)(2). And, even once obtained, such information in many instances would be incapable of verification by the inspector of election. Consequently, the *Luxottica* court found:

> that it would be impossible to comply with § 1701.01(CC)(2) within the sixty day period for reinstituting withdrawal rights under the Williams Act and that compliance with this particular provision of the [OCSAA] would frustrate the Congressional purpose of preventing undue delay in the consummation of a tender offer.[36]

In concluding its opinion, the *Luxottica* court offered remarks that appeared to be dicta at the time, but in fact take on significance when the *Luxottica* decision is reviewed in light of the *United Dominion* decision. The remarks centered around U.S. Shoes' contention that the challenge to R.C. 1701.01(CC)(2) was not ripe for judicial review because it may have been possible for U.S. Shoe to comply with the provision without incurring undue delay. The court rejected this argument, noting that : "Uncertainty about the ground rules for the 831 meeting . . . in itself is likely to cause irreparable injury to [Luxottica] in [its] attempt to consummate [the] tender offer.[37]

But before analyzing the *United Dominion* opinion, a discussion of the *Danaher Corporation v. Acme-Cleveland Corporation* case is in order. The *Danaher* case arose in March 1996 in connection with Danaher Corporation's tender offer for shares of Cleveland-based Acme-Cleveland Corporation. Like Luxottica, Danaher sought an injunction against the application of R.C. 1701.01(CC)(2). In fact, Danaher argued that the issue was controlled by the *Luxottica* decision.

However, the *Danaher* litigation became moot on June 3, 1996, when Danaher and Acme-Cleveland reached an agreement on Danaher's acquisition. Upon reaching the agreement, Danaher and Acme-Cleveland moved the court to dismiss the lawsuit. The state of Ohio, which had also been named as a defendant, filed a motion to impose appropriate terms and conditions on the dismissal, specifically asking the court to rule on the constitutionality of the OCSAA.

Judge Graham granted the motion to dismiss, but declined to rule on the constitutionality of the OCSAA. In a written order dated July 1, 1996, he noted that the parties sought dismissal of the proceeding before the hearing on the constitutionality of the OCSAA was completed, leading him to state that "[i]t would not be appropriate for the court to make a final determination of that issue on an incomplete record."[38]

However, Judge Graham concluded his order with the following commentary:

> This court's decision in *Luxottica Group S.p.A. v. The United States Shoe Corporation*, 919 F.Supp. 1085 (S.D. Ohio 1995), as well as the arguments raised in this case and the court's rulings during the aborted preliminary injunction hearing show that there are serious issues relating to the interpretation of certain provisions of Ohio Revised Code § 1701.01(CC)(2). The state should consider amending the statute to resolve the resulting confusion.[39]

Before the state had the opportunity to consider amending the statute pursuant to Judge Graham's admonition, United Dominion filed its complaint on July 12, 1996. The lawsuit, captioned *United Dominion Industries Limited v. Commercial Intertech Corp*, was filed in connection with United Dominion's tender offer for shares of Youngstown-based Commercial Intertech. Like Luxottica and Danaher, United

Dominion sought an injunction against the operation of R.C. 1701.01(CC)(2).

A two day hearing was held before Judge Graham on July 29 and 30, 1996. United Dominion argued that the case was controlled by the *Luxottica* decision, that R.C. 1701.01(CC)(2) was unconstitutional and that the operation of the statute should be enjoined. Commercial Intertech argued that it had developed unique procedures that would allow it to comply with R.C. 1701.01(CC)(2) within the time frame permitted under the Williams Act. Specifically, Commercial Intertech proposed to use self-certifying proxies, presented evidence regarding certain presumptions to be used in connection with the voting at the 831 meeting and claimed that quorum and voting totals could be determined within ten days of the 831 meeting. Thus, unlike U.S. Shoe, Commercial Intertech had already laid certain ground rules for the 831 meeting.

At the conclusion of the hearing, Judge Graham delivered an opinion from the bench denying the motion for injunction. The subsequent written opinion describes the conclusion of the hearing as follows:

> At the hearing on [United Dominion's] motion for preliminary injunction, [Commercial Intertech] presented evidence in support of its proposed election procedures which was sufficiently convincing to persuade the court to deny the relief requested. Noting that "the court's power to declare a state statute unconstitutional is one which should be resorted to sparingly, and the party who asserts that a state statute is unconstitutional under the Supremacy Clause bears a heavy burden, the court denied plaintiff's motion.[40]

On August 5, 1996, perhaps because of this ruling and perhaps because of certain defensive tactics employed by Commercial Intertech, United Dominion withdrew the tender offer. Accordingly, counsel for *United Dominion* announced their desire to terminate the litigation challenging the OCSAA. Commercial Intertech and the state urged the court to nonetheless issue a decision on the constitutionality of R.C. 1701.01(CC)(2). The court chose to "take the occasion to express its current conviction on the interpretation and constitutionality of 1701.01(CC)(2) and the election procedures proposed by [Commercial Intertech]."[41] Those convictions are set out in a written opinion issued September 13, 1996.

In the written opinion, Judge Graham reexamined the alleged constitutional infirmities of R. C. 1701.01(CC)(2). First he addressed the "once tainted, always tainted" problem. That phrase describes the literal interpretation of the statute that once a share become "interested," it remains interested regardless of who owns the share. This interpretation had been adopted by the *Luxottic*a court, but in *United Dominion*, Judge Graham noted that "[t]he court in *Luxottica* did not pursue whether other permissible interpretations of the statute might resolve the once tainted, always tainted problem."[42] Thus, in *United Dominion*, Judge Graham recognized that in *Danaher* the court did reconsider the once tainted, always tainted interpretation. Specifically, at the *Danaher* hearing, Judge Graham commented:

> . . . I believe that a fair reading of the statute leads to the conclusion that any shares, and again its my belief that the General Assembly was focusing on shares, not individuals, but they're measuring the disqualification of the shares in terms of the attributes of an individual who holds them at the time of the 831 meeting; and if that individual acquired more than $250,000 worth of shares from the time of the public announcement until the time of the 831 meeting, those shares are disqualified.[43]

The *United Dominion* opinion states that "the court continues to believe that this is the correct interpretation of the statute."[44] When combined with the fact that the period of disqualification runs through the date of the 831 meeting (not the record date for such meeting) this interpretation requires an evaluation of the status of the shares as of the date of the 831 meeting, first for the purpose of voting, and second for determining the existence of a quorum. Also, shares that were disinterested on the record date for the 831 meeting may be rendered interested if the holder acquires additional shares after the record date. In summary, the *United Dominion* court commented:

> in order to determine whether shares are interested or not in the hands of some owner, one must look back from the time of the 831 meeting and determine whether that owner has purchased, in the defining period, shares in excess of either of the defining maximums. If the owner sells his shares, then § 1701.01(CC)(2) must be separately applied to any new owner or owners.[45]

As a practical matter, the court noted that in order to determine whether shares purchased during the defining period are interested, an inspector of election need simply determine whether a shareholder's total ownership of shares at any time in the defining period exceeded

Continued on page 6

Share Acquisition Act

Continued from page 5

$250,000 in purchase costs or one-half of a percent of the outstanding shares of the corporation entitled to vote in the election of directors. Thus, the court concluded, with respect to the self-certifying proxies proposed by Commercial Intertech, "that what shareholders are being asked to certify on information seeking proxies can be specified in a relatively straightforward way."[46]

Having reiterated the constitutional interpretation of R.C. 1701.01(CC)(2) to avoid the once tainted, always tainted problem, the *United Dominion* opinion next explored the second problem identified in *Luxottica*, the problem of obtaining the information necessary to determine the interested status of shares for purposes of the 831 meeting. Recall that in the *Luxottica* case, evidence indicated that it would take at least four weeks after the 831 meeting to compile the information. This delay pushed the Luxottica tender offer outside the time frame permitted under the Williams Act and caused R.C. 1701.01(CC)(2) to be preempted. However, in the *United Dominion* case, Commercial Intertech proposed certain procedures such that the pertinent information could be finalized within ten days of the 831 meeting. Undoubtedly aware of the dicta of the *Luxottica* opinion discussed earlier, Commercial Intertech sought to set the ground rules for the 831 with certainty and sought to insure that those ground rules would operate within the time permitted by the Williams Act.

