OHIO SECURITIES BULLETIN

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Applicability of the Ohio Control Bid Statute

Generally speaking, the Ohio Control Bid Statute, set out in R.C. 1707.041 to 1707.043 (the "OCBS"), applies to acquisitions, through a tender offer, of securities of a corporation that has significant ties to Ohio if, after such acquisition, the acquiror would beneficially own more than ten percent of any equity securities of such corporation. Although viewed by many as a provision triggered only by hostile takeover attempts, it is important to note that the OCBS has no express exception for friendly acquisitions, negotiated acquisitions, acquisitions approved by the board of directors, acquisitions which are subject to a fairness opinion or acquisitions pursuant to a merger agreement. Rather, whether the context is friendly or hostile, R.C. 1707.041(A)(1) provides that the OCBS applies if the transaction is a "control bid"[1] for securities of a "subject company"[2] pursuant to a "tender offer"[3] unless the companies involved fit into the narrow exception to the application of the OCBS set out in R.C. 1707.041(G)[4].

This article will provide an overview of the foregoing statutory predicates to the applicability of the OCBS. The text of this article will provide a general description, while the exact text of the statutory provisions will be set out in the Endnotes.

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"Covered Securities" Under the Ohio Securities Act

One of the major aspects of the recently enacted National Securities Markets Improvement Act of 1996 (the "NSMIA") is the creation of federal categories of "covered securities" that are exempt from state regulation. Specifically, section 102 of the NSMIA amends section 18 of the Securities Act of 1933 (the "1933 Act") to exempt from state regulation certain classes of securities known as "covered securities." Prior to the NSMIA, section 18 of the 1933 Act was a savings provision in favor of state securities regulation.

However, with one important exception, the creation of covered securities does not have a significant impact on the function of the Ohio Division of Securities (the "Division")because the Ohio Securities Act already provided companion exemptions for the securities that now constitute covered securities. This article will discuss each of the four categories of covered securities set out in new section 18(b) of the 1933 Act and describe the companion Ohio exemptions where applicable.

The first category of covered securities, set out in new section 18(b)(1) of the 1933 Act, is "nationally traded securities." This category has three subcategories: (A) securities listed or authorized for listing on the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX"), or listed on the Nasdaq National Market System; (B) securities listed or authorized for listing on a national exchange that has listing standards that the Securities and Exchange Commission (the "SEC") determines are substantially similar to NYSE, AMEX or Nasdaq/NMS; and (C)

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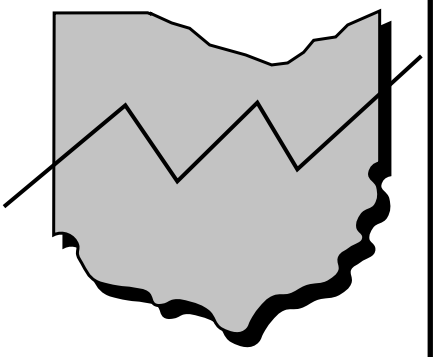

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securities of the same issuer that are equal in seniority or are senior to a security in (A) or (B). Exchange listed securities were already exempt in Ohio pursuant to R.C. 1707.02(E)(1). That provision also sets out an exemption for securities senior to exchange listed securities, which has been broadened by the NSMIA to include securities equal to exchange listed securities. In addition, the Ohio Securities Act already provided, in R.C. 1707.02(E)(2), a procedure for application by other stock exchanges.

The second category of covered securities, set out in new section 18(b)(2) of the 1933 Act, consists of securities issued by an investment company that is registered, or has filed a registration statement, under the Investment Company Act of 1940. This is the category that has the significant impact on the Division by preempting the application of merit standards to mutual fund securities. Specifically, the application of the Division's mutual fund merit standards set out in O.A.C. 1301:6-3-09 is preempted. Although mutual fund securities are no longer "registered" by the Division, a mutual fund must still make a notice filing with the Division that provides certain information about the offeror and the offering. The notice filing must be signed and verified and accompanied by both a consent to service of process and filing fee equal to what would be due had the securities been subject to registration.

The third category of covered securities, set out in new section 18(b)(3) of the 1933 Act, provides that securities sold to "qualified purchasers" are exempt. "Qualified purchasers" is to be defined by the SEC. However, Ohio already has an exemption for sales to "institutional investors," set out in R.C. 1707.03(D). "Institutional investor" is defined in R.C. 1707.01(S) and O.A.C. 1301:6-3-01(D) and includes "qualified institutional buyers" as defined in federal Rule 144A. In addition, the Ohio Securities Act already provides exemptions for sales to "accredited investors" under federal Rules 505 and 506 pursuant to R.C. 1707.03(W) and (Q) respectively. While the SEC definition may broaden these exemptions, it is likely that the majority of persons included in the SEC definition of qualified purchaser will have already been included in the Ohio definition of institutional investor or exempt under R.C. 1707.03(W) or (Q).