First, Commercial Intertech proposed to use information seeking proxies where beneficial owners were asked to certify the status of their shares as "interested" or "disinterested" by indicating whether they purchased more than $250,000 of the shares after announcement of the tender offer.[47] The beneficial owners were also asked to agree to update their certification should they purchase or sell shares after they complete and return their proxy forms. The court, while recognizing that no information-seeking proxies of this precise sort had ever been employed, upheld the validity of such proxies, specifically rejecting challenges under R.C. 1701.48.

Second, Commercial Intertech proposed to use certain presumptions in connection with the 831 meeting. For example, Commercial Intertech established a presumption that all of the interested shares would be present at the 831 meeting. United Dominion claimed that having the presumptions originate with Commercial Intertech, rather than the inspector of election, violated standard election and voting practice and was not authorized by Ohio corporation law. The court rejected this claim, finding that the procedure was not prohibited by the Ohio corporate laws section governing inspectors of election, R.C. 1701.50.

Within the general structure of certain proxies and presumptions, United Dominion raised a number of additional objections. United Dominion claimed that the self-certifying proxy procedures violated SEC rules because beneficial owners were required to disclose information that they are entitled to keep confidential. The court rejected this claim noting that no confidential information would make its way back to Commercial Intertech or the inspector of election.[48] United Dominion also objected to Commercial Intertech's proposed method to verify the voting results, which involved a private service using a sophisticated "nominee identification" system. United Dominion argued that the system was unreliable and that the system went so far beyond traditional election methods as to render it illegal. The court rejected both claims on the grounds that United Dominion had not presented sufficient evidence to demonstrate unreliability or illegality.

Finally, United Dominion objected to the presumption that all interested shares would be present at the 831 meeting, which essentially set the required size of the second quorum. The court did find merit with this contention. However, the court ultimately rejected the argument, stating:

> in order to prevail, it is not enough that [United Dominion] show that the specific presumption that [Commercial Intertech] proposes would violate the requirement of fairness imposed by § 1701.50(C) and because of this, frustrate the purposes of the Williams Act. It must also be shown that no presumption or procedures concerning the interested status of nonvoting shares are possible in the instant case that will not subject shareholders to the unreasonable and uncertain risk of disenfranchisement and quorum manipulation.[49]

In conclusion, the *United Dominion* court found:

> . . . that [United Dominion has] not shown that [it is] likely to succeed in [its] preemption claim. Unlike *Luxottica*, the court in the instant case is unable to find that the procedures necessary to determine the existence of a second quorum and the result of the second vote would require delay in the consummation of a tender offer well beyond the parameters set by the Williams Act.[50]

The simple analysis of the *United Dominion* case is that R.C. 1701.01(CC)(2) will not be enjoined if the target corporation can demonstrate the existence of reasonable procedures that will permit the statute to operate within the timeframe established by the Williams Act.

Commercial Intertech established a template for such procedures. Consequently, it appears that future challenges to R.C. 1701.01(CC)(2) will turn on the facts of each particular case rather than constitutional challenges. More importantly, the OCSAA will remain a formidable consideration to companies that attempt hostile takeover bids for corporations with significant ties to Ohio.

Mr. Geyer is the Commissioner of Securities.

Endnotes

[1] United Dominion Industries Limited v. Commercial Intertech Corp., No C2-96-672 (S.D. Ohio July 30, 1996) (ordering denying preliminary and permanent injunction). Judge Graham subsequently issued a written opinion and order on September 13, 1996.

[2] 919 F. Supp. 1085 (S.D. Ohio 1995).

[3] 15 U.S.C. 78n (§ 14 of the Securities and Exchange Act of 1934).

[4] No. C2-96-0247 (S.D. Ohio July 1, 1996).

[5] *Id.*, slip op. at 2.

[6] 1701.01(Y): "Issuing public corporation" means a domestic corporation with fifty or more shareholders that has its principal place of business, its principal executive offices, assets having substantial value, or a substantial percentage of its assets within this state, and as to which no valid close corporation agreement exists under division (H) of section 1701.591 of the Revised Code.

[7] 1707.01(Y): (1) "Subject company" means an issuer that satisfies both of the following:

(a) Its principal place of business or its principal executive office is located in this state, or it owns or controls assets located within this state that have a fair market value of at least one million dollars;

(b) More than ten per cent of its beneficial or record equity security holders are resident in this state, more than ten per cent of its equity securities are owned beneficially or of record by residents in this state, or more than one thousand of its beneficial or record equity security holders are resident in this state.

(2) The division of securities may adopt rules to establish more specific application of the provisions set forth in division (Y)(1) of this section. Notwithstanding the provisions set forth in division (Y)(1) of this section and any rules adopted under this division, the division, by rule or in an adjudicatory proceeding, may make a determination that an issuer does not constitute a "subject company" under division (Y)(1) of this section if appropriate review of control bids involving the issuer is to be made by any regulatory authority of another jurisdiction.

[8] R.C. 1701.832 (A)(3).

[9] *Id.*

[10] R.C. 1701.831(A)(4). Note that despite the reference to "Ohio securities laws," the OCSAA is contained in the general corporation law. R.C. 1701.832(A)(5) explains this by stating:

> Initial state efforts to deal with tender offer developments have been questioned by the federal courts. The general assembly observes that responsibility for general corporate laws is the function of state legislation and that no federal law of corporation exists. The general assembly observes that securities law protection of state residents has long been recognized as an appropriate subject of state law regulation under the federal system. The general assembly acknowledges an in loco parentis responsibility to shareholders who invest in corporations created under the laws of Ohio and to sharesholders generally who reside in Ohio.

[11] R.C. 1701.831(A).

[12] R.C. 1701.831(B).

[13] R.C. 1701.831(C). Unless the acquiror agrees in writing to another date, such special meeting must be held within fifty days of receipt of the acquiring person statement. The acquiring person statement may request that such special meeting be held no sooner than thirty days after receipt.

[14] 1701.01 (CC): "Interested shares" means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise of the voting power of the corporation in the election of directors.

(a) An acquiring person;

(b) Any officer of the issuing public corporation elected or appointed by the director of the issuing public corporation;

(c) Any employee of the issuing public corporation who is also a director of such corporation.

(2) "Interested shares" also means any shares of an issuing public corporation acquired, directly or indirectly, by any person from the holder or holders thereof for a valuable consideration during the period beginning with the date of the first public disclosure of a proposed control share acquisition of the issuing public corporation or any proposed merger, consolidation, or other transaction which would result in a change in control of the corporation or all or substantially all of its assets, and ending on the date of any special meeting of the corporation's

Continued on page 8

SIPA

Continued from page 1

et seq. The several purposes of SIPA were stated in the Senate Report as follows:

> . . . to protect individual investors from financial hardship, to insulate the economy from the disruption which can follow the failure of major financial institutions; and to achieve a general upgrading of financial responsibility requirements of brokers and dealers to eliminate, to the maximum extent possible, the risks which lead to customer loss.

In furtherance of these purposes, among other methods of protecting investors, SIPA created the Securities Investor Protection Corporation ("SIPC") and established procedures for liquidating financially-troubled broker-dealers who are members of SIPC.

Securities Investor Protection Corporation

SIPC is not a government agency; rather it is a non-profit membership corporation. SIPA §78ccc(a). SIPC is governed by a board of directors, which consists of seven members — one from the Treasury Department, one from the Federal Reserve Board, three from the securities industry, and two from the general public. The sole office is at

Continued

Share Acquisition Act

Continued from page 7

shareholders held thereafter pursuant to section 1701.831 of the Revised Code, for the purpose of voting on a control share acquisition proposed by any acquiring person if either of the following apply:

(a) The aggregate consideration paid or given by the person who acquired the shares, and any other persons acting in concert with him, for all such shares exceeds two hundred fifty thousand dollars;

(b) The number of shares acquired by the person who acquired the shares, and any other persons acting in concert with him, exceeds one-half of one per cent of the outstanding shares of the corporation entitled to vote in the election of directors.

(3) If any part of this division is held to be illegal or invalid in application, the illegality or invalidity does not affect any legal and valid application thereof or any other provision or application of this division or section 1701.831 of the Revised Code which can be given effect without the invalid or illegal provision, and the parts and applications of this division are severable.

[15] H. Friedman, Ohio Securities Law & Practice 595 (1993 supp.)

[16] 637 F. Supp. 742 (S.D. Ohio 1986).

[17] *Id*. at 756-9. *See also* Friedman, *supra* note 15, at 595.

[18] *Fleet Aerospace Corporation v. Holderman*, 796 F.2d 135 (6th Cir. 1986).

[19] *State of Ohio v. Fleet Aerospace Corporation*, 481 U.S. 1026 (1987).

[20] 481 U.S. 69 (1987).

[21] 457 U.S. 624 (1982).

[22] *CTS*, 481 U.S. at 80.

[23] *Id*. at 84-5.

[24] *Id*. at 87-93.

[25] *Fleet Aerospace Corporation v. Holderman*, 848 F.2d 720 (6th Cir. 1988).

[26] *Fleet Aerospace Corporation v. Holderman*, No. C2-86-556 (S.D. Ohio October 31, 1988).

[27] No. C-1-84-1587 (S.D. Ohio November 8, 1994).

[28] 685 F. Supp. 1027 (S.D. Ohio 1988).

[29] For the text of this provision, *see supra* note 14.

[30] *See Luxottica*, 919 F. Supp. at 1087.

[31] 457 U.S. 624 (1982).

[32] 481 U.S. 69 (1987).

[33] *Luxotttica*, 919 F. Supp. at 1088, *quoting CTS*, 457 U.S. at 639.

[34] *Luxottica*, 919 F. Supp. at 1088.

[35] *Id*.

[36] *Id*. at 1090.

[37] *Id*. at 1091

[38] *Danaher*, slip op. at 2.

[39] *Id*.

[40] *United Dominion*, slip op. at 10.

[41] *Id*. at 11.

[42] *Id*. at 12.

[43] *Id*.

[44] *Id*. at 13

[45] *Id*. at 14.

[46] *Id*. at 16.

[47] *See Id*. at 21. The opinion notes that R.C. 1701.01(CC)(2)(b) had no practical application. *See Id*., fn. 2.

[48] *Id*. at 26-27

[49] *Id*. at 36.

[50] *Id*. at 37.

805 Fifteenth Street, N.W., Suite 800, Washington, D.C., 20005. Its principal officers are: President, General Counsel, and Vice-President - Operations and Finance.

Membership in SIPC is automatic and not voluntary. Under SIPA §78ccc(a)(2)(A), all brokers and dealers registered under the Securities Exchange Act of 1934 ("1934 Act") are members of SIPC, other than those whose operations consist exclusively of certain specified types of business.[1] Also excluded from membership are government securities dealers registered under §15C of the 1934 Act, and brokers or dealers "whose principal business, in the determination of SIPC[2], taking into account the business of affiliated entities, is conducted outside the United States, and its territories and possessions." SIPA §78ccc(a)(2)(A).

As part of the creation of SIPC and for the protection of customers of SIPC members, SIPA established a SIPC Fund, funded through assessments upon SIPC members. SIPA §78ddd. The current number of members is just under 8,000. Members of SIPC are obligated to pay assessments upon all revenues specified in SIPA §78ddd(c). If SIPC's funds should become inadequate to carry out the statutory purposes, SIPA authorizes a borrowing of United States Government funds up to $1,000,000,000. SIPA §78ddd(f), (g), and (h).

Assessments are <u>required</u> when the SIPC Fund declines below $150 million. SIPA §78ddd(d)(B). In 1991, however, SIPC appointed a task force composed of government, industry, and self-regulatory organization representatives to make recommendations on the future course of assessments. That task force recommended planned, steady growth by setting the assessment rate each year based on projections of SIPC's expenses, interest income, industry earnings, and other relevant factors. The board agreed to set the assessment rate each year so as to achieve an annual fund growth of ten percent. Under this program, the current size of the Fund has surpassed the $1 billion level.

The Legal Framework of SIPA

Prior to 1938, margin and cash customers of a bankrupt stockbroker were relegated to the position of general creditors unless they could trace their cash or securities in the broker's possession. In 1938, section 60e of the former Bankruptcy Act[3] was enacted to rectify inequities under the prior law.[4] Section 60e permitted limited tracing by cash customers of their "specifically identifiable property." Other customer's property was placed in a "single and separate fund," for the pro rata benefit of all customers (to the exclusion of the general creditors), based on the net equity in their respective accounts. Thus it benefited all customers, as a class, who entrusted securities to their broker in connection with their securities account.[5]

Under SIPA, persons who qualify as customers are afforded significant protection, even where the debtor firm is completely without the financial capacity to honor its obligations to customers. Trustees endeavor to replace customers' securities positions, and restore cash in customers' accounts. The trustee can restore customers' accounts by either transferring the account to another SIPC member, or by forwarding the securities and cash directly to the customers.

An account transfer is the most efficient and effective method of restoring the customer's account. If no account transfer is feasible, the trustee satisfies claims on an individual basis, which is a rather time-consuming procedure. SIPC approval is required, however, for account transfers. Among the considerations in approving a transfer are:

(i)A transferee broker willing and able to accept some or all of the accounts, including an adequate plan for staffing to assist the trustee in implementing the transfer.

(ii) Accurate books and records; compatibility of data systems between the brokers.

(iii) Payment or guarantee of loans so that customers' stock, particularly margin customers, can be forwarded to a transferee broker or its lender. SIPA §78fff-l(b)(2); §78fff-3(c)(l).[6]

(iv) Possible SIPC guarantee of the trustee's undertakings with respect to the transfer. SIPA §78fff-2(f)(2) and §78fff-3(c)(2).

(v) Possible use by the trustee of SIPC funds to buy missing securities to transfer under SIPA §78fff-2(d). This is not possible where there is no "fair and orderly market," such as where the securities are unique, thinly traded, or possibly manipulated.

(vi) Where a transferee broker introduces business to a clearing broker, inclusion of both the introducing and the carrying broker in the negotiations.

Summary of the Protections Available to Customers

In a SIPA proceeding, each separate customer is entitled to receive the following:

(i)All "customer name securities" which are actually held for the customer's account. There is no limit as to amount or value of the securities and they are not counted as part of the customer's "net equity."

(ii) A ratable share of "customer property" based on the customer's "net equity."

(iii) To the extent the foregoing does not fully satisfy the

Continued on page 10

SIPA

Continued from page 9

customer's claim for cash and securities:

(a) SIPC will advance funds to the trustee to satisfy each customer's claim, within limits. Those limits are $500,000 for each customer, of which not more than $100,000 may be for a cash credit balance owed to the customer.

(b) When practicable, the trustee will use the funds advanced to buy securities of the same class and series as those owed to the customer. When this is not practicable, the customer receives the cash value of the security, as of the filing date of the proceeding.

(c) In practice, to assure prompt payment, initial distributions within the limits of this protection are made before actual determination of each customer's pro rata share of "customer property" since this cannot be determined for at least six months.[7] The amount due a customer (whatever the source of payment) is determined by his or her respective "net equity." SIPA §78lll(11). Accounting adjustments are made later.

(iv) To the extent the customer remains unsatisfied from the sources outlined above, the customer is entitled to share in the general estate of the debtor as a general creditor. SIPA §78fff-2(c)(1).