The fourth category, set out in new section 18(b)(4) of the 1933 Act, deems securities sold in certain exempt offerings to be covered securities. There are four subcategories to this provision.

First are securities that are exempt pursuant to section 4(1) or 4(3) of the 1933 Act and are issued by a company that is subject to the reporting requirement of the Securities Exchange Act of 1934. Section 4(1) of the 1933 Act provides an exemption for transactions by any person other than an issuer, underwriter or dealer. The companion exemption in Ohio is R.C. 1707.03(B), sales by a bona fide owner in good faith and not in the course of repeated and successive transactions. Section 4(3) of the 1933 Act generally exempts transactions by a dealer. Ohio's companion exemption is R.C. 1707.03(M).

Second are securities exempt pursuant to section 4(4), broker's transactions executed upon customer orders on any exchange or in the OTC market; the Ohio Securities Act already provided companion exemptions in R.C. 1707.03(M) and (T).

The third subcategory generally exempts securities that are exempt under section 3(a) of the 1933 Act, except: (i) securities issued under section 3(a)(2) (the government securities exemption) where the issuer is located in Ohio; however R.C. 1707.02(B) already exempts all securities listed in 3(a)(2), so even Ohio issuers would be exempt, except if the default provision of R.C. 1707.02(B)(2)

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.

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applies; (ii) non-profit, religious or educational issuers (i.e. church bonds) exempt under 3(a)(4); and (iii) intra-state securities under 3(a)(11). To the extent one of these three exceptions apply, securities are not covered securities.

The fourth subcategory provides that covered securities include those securities exempt federally pursuant to SEC rules or regulations issued under section 4(2) of the 1933 Act. In other words, securities issued under the Rule 506 safe harbor (note that 504 and 505 are promulgated under section 3(b) of the 1933 Act). The wording of the new statutory provision has caused a split in private placement law. That is, securities within the safe harbor of Rule 506 are covered securities, while securities in the broader parameters of section 4(2) of the 1933 Act are not covered securities. Consequently, R.C. 1707.03(Q) will continue to apply, as it applied prior to the NSMIA, to offerings under section 4(2) of the 1933 Act. For 506 offerings, which are now covered securities, the NSMIA did preserve a notice filing requirement. As described on p.12, the Division is proposing to amend O.A.C. 1301:6-3-03(B) to permit the filing of either a federal Form D or a Form 3-Q to comply with this notice filing requirement.

To summarize, except for the preemption of application of merit standards to mutual fund securities, the creation of covered securities by the NSMIA does not have a significant impact on Ohio blue sky law. Rather, the creation of covered securities is a Congressional effort to nationalize certain exemptions that the Ohio General Assembly (and the Division) had already deemed appropriate.

Commissioner Geyer wrote this article based on remarkes he delivered at the 1996 Ohio Securities Conference.

Control Bid Statute

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This article will also briefly compare the OCBS predicates to the federal Williams Act[5] predicates and the Ohio Control Share Acquisition Act[6] (the "OCSAA") predicates.

The first statutory predicate to the applicability of the OCBS is the definition of "control bid" set out in R.C. 1707.01(V). A control bid is the purchase, or offer to purchase, of any equity securities of a subject company from an Ohio resident if: (i) after the purchase the offeror[7] would be directly or indirectly the beneficial owner[8] of more than ten percent of any class of the issued and outstanding shares of the issuer; or (ii) the offeror is the subject company, there is a pending control bid by a person other than the issuer, and the number of the issued and outstanding shares of the subject company would be reduced by more than ten percent. However, a control bid does not include: (i) a bid made by a dealer for his own account in the ordinary course of his business of buying and selling securities; (ii) an offer to acquire, or the acquisition of, equity securities solely in exchange for other securities, where such exchange qualifies as a private offering under section 4(2) of the Securities Act of 1933; or (iii) an offer to acquire, or any acquisition, of any equity securities, for the sole account of the offeror from less than fifty persons, in good faith and not for the purpose of avoiding the Ohio Securities Act.

The ten percent threshold in the definition of control bid is greater than the five percent threshold that triggers the federal Williams Act.[9] However, the ten percent threshold is less than the twenty percent threshold that triggers the OCSAA.[10] Note that a transaction consisting of an offer of securities of the offeror for the securities of the subject company is not excepted from the definition of control bid unless the exchange qualifies as a private offering under federal law. In other words, a transaction need not have a cash component to constitute a control bid. It is also worth noting that there is no exception to the definition of control bid for a pre-acquisition shareholder or a majority or even super-majority shareholder.