SIPC, SEC and SROs

SIPC is not a regulator, and with the exception of limited advertising rules, has no regulatory authority. SIPC cooperates with the SEC as well as the various stock exchanges and the National Association of Securities Dealers, which are, collectively, referred to as "Self-Regulating Organizations" ("SROs"). In monitoring SIPC members, SIPC relies upon the early warning and surveillance procedures of the SEC and SROs. SIPA provides that if the SEC or any SRO is aware of facts which lead it to believe that any member is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by an SRO, the SRO must also notify the SEC. SIPA §78eee(a)(1).

The need for accurate data before the commencement of a liquidation proceeding cannot be overemphasized. There must be a completely open exchange of information between SIPC, the SEC, and the SROs, and this exchange of information must allow for the sometimes competing interests involved. SIPC must be privy to sufficient data to establish that the case is appropriate for a SIPC liquidation within a time frame that is sensitive to the needs of the SEC and SROs to move quickly. Specifically, there should be close cooperation among the SEC and SRO examiners, SEC legal personnel (who will typically be drafting a complaint for injunctive relief) and SIPC legal personnel, to insure the support for and identity of factual allegations in the SEC Complaint and SIPC's application for a protective decree (discussed below). The SIPC application is usually combined with the SEC action pursuant to SIPA §78eee(a)(4)(A).

The Liquidation Proceeding
SIPC's Application for Customer Protection

Pursuant to SIPA §78eee(a)(3), in order for SIPC to take action to obtain customer protection, SIPA requires that SIPC file an application with any court of competent jurisdiction after making a determination that a SIPC member is in danger of failing to meet its obligations to customers and that there exists one or more of the following conditions listed in SIPA §78eee(b)(1):

(i) The SIPC member is insolvent or is unable to meet obligations as they mature;

(ii) The SIPC member is the subject of a state or federal proceeding in which a receiver, trustee, or liquidator for such debtor has been appointed;

(iii) The SIPC member is not in compliance with applicable requirements under the 1934 Act concerning financial responsibility or hypothecation of customers' securities, or rules of the SEC or any SRO with respect to these matters;

(iv) The SIPC member is unable to compute whether it is in compliance with the financial responsibility or hypothecation rules.

Note that due process requires only that the member be given an opportunity to be heard before the court grants the decree, not before SIPC makes its determination to apply.[8]

Pending issuance of a protective decree, the court may appoint a temporary receiver. SIPA §78eee(b)(2)(B)(iv). Frequently, the SEC also seeks appointment of a temporary receiver in conjunction with an application for a temporary restraining order. In pursuing the appointment of a temporary receiver, SIPC proceeds by issuing an order to show cause and a supporting affidavit based on information supplied by the SROs and the SEC. Where only books and records violations have been alleged, particularly strong resistance to appointment of a receiver may be encountered.

Pursuant to SIPA §78eee(b)(1), the court "shall forthwith issue a protective decree" if the debtor consents or if one or more of the conditions listed in that section are present. Contested fact situations demonstrate SIPC's reliance upon the SEC and SROs to prove the facts necessary to establish the need for SIPA protection of customers. Some problem areas which are encountered include: multiple entities; clearing/introducing broker issues; and lack of "customers" as defined in SIPA.

Upon SIPC's filing of an application, the district court acquires exclusive jurisdiction over the SIPC member and its property, wherever located. SIPA §78eee(b)(2). If the court grants the application and issues a protective decree, then the court "shall forthwith appoint," as trustee and as attorney for the trustee, such persons as SIPC, in its sole discretion, specifies. SIPA §78eee(b)(3).[9] In some limited instances, SIPC may designate itself or one of its employees as trustee. Certain factors are important in determining whether SIPC may designate itself as trustee under SIPA §78eee(b)(3). Such factors include the extent of liability to general creditors and subordinated lenders, and the number of customers. The duties of the trustee are as follows:

(i) Same duties as a trustee in bankruptcy.

(ii) Distributes securities, rather than rely on cash liquidation (a notable distinction from the Bankruptcy Code); distribution is facilitated by authority to purchase securities for delivery to customers pursuant to SIPA §78fff-2(d).

(iii) Pays or guarantees indebtedness of the debtor where appropriate. This is vital to obtain securities held as collateral for loans with banks or clearing brokers.

(iv) Reports to the court.

(v) Investigates and reports on the acts and conduct of the debtor.

(vi) Allocates assets between "customer property" and "general estate," which is necessary to determine pro rata shares and priorities entitled to distribution. SIPA §§78fff-l(b) and (c).

In furtherance of these duties, the trustee may utilize the following powers:

(i) Retains same powers as a trustee in bankruptcy.

(ii) Has power to hire personnel with SIPC approval but without need of court approval.

(iii) Uses SIPC personnel as needed.

(iv) Margins and maintains accounts for the limited purpose of facilitating transfers. SIPA §§78fff-l(a).

The trustee and counsel must be "disinterested. "SIPA §§78eee(b)(3) and (b)(6). A hearing on the disinterestedness of the trustee and counsel is required after they are appointed. SIPA §78eee(b)(6)(B). With SIPC approval, the trustee has the right to hire accountants and others necessary for purposes of the liquidation. SIPA §78fff-l(a)(1). Members of SIPC's staff will meet and cooperate with the trustee, his counsel and accountants as early as possible to facilitate immediate action on all necessary matters. After the granting of the protective decree, the liquidation is removed to the Bankruptcy Court. SIPA §78eee(b)(4).

Following his or her appointment, the trustee takes possession and control of the debtor's property, secures the debtor's premises, bank accounts, records, data processing equipment, and any other assets. The trustee also obtains authority from the bankruptcy court for a number of "housekeeping" matters, such as publication and mailing of notices, approval of claim forms, setting a hearing on disinterestedness, setting a date for the first meeting of creditors, approving dispute resolution procedures, and approving distribution of customer-related assets by either transfer of assets to another broker or directly to the customer

A SIPA proceeding is essentially a liquidation in bankruptcy.[10] No plan of reorganization of the Debtor is permitted. Except where SIPA is inconsistent, SIPA section 78fff(b) provides that a liquidation is conducted under Chapters 1, 3, 5 and Subchapters I and II of Chapter 7 the Bankruptcy Code. Subchapter III of Chapter 7, "stockbroker bankruptcy," is specifically inapplicable; liquidations under this subchapter require reducing all securities to cash prior to distribution. As previously stated, SIPA adopts a completely different approach. If the debtor is also a commodities broker, that portion of the liquidation will be conducted by the trustee pursuant to Subchapter IV of Chapter 7.

SIPA lists the purposes of the liquidation proceeding as being:

(i) Delivering "customer name securities" as defined in SIPA §78lll(3), subject to payment of customer indebtedness to the trustee. SIPA §78fff-2(c)(2).

(ii) Distributing "customer property" as defined in SIPA §78lll(4), and as augmented by SIPC's funds where appropriate. See SIPA §78fff-2(c)(1).

(iii) Selling or transferring offices or other productive units of the debtor.

(iv) Enforcing subrogation rights, e.g., SIPC subrogated to customer claims paid. SIPA §78fff-3(a).

(v) Liquidating the business of the debtor. Priorities of distribution from the general estate are as provided in Section 726 of the Bankruptcy Code. SIPA §78fff(a).

During the liquidation proceeding, SIPC provides support to the trustee to the extent necessary. This support comes in the form of familiarizing the trustee with the nuances of the statute; assisting in establishing claims procedures; providing funds for administrative costs, where necessary; providing funds to make customer accounts whole within statutory limits; and, generally providing guidance from the experience SIPC has gained in over 200 such proceedings. In addition, SIPC has an obligation to protect the SIPC Fund created by SIPA.[11]

It is important to remember that the trustee is an independent fiduciary and is not a mere extension of SIPC.[12] However, SIPC is deemed to be a party as to all matters in a liquidation proceeding. SIPA §78eee(d). SIPC is given the respon-

Continued on page 12

SIPA

Continued from page 11

sibility for approving the engagement of all personnel, including accountants, which the trustee may require in administering the estate. SIPA §78fff-l(a). SIPC also advances funds for the payment of administrative expenses and, of course, SIPC advances funds for the payment of customer claims within the statutory limits. SIPA §78fff-3. SIPC may indemnify certain contractual obligations of the trustee to facilitate an account transfer, SIPA §78fff-2(f), and pay or guarantee loans in order to facilitate release of securities from a pledge. SIPA §78fff-l(b)(2). SIPC approval is required for both account transfers and payments or the guarantee of bank loans. SIPC also advances funds for the completion of certain open contractual commitments. SIPA §§78fff-2(e); 78fff-3(b)(1).

In the event SIPC declines to commit its funds or otherwise act to protect customers of a member, the SEC may apply to the district court in Washington, D. C. for an order requiring SIPC to discharge its obligations under SIPA and for such other relief as the court may deem appropriate to carry out the purposes of SIPA. SIPA §78ggg(b). The Supreme Court has held that neither customers of the member, nor any other private parties, have standing to compel SIPC to file an application to have a broker liquidated pursuant to SIPA. If SIPC declines to act, only the SEC may sue to compel SIPC to enter a case.[13]

SIPA does not contemplate that the SEC will ordinarily participate in any given liquidation proceeding. While the SEC has never done so in the past, it may appear as a party pursuant to SIPA §78eee(c). The SEC, through the rulemaking procedures of 5 U.S.C. §553, has a policy role which can and does affect all SIPA liquidations. Both the SEC and the SROs usually have investigated the affairs of a broker which leads to SIPC's filing of an application to protect customers. The information gleaned by the SEC and SROs is of great importance to the trustee, particularly in assisting the trustee in the initial few weeks of the SIPA proceeding.

Alternatives to a Liquidation Proceeding Under SIPA

Because of the finality of a SIPA proceeding, SIPC properly views the application for a protective decree as a last resort. Thus, SIPC will not file an application for a protective decree unless there exists customers whose claims could be satisfied with SIPC advances. It is possible for a brokerage firm to be insolvent, yet have "customers" who could not be satisfied by SIPC advances. Such persons could be principals in the firm or other brokers or banks. SIPA § 78fff-3(a)(4),(5). They could also be customers who have loaned or subordinated the contents of their accounts, SIPA § 78lll(2)(B).

Self-Liquidation

Stockbrokers can and do liquidate their business outside of SIPA proceedings. If the broker can genuinely recapitalize, or self-liquidate with or without the assistance of an SRO, this must be set into motion immediately. It is specifically contemplated by SIPA that an SRO may assist a broker in self-liquidation without the use of SIPC funds. SIPA §78eee(a)(2). This can be done voluntarily with the assistance of a self-regulatory organization, and SIPA specifically recognizes this possibility of self-liquidation in SIPA §78eee(a)(2). The Bankruptcy Code, Subsection III of Chapter 7, also provides procedures for liquidation where there are sufficient assets to meet customer obligations.

Direct Payment Procedure

There are other situations where insolvent stockbrokers are not able to meet their obligation to customers, but the exposure to customers does not warrant the initiation of a full scale liquidation proceeding. SIPA provides that the customers of such brokers may be protected with advances from SIPC without the necessity of a liquidation, by means of a "direct payment procedure." SIPA §78fff-4. Such a procedure may be used where SIPC makes the same determinations required to initiate a liquidation proceeding, but also determines that the claims of all customers are within the limits of SIPA protection; that the customer claims aggregate less than $250,000; that the cost of a direct payment will be less than the cost of full liquidation, and that the broker has either terminated its broker-dealer registration or consented to the use of the direct payment procedure. In such cases, SIPC satisfies the obligations to its customers. But, unlike a liquidation proceeding, the direct payment procedure does not deal with the claims of general creditors.

There are two situations where a "direct payment procedure" would eventually require litigation in the courts. First, if a claimant in a direct payment procedure is aggrieved by any determination of SIPC with respect to a claim, the claimant may seek adjudication of his rights in the bankruptcy court where the head office of the debtor is located. SIPA §78fff 4(e). Second, if SIPC determines, in its discretion, that a continuation of a direct payment procedure is inappropriate, it may file for a protective decree with respect to that debtor, in which case the liquidation would proceed as outlined above. SIPA §78fff 4(f).

SIPA and SIPC exist to provide protection from loss to customers of SIPC members and to protect the economy from the destruction that

Continued

U.S. Court of Appeals Case Addresses Securities Status of Viatical Settlements

Securities regulators received some guidance regarding the treatment of so-called "viatical settlements" as securities. The U.S. Court of Appeals for the District of Columbia Circuit ruled in July that these instruments do not involve "securities" within the federal act. SEC v. Life Partners, Inc., CA DC, No. 95-5364, 7/5/96. These instruments are actually fractional interests of life insurance policies held by people who are terminally ill. They have become especially popular with AIDS victims, who receive money by selling their life insurance policies to investors. These investors, in turn, receive the face value of the policy after the policy-holder's death. Companies that facilitate and manage these transactions have proliferated in the past few years, posing a problem for securities regulators. Many state securities authorities and the Securities and Exchange Commission deemed viatical settlements investment contracts, thereby putting them within regulatory reach.

But the court in this case ruled that one of these companies, Life Partners, Inc., was not selling securities within the meaning of the federal securities acts. The crux of the court's reasoning was that, since the value of the instruments were largely dependent upon the seller's life expectancy, rather than any efforts by the promoting company, they failed as investment contracts. The Court noted that the SEC failed to show that the promoter's efforts had a predominant influence upon investors' profits. Proving such is required under *SEC v. W.J. Howey Co.* 328 US 293 (1946), the landmark case that is used in determining which transactions qualify as investment contracts, and therefore can be deemed securities under federal and state laws. The court did state, however, that viatical settlements were not exempt from securities laws as insurance contracts, thus leaving room for some state regulation.

SIPA

Continued

would accompany the failure of broker-dealers. With the cooperation of the SEC and SROs, SIPC is able to monitor its members and take necessary steps to protect investors when a SIPC member encounters financial difficulty. The several alternatives to addressing the financial difficulty of a SIPC member enables SIPC to take appropriate action in the best interests of its members and their customers.

Mr. Grigsby is an Enforcement Staff Attorney at the Ohio Division of Securities. This article was adapted from an outline prepared by the Office of the General Counsel of SIPC.

Endnotes

[1] Those specified types of business are: (i) the distribution of shares of registered open - end investment companies or unit investment trusts, (ii) the sale of variable annuities, (iii) the business of insurance, or (iv) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts. SIPA §78ccc(a)(2)(A).

[2] Such determination must be filed with the SEC for review. SIPA §78ccc(a)(2)(B).

[3] *See* Gilchrist, "Stockbrokers' Bankruptcies: Problems Created by the Chandler Act," 24 MINN. L.REV. 52 (1939); McLaughlin, "Aspects of the Chandler Bill to Amend the Bankruptcy Act," 4 U. CHI. L. REV. 369, 395-398 (1937).

[4] *See also* Hagar, "The Bankruptcy Law as Applied to Stockbrokerage Transactions," 30 YALE L. J. 488 (1921); Oppenheimer, "Rights and Obligations of Customers in Stockbrokerage Bankruptcies," 37 HARV. L. REV. 860 (1924). An excellent discussion may be found in Smith, "Margin Stocks," 35 HARV. L. REV. 485 (1922).

[5] *See e.g. SEC v. First Securities Co. of Chicago* , 507 F.2d 417, 420-22 (7th Cir. 1974); *Temper v. Chichester*, 285 F. 2d 309 (9th Cir. 1960); *In re McMillan, Rapp & Co.*., 123 F.2d 428 (3d Cir. 1941).