The second statutory predicate to the application of the OCBS is the definition of "subject company" set out in R.C. 1707.01(Y). The term is the Ohio General Assembly's euphemism for a company that has significant ties to Ohio. Specifically, a subject company is an issuer[11] that meets both an operations test and a shareholder test. First, the operations test is met if the company has either its principal place of business or principal executive office in Ohio, or it owns or controls assets located in Ohio that have a fair market value of at least one million dollars. Second, the shareholder test is met if more than ten percent of the company's beneficial or record equity security holders are resident in Ohio, more than ten percent of the company's equity securities are owned beneficially or of record by residents of Ohio, or more than one thousand of the company's beneficial or record equity security holders are resident in Ohio.

Obviously this Ohio nexus requirement is much narrower than the Williams Act's application to equity securities registered under the Securities Exchange Act of 1934.[12] However, the definition of subject company is broad enough to include companies that are not incorporated in Ohio, do not have their main operations or headquarters in the state, provided they have one million dollars in assets in Ohio and provided also that they meet the shareholder test. In this regard, the OCBS has broader application than the OCSAA.[13]

The third statutory predicate is that the control bid for the subject company be made pursuant to a "tender offer or request or invita-

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tion for tenders."[14] Unlike "control bid" and "subject company," "tender offer" is not defined in the Ohio Securities Act. Nor is "tender offer" defined in any federal statute. However, the phrase "tender offer or request or invitation for tenders" used in the OCBS is identical to the language used in the Williams Act.[15] Consequently, it is instructive to look to the federal case law construction of the notion of tender offer.[16]

Unfortunately, a uniform test has not been developed by the federal courts. The Second Circuit Court of Appeals has stated that the "traditional characterization" of a tender offer is

> . . . a bid by an individual or group to buy shares of a company usually at a price above the current market price. Those accepting the offer are said to tender their stock for purchase. The person making the offer obligates himself to purchase all or a specific portion of the tendered shares if certain specified conditions are met.[17]

Beyond this, two general standards have developed, one broad and one narrow. The broad view is exemplified by the two part test enunciated in *S-G Securities, Inc. v. Fuqua Investment Co.*,[18] which holds that a tender offer exists where there is: (i) a publicly announced intention by the purchaser to acquire a substantial block of the stock of a target company for purposes of acquiring control thereof, and (ii) a subsequent rapid acquisition by the purchaser of large block of stock through open market and privately negotiated transactions.[19] The narrow standard consists of an eight part test most notably applied by the Ninth Circuit in *Securities and Exchange Commission v. Carter Hawley Hale Stores, Inc.*:[20]

> (1) active and widespread solicitation of public shareholders for the shares of an issuer;
> (2) solicitation made for a substantial percentage of the issuer's stock;
> (3) offer to purchase made at a premium over the prevailing market price;
> (4) terms of the offer are firm rather than negotiable;
> (5) offer contingent upon the tender of a fixed number of shares, after subject to a fixed maximum number to be purchased;
> (6) offer open only for a limited period of time;
> (7) offeree subjected to pressure to sell his stock; and
> (8) public announcement of purchasing program concerning the target company precede or accompany rapid accumulation of a large amount of target company securities.[21]

Accordingly, one must look to these not so bright case law lines to determine whether a proposed acquisition constitutes a tender offer. Because of the extensive federal case law on point, and the corresponding lack of Ohio case law, a transaction constituting a tender offer for federal purpose should also be considered a tender offer for Ohio purposes. Thus, the tender offer predicate is identical for OCBS and Williams Act purposes. It should be noted, however, that there is no tender offer predicate to the antifraud provisions of the OCBS set out in R.C. 1707.042. Nor is there a tender offer predicate to the OCSAA.[22]

To summarize, practitioners should look to the jurisdictional predicates of "control bid," "subject company" and "tender offer" to determine whether the OCBS applies to a particular transaction. It is important to keep in mind that the jurisdiction of the OCBS is not the same as the jurisdiction of the Williams Act or the OCSAA. Rather, if the three OCBS predicates are met, the practitioner should then check R.C. 1707.041(G) to see whether one of the narrow exceptions for public utilities, banks, savings and loans and their respective holding companies applies. If none of these exceptions applies, the offeror must comply with the OCBS — the language of R.C. 1707.041 is mandatory. Under R.C. 1707.25 (and perhaps also R.C. 1707.26) the Division has the authority to seek an injunction against any control bid made for a subject company pursuant to a tender offer that takes place without compliance with the OCBS.

This article was compiled by Thomas Geyer and Michael Miglets.