[6] SIPC may pay or guarantee payment of loans, whether or not incident to a transfer, if the value of the securities to be recovered exceeds the outstanding indebtedness.

[7] The priorities of allocation of assets in the fund of customer property are set forth in SIPA §§78fff-2(c)(1). Customer ratable shares cannot be determined until all claims have been filed.

[8] *SEC v. Alan F. Hughes, Inc.*, 461 F.2d 974 (2d Cir. 1972); *SEC v. Oxford Securities Ltd.* 486 F 2d 1396 (2d Cir. 1973), *reversing w/o opinion*, 354 F. Supp. 301 (S.D.N.Y. 1973).

[9] *See, SEC v. Oxford Securities, Ltd.*

[10] *See e.g. Exchange National Banks v. Wyatt*, 517 F.2d 453 (2d Cir. 1975); *SIPC v. Charisma Securities Corp.*, 506 F.2d 1191 (2d Cir. 1974).

[11] *SIPC v. Charisma Securities Corp.*, 506 F.2d 1191 (2d Cir. 1974).

[12] *See e.g. SEC v. Wick*, 360 F.Supp 312 (N.D. Ill. 1973); *SIPC v. Morgan Kennedy & Co.*, 533 F.2d 1314 (2d Cir.), *cert. denied*, 426 U.S. 936 (1976).

[13] *See SIPC v. Barbour*, 421 U.S. 412 (1975). *See also SIPC v. Ambassador Church Finance Development Corp.*,788, F.2d 1208 (6th Cir. 1986).

Division Implements Internet Monitoring Program

During the third quarter of 1996, the Division of Securities formally implemented a program to ensure that securities offerings available to Ohio residents on the Internet comply with Ohio securities laws. Offerings on the Internet are permitted, provided that such offerings (like all other offerings) are properly registered, or properly exempted from registration, and are made in compliance with Ohio's dealer and salesman licensing requirements.

Procedurally, the Division searches the Internet for offerings available to Ohio residents. Upon finding such an offering, the Division checks to see whether a registration or exemptive filing has been made. If no filing has been made, the Division sends a notice letter asking the offeror how it plans to comply with Ohio securities laws. If the offeror responds that it plans to comply, it will be directed to the Division's registration section to discuss applicable registration or exemptive provisions. If the offeror responds that it does not plan to sell in Ohio, the Division will require that a legend be placed on the offering to indicate that the offering is not available to Ohio residents.

Individuals and entities contemplating offering securities over the Internet should keep in mind that Ohio has not adopted the "test the waters" provisions of SEC Regulation A. Therefore, a filing must be made with the Division before a public offering is commenced in Ohio (via the Internet or otherwise). Such individuals and entities should also consider whether an Internet posting constitutes "general solicitation" such that SEC Regulation D, and the companion Ohio exemptions, would not be available.

With respect to Internet offerings not intended for Ohio residents, the Division is considering adopting a safe harbor position similar to a resolution approved by NASAA earlier this year. The NASAA resolution suggests a state exemption for Internet offerings that: (i) indicate, directly or indirectly, that securities are not being offered to residents of the state; (ii) are not specifically directed to any person in the state; and (iii) do not result in any sales of securities in the state. The Division intends to discuss this issue at the meeting of its Registration and Exemptions Advisory Committee to be held in connection with the Ohio Securities Conference.

Memorializing the Exemption Pursuant to R.C. 1707.03(O)

R.C. 1707.03(O) provides a transactional exemption for the sale of equity securities if all of the following conditions are satisfied:

(a) The sale is by the issuer of the securities.

(b) The total number of purchasers in Ohio of all securities issued or sold by the issuer in reliance upon R. C. 1707.03(O) during the period of one year ending with the date of the sale does not exceed ten.

(c)No advertisement, article, notice, or other communication published in any newspaper, magazine, or similar medium, or broadcast over television or radio is used in connection with the sale (but the use of an offering circular or other communication delivered by the issuer to selected individuals does not destroy the R.C. 1707.03(O) exemption).

(d) The issuer reasonably believes after reasonable investigation that the purchaser is purchasing for investment.

(e) The aggregate commission, discount, and other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly does not exceed ten per cent of the initial offering price.

(f)Any such commission, discount, or other remuneration for sales in this state is paid or given only to dealers or salesmen registered pursuant to the Ohio Securities Act.

Prior to October 1994, the "3(O)" exemption outlined above required a filing, along with a $25 fee, with the Division to perfect the exemption. 3(O) is such a popular exemption that Form 3-O filings accounted for about 60% of the total filings received by the Division during both 1992 and 1993. However, House Bill 488, effective October 11, 1994, amended R.C. 1707.03(O) to eliminate the filing and fee requirements as conditions of the exemption. In other words, 3(O) became a self-executing exemption.

Prior to the elimination of the 3(O) filing requirement, practitioners and issuers had the completed Form 3-O to memorialize reliance on R.C. 1707.03(O). After the elimination of the filing requirement, questions have arisen regarding how to memorialize the exemption.

Although not mandated by statute or rule, the Division recommends that reliance on R.C. 1707.03(O) be memorialized in writing and kept with the issuer's start-up documents or minute book. Express reference to both R.C. 1707.03(O) and satisfaction of the conditions contained therein is advisable. Written documentation of the 3(O) exemption demonstrates good record-keeping, and will be invaluable with respect to future securities offerings, due diligence examinations and even Division examinations.

Administrative Orders

May Day Films, Inc.

On July 11, 1996, the Division of Securities issued Division Order 96-094, a final Cease and Desist Order, against May Day Films, Inc. An investigation by the Division revealed that this company sold stock to several investors without timely filing the appropriate registration exemption.

May Day Films, Inc., pursuant to R.C. 1707.03(Q), filed a Form 3-Q seeking an exemption from registering securities it had sold to five Ohio investors. To perfect a claim of exemption under R.C. 1707.03(Q), a Form 3-Q must be filed with the Division no later than 60 days after the date of a securities sale. The Division determined that most of the stock issued by May Day Films, Inc. was actually sold too early to qualify for exemption coverage within the 60-day window period required under 1707.03(Q).

On May 31, 1996, the Division had issued Order No. 96-077, a Notice of Opportunity for Hearing, to May Day Films, Inc. This Order set forth the Division's allegations and described the right of the respondent to request an administrative hearing on the matter. The order was served on May Day Films, Inc., which, in turn, did not request a hearing. Consequently, the Division issued the final Cease and Desist Order which declared May Day Films, Inc.'s Form 3-Q filing null and void. It also ordered the company to cease and desist from violations of R.C. section 1707.44(C)(1), selling securities without registration or proper claim of exemption.

C'est Lestial Waters, Inc.; Roddy/Conners, Inc.; Thomas A. Piechowicz

The Division issued three separate final Cease and Desist Orders in July, 1996 against C'est Lestial Waters, Inc., Roddy/Conners, Inc. and Thomas A. Piechowecz. The orders variously charge these respondents with selling unregistered securities and selling securities without proper licensing from the Division.

Division Order No.96- 096, issued July 15, 1996, cited Thomas A. Piechowicz for violations of R.C. 1707.44(C)(1) and R.C. 1707.16, selling unregistered securities without an Ohio salesman license. The order noted that Piechowicz, acting as an agent for Roddy/Conners, Inc., sold bonds issued by C'est Lestial Waters, Inc. to an Ohio resident. The bonds were not registered or exempt from registration pursuant to Chapter 1707 of the Revised Code. Nor did Piechowicz have a salesman license as required by R.C. 1707.16 to sell securities. The Division had issued a Notice of Opportunity for a Hearing, Division Order 96-075, on June 27, 1996. This order gave the respondent notice that the Division intended to issue a final order setting forth the factual and legal assertions outlined above. In conjunction with the final Division Order No. 96- 096, Piechowicz entered into a consent agreement with the Division. In the agreement, Piechowicz waived his right to appeal Division Order No. 96-096 under Chapter 119 of the Revised Code, as well as stipulating to the Division's findings as set forth in that order.

Division Order No. 96-107, issued July 22, 1996, cited C'est Lestial Waters, Inc. for violating R.C. 1707.44(C)(1), selling unregistered securities. The Division's factual findings were the same as those stated in Division Order No. 96-096, discussed above. The respondent had also been served Division Order No. 96-075, a Notice of Opportunity for Hearing giving it notice of the Division's intent to issue a final Cease and Desist Order based on the factual and legal assertions outlined above. C'est Lestial Waters, Inc., however, did not request an adjudicative hearing pursuant to Chapter 119 of the Revised Code either personally or through its representative. The Division subsequently issued Division Order No. 96-107, a final Cease and Desist Order.

Division Order No. 96-117, a final Cease and Desist Order issued July 31, 1996, cited Roddy/Conners, Inc. for violating R.C. 1707.44(A), selling securities without a dealer's license issued by the Division in violation of R.C. 1707.14(A). Again, the Division factual findings were the same as those stated in Division Order No. 96-096, discussed above. The respondent in this case, too, was served with Division Order No. 96-075, a Notice of Opportunity for Hearing giving it notice of the Division's intent to issue a final order. Roddy/Conners, Inc., after being served with this order, did not request an adjudicative hearing, thereby prompting the Division to issue a final Cease and Desist Order.

Editor's Note: Reports of additional administrative orders issued by the Division during the third quarter of 1996 will appear in the next issue of the bulletin.

Criminal Cases

Floyd Bishop

As reported in *Bulletin* Issue 95:4, Floyd L. Bishop was indicted on September 13, 1995, in Lorain County on four counts of securities violations and one count of grand theft. Specifically, Bishop was charged with violating R.C. 1707.44 (A) for allegedly selling securities without being properly licensed by the Ohio Division of Securities to do so. Bishop was also charged with violating R.C. 1707.44 (C)(1) for allegedly selling securities that were not properly registered by the Ohio

Continued on page 16

Division of Securities. Additionally, Bishop was charged with violating R.C. 1707.44 (B)(4) for allegedly making written and/or oral misrepresentations of material and relevant facts in the sale of securities, as well as violating R.C. 1707.44 (G) for allegedly defrauding investors in the sale of securities. Bishop was additionally charged with violating Revised Code Chapter 2913 by making written and oral misrepresentations in order to obtain $300,000.00 from an Ohio investor.

The indictment alleged that Bishop enticed the purchaser to invest in American Intertech Corporation under the premise that American Intertech would acquire numerous companies. The indictment further alleged that Bishop did not acquire the companies as he had represented, but rather misappropriated the investment proceeds and used them for his own personal expenses.

On July 22, 1996, Bishop pleaded no contest to each of the five charges levied against him. That plea was accepted and the court found Bishop guilty on all five counts. The court will conduct a pre-sentence investigation before sentencing Bishop.

Donald H. Gilliland

On March 28, 1995, Donald H. Gilliland, a former Dublin Securities salesman, was indicted by a Franklin County grand jury on eight counts of making false representations for the purpose of selling securities, in violation of R.C. 1707.44(B), and eight counts of securities fraud in violation of R.C. 1707.44(G). Each of the counts upon which Gilliland was indicted is a felony of the fourth degree. At his arraignment on these charges, Gilliland pleaded not guilty to all 16 counts against him.

On August 28, 1996, Gilliland appeared before Judge John A. Connor of the Franklin County Common Pleas Court and changed his plea to guilty on count one of the indictment — making false representations for the purpose of selling securities in violation of R.C. 1707.44(B). The false representations mainly pertained to the value of stock and the financial standing of issuing companies. Judge Connor accepted Gilliland's plea of guilty to count one of the indictment and dismissed the remaining 15 counts. The Court then ordered a pre-sentence investigation of Gilliland. A determination would be made at that time regarding the amount of restitution Gilliland will be required to pay investors.

Dennis Houston

On March 28, 1995, Dennis Houston, a former Dublin Securities salesman, was indicted by a Franklin County grand jury on 11 counts of making false representations for the purpose of selling securities, in violation of R.C. 1707.44(B)(4), and 11 counts of securities fraud in violation of R.C. 1707.44(G). Each of the counts constitutes a felony of the fourth degree. At his arraignment, Houston pleaded not guilty to all 22 of the counts against him.

In May, 1996, a trial was held before Judge Patrick McGrath of the Franklin County Court of Common Pleas. On July 31, 1996, Judge McGrath found Houston guilty on 20 of the 22 counts of securities fraud and making false representations in the sale of securities. The false representations mainly pertained to the value of the stock and the financial standing of issuing companies. On September 24, 1996, Judge McGrath sentenced Houston to 18 months of incarceration on each of the 20 counts, with the sentences to be served consecutively. Judge McGrath suspended those sentences, however, pending Houston's successful completion of a 5-year probationary period. During the probationary period, Houston is required to pay full restitution to the investors to whom he made prohibited securities sales.

Kevin R. Roser

In April, 1996, a Franklin County Grand Jury returned a 15 - count indictment against Kevin R. Roser of Akron, Ohio, for criminal violations of the Ohio Securities Act. The indictment was based on Roser's improprieties in connection with an Ohio corporation, Ohio Business Consultants ("OBC").

OBC purported to operate and manage bars in the Ohio State University campus area. Roser sold shares in OBC to two Columbus residents. Roser was not licensed at the time of the sales, and the OBC shares were neither registered nor properly exempted from registration. Consequently, the indictment alleges the unlicensed sale of securities in violation of R.C. 1707.44(A), and the sale of unregistered securities in violation of R.C. 1707.44(C)(1).

In addition, the indictment alleges Roser made false representations in violation of R.C. 1707.44(B)(4), and committed fraud in violation of R.C. 1707.44(G), in connection with the sale of the OBC securities. The indictment alleges that Roser also misappropriated the investment proceeds in violation of the theft provisions of the criminal code. Roser's trial date has been set for late November.

PUBLIC NOTICE

At 10:00 a. m. on Tuesday, January 7, 1997, the Ohio Division of Securities will hold a public hearing regarding proposed changes to Ohio Administrative Code (OAC) rules 1301:6-3-15, and 1301:6-3-16. The hearing will be held in the offices of the Division located at 77 South High Street, 22nd Floor, Columbus, Ohio 43215. Please note that this is a rescheduling of a public hearing that had been scheduled for October 16, 1996. The Division has proposed the following changes:

OAC 1301:6-3-15, Dealer responsibilities: The proposed amendment adds a new provision permitting an applicant to present evidence of his or her knowledge of securities laws and practices in connection with an application for a dealer's license or designated principal position, by achieving a score of eighty-five per cent or better on the Uniform Combined State Law Examination, Series 66, administered by the National Association of Securities Dealers, Inc.

OAC 1301:6-3-16, Application for salesman's license: The proposed amendment adds a new provision permitting an applicant to present evidence that he or she has achieved a passing score on the Uniform Combined State Law Exam, Series 66, administered by the National Association of Securities Dealers, Inc., in connection with an application for a salesman license.

The purpose of the amendments to both OAC 1301:6-3-15 and OAC 1301:6-3-16 is to promote uniformity in salesmen and dealer licensing. The Uniform Combined State Law Examination, Series 66, is a combination of the Uniform Securities Agent State Licensing Exam, Series 63, and the Uniform Investment Adviser Law Exam, Series 65. Although Ohio does not license investment advisers, the Division has decided to accept Series 66 results in order to promote uniformity. The Division realized that failure to accept Series 66 results would veto the uniformity of the Series 66 because an applicant would still have to take two tests, the Series 63 and then the Series 65 for those states that license investment advisers.

The Series 66 will not replace the Series 63. The Division will continue to accept results from the Series 63 pursuant to OAC rules 1301:6-3-15 and OAC 1301:6-3-16. Upon effectiveness of the proposed amendments to those rules, the Division will also accept Series 66 results.

As noted above, the hearing originally scheduled for October 16, 1996 was not held and is rescheduled for January 7, 1996. As some readers may recall, the original intent of the hearing was also to propose changes to the sections of Ohio Administrative Code 1301:6-3-09 relating to investment companies/mutual funds.

As a result of recent federal legislation, the "National Securities Markets Inprovement Act of 1996" ("Imrovement Act"), the Division no longer proposes the change to the investment company regulation. The "Improvement Act" essentially preempts the Division's ability to use substantive standards to review investment company regulation would be superfluous at this time.

The Division will continue to monitor the need for changes to the investment company regulation, including the deletion of preempted provisions. Any comments you may have are welcome.

Copies of the proposed amendments to OAC 1301:6-3-15 and OAC 1301:6-3-16 may be obtained by contacting the Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43215.

Division Sees Sharp Increase in Control Bids

by William Leber

By any standard, 1996 has been an exceptional year for Control Bid filings under the provisions of 1707.041 of the Ohio Securities Act. In addition to the bid for Acme-Cleveland filed in April of this year (see *Bulletin* Issue 96:2), there have been six Form 041 filings made since the first of the year, representing control bids for five Ohio target companies. Only four Control Bid filings have been made during the five preceding years.

Briarwood Golf Course, Inc. / BGC Acquisition Corporation and Golf Acquisition Corp.

In June, two independent bids were made for Briarwood Golf Course, Inc., which operates a public golf course in Macedonia, Ohio. The first bid was made by BGC Acquisition Corporation, and the second bid was made by Golf Acquisition Corp. Both were newly-formed Ohio corporations.

On June 17th, the Division of Securities issued an order suspending the Control Bid of BGC Acquisition Corporation for Briarwood Golf Course, Inc. The Division invoked the suspension because the documentation provided by BGC Acquisition on June 14th was deficient, particularly with regard to the financing of the offer. The Division of Securities continued to negotiate with counsel for BGC Acquisition to correct those deficiencies. On June 27th, the suspension order was terminated after the Division received additional documentation from the offeror, including a commitment letter from its lender.

Meanwhile, a filing from a second bidder, Golf Acquisition Corp., was received on June 24th. The review period for this filing ended on June 27th without action by the Division. The Briarwood control bids were substantially different from the control bids generally filed with the Division of Securities. First, because the bids did not involve interstate commerce, there were no Williams Act filings made in conjuntion with the state filings. The Ohio Form 041 was the only regulatory documentation filed in the transaction. Secondly, there were two bidders for Briarwood. As a result, there was a series of offers for the Briarwood shares. The offer to Briarwood shareholders increased from $180 per share on June 17th to $210 per share when accepted by the Briarwood board and shareholders. Many Briarwood shareholders reported that they preferred the BGC Acquisition offer, which they accepted over the Golf Acquisition offer, because BGC Acquisition promised to continue the shareholders' golfing privileges for a period of years.

United Dominion Industries, Ltd. / Commercial Intertech Corporation

See Thomas E. Geyer's article beginning on Page 1 for a detailed discussion of this control bid.

Roto Rooter Inc. / Chemed Corp.

On August 8th, Chemed Corp. (CHE) of Cincinnati announced its intention to make a bid for all the remaining outstanding shares of Roto Rooter, Inc. (ROTO), also of Cincinnati. CHE trades on the New York Stock Exchange, and ROTO is a NASDAQ National Market issue. Both corporations are, in fact, headquartered in the Chemed Center in downtown Cincinnati. At the time of the announcement, CHE held approximately 59% of ROTO's outstanding shares. CHE had acquired ROTO in 1980, and then reduced its interest in ROTO to the current level in 1985.

CHE filed a Form 041 with the Division on August 13th ; on August 16th, the Division completed its review of CHE's bid for the remaining outstanding shares of ROTO. Although counsel for the parties had anticipated that no litigation would be filed in connection with the ROTO/ CHE control bid, litigation was filed on behalf of minority shareholders during the week of August 19th. Without referring to the Ohio Division of Securities or Ohio Securities Act, a class action complaint was filed in the state of Delaware claiming that CHE's $41 per share offer was unconscionably low.

CasTech Aluminum Group Inc. / CALC Acquisition Corporation on Behalf of Commonwealth Aluminum Corporation

On August 26th, the Division completed its review of the bid by CALC Acquisition Corporation on behalf of Commonwealth Aluminum Corporation (CALC) for all the shares of CasTech Aluminum Group Inc. (CTA). Both are Delaware corporations, but CTA has substantial operations in Ohio, with approximately 300 employees in Akron, Uhrichsville, and Bedford, Ohio. CTA trades on the New York Stock Exchange, and CALC is a NASDAQ National Market issue. CALC had filed its bid with the Division of Securities on August 22nd.

Because the transaction involved two Delaware corporations and was characterized as a negotiated and agreed-upon merger by the parties, there was limited media and public reaction to the control bid, and no litigation was initiated. The transaction did demonstrate one advantage in employing Ohio counsel for an Ohio takeover. Counsel for the offeror used a form that was approximately fifteen years old, and the out -of -state messenger delivered their documents to 180 East Broad Street, the address for the Ohio Department of Commerce in the 1970's.

Registration Statistics

The table to the right sets out the number of registration filings received by the Division during the third quarter of 1996, compared to the number received during the third quarter of 1995, as well as the number of registration filings received by the Division through the third quarter of 1996, compared to the number received through the third quarter of 1995.

1707	*3Q'96*	*YTD '96*	*3Q'95*	*YTD '95*
.03(Q)	296	819	258	885
.03(W)	34	107	30	91
.04	0	0	0	0
.041	3	6	0	1
.06(A)(1)	13	63	25	87
.06(A)(2)	8	30	11	29
.06(A)(3)	7	18	4	19
.06(A)(4)	2	13	10	22
.09	62	267	99	354
.091	1,034	2,983	826	2,546
.39	9	22	11	38
.391/.09	1	1	0	0
.391/.091	0	10	5	18
.391/.03(O)	1	11	20	185
.391/.03(Q)	30	102	24	103
.391/.03(W)	1	4	1	1
.391/.06(A)(1)	0	0	0	0
.391/.06(A)(2)	0	1	0	0
.391/.06(A)(3)	0	0	1	1
.391/.06(A)(4)	0	0	0	0
Totals	1,501	4,457	1,325	4,380

Licensing Statistics

The table below sets out the number of Salesmen and Dealers licensed by the Division at the end of the third quarter of 1996, compared to the same quarter of 1995, as well as the number of Salesmen and Dealers licensed by the Division at the end of the first and second quarters of 1996 compared to the same quarters of 1995 and the fourth quarter of 1995, compared to the same quarter of 1994.

	End of Q3 1996	End of Q3 1995	End of Q4 1995	End of Q4 1994	End of Q1 1996	End of Q1 1995	End of Q2 1996	End of Q2 1995
Number of Salesmen Licensed:	83,438	72,062	71,658	70,642	78,890	69,143	81,795	70,580
Number of Dealers Licensed:	2,061	1,891	1,863	1,759	1,928	1,837	2,011	1,873

Thomas E. Geyer Appointed Commissioner of Securities

On October 11, 1996, Donna Owens, Director of the Ohio Department of Commerce, appointed Thomas E. Geyer as Commissioner of the Division of Securites. Mr. Geyer had been serving as Acting Commissioner since June 10, 1996. Mr. Geyer had been a Staff Attorney in the Division's Enforcement Section since January 1994, and also served as Attorney Inspector on an interim basis. Before joining the Division, Mr. Geyer was in private practice in both Cincinnati and Columbus. He is a 1990 honors graduate of the Ohio State University College of Law and a 1987 graduate of the University of Notre Dame.

OHIO SECURITIES BULLETIN

Ohio Division of Securities
77 South High Street
22nd Floor
Columbus, Ohio 43215

Bulk Rate
U.S. Postage
PAID
Columbus, Ohio
Permit No. 5455