Endnotes

[1] R.C. 1707.01(V) states: (1) "Control bid" means the purchase of or offer to purchase any equity security of a subject company from a resident of this state if either of the following applies:

(a) After the purchase of that security, the offeror would be directly or indirectly the beneficial owner of more than ten per cent of any class of the issued and outstanding equity securities of the issuer.

(b) The offeror is the subject company, there is a pending control bid by a person other than the issuer, and the number of the issued and outstanding shares of the subject company would be reduced by more than ten per cent.

(2) For purposes of division (V)(1) of this section, "control bid" does not include any of the following:

(a) A bid made by a dealer for his own account in the ordinary course of his business of buying and selling securities;

(b) An offer to acquire any equity security solely in exchange for any other security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, in good faith and not for the purpose of avoiding the provisions of this chapter, and not involving any public offering of the other security within the meaning of Section 4 of Title I of the "Securities Act of 1933," 48 Stat. 77, 15 U.S.C.A. 77d(2), as amended;

(c) Any other offer to acquire any equity security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, from not more than fifty persons, in good faith and not for the purpose of avoiding the provisions of this chapter.

[2] R.C. 1707.01(Y) states: (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.

[3] "Tender offer" is not defined in the Ohio Securities Act. See infra notes 14-21 and accompanying text.

[4] R.C. 1707.041(G) states: This section [1707.041] does not apply when:

(1) The offeror or the subject company is a public utility or a public utility holding company as defined in section 2 of the "Public Utility Holding Company Act of 1935," 49 Stat. 803, 15 U.S.C. 79, as amended, and the control bid is subject to approval by the appropriate federal agency as provided in such act;

(2) The offeror or the subject company is a bank or a bank holding company as subject to the "Bank Holding Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, and subsequent amendments thereto, and the control bid is subject to approval by the appropriate federal agency as provided in such act;

(3) The offeror or the subject company is a savings and loan holding company as defined in section 2 of the "Savings and Loan Holding Company Amendments of 1967," 82 Stat. 5, 12 U.S.C. 1730a, as amended, and the control bid is subject to approval by the appropriate federal agency as provided in such act;

(4) The offeror and the subject company are banks and the offer is part of a merger transaction subject to approval by appropriate federal supervisory authorities.

[5] §§ 14(d) and (e) of the Securities and Exchange Act of 1934.

[6] R.C. 1701.831 et seq.

[7] R.C. 1707.01(W) states: "Offeror" means a person who makes, or in any way participates or aids in making, a control bid and includes persons acting jointly or in concert, or who intend to exercise jointly or in concert any voting rights attached to the securities for which the control bid is made and also includes any subject company making a control bid for its own securities.

[8] R.C. 1707.01(Z) states: "Beneficial owner" includes any person who directly or indirectly through any contract, arrangement, understanding, or relationship has or shares, or otherwise has or shares, the power to vote or direct the voting of a security or the power to dispose of, or direct the disposition of, the security. "Beneficial ownership" includes the right, exercisable within sixty days, to acquire any security through the exercise of any option, warrant, or right, the conversion of any convertible security, or otherwise. Any security subject to any such option, warrant, right, or conversion privilege held by any person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by that person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person. A person shall be deemed the beneficial owner of any security beneficially owned by any relative or spouse or relative of the spouse residing in the home of that person, any trust or estate in which that person owns ten per cent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which that person owns ten per cent or more of the equity,

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Summaries of the Advisory Committee Meetings held at the 1996 Securities Conference

Licensing Advisory Committee

by Joyce Cleary

The annual Licensing Advisory Committee meeting was held in conjunction with the 1996 Ohio Securities Conference, on November 4th.

The following members and guests of the Committee were present:

Dale Jewell, Co-Chairman, Ohio Division of Securities; John Matsumoto, NASD; Erwin Dugasz, Nationwide Investment Securities Corp.; Jim Everett, Securities Industry Association; Ken Geist, Ohio Division of Securities; Richard Pautsch, Ohio Division of Securities; Kathy Veach, Ohio Division of Securities; Joyce Cleary, Ohio Division of Securities.

The first item discussed was the Uniform Combined State Law Examination, or Series 66. The Series 66, which is a combination of the Uniform Securities Agent State Licensing Exam, Series 63, and the Uniform Investment Adviser Law Exam, Series 65, will soon be accepted by the Division for licensing purposes. The Administrative Rule change is expected in January. Until the amendments to the rule become effective, the Division will accept the Series 63 break-out score from the Series 66.

The Committee then discussed regulating broker-dealer activity on the Internet. Mr. Jewell noted that the Division is currently browsing the Internet for broker-dealers. On October 29, 1996, 128 entities or individuals were found advertising through this medium. Of the 128 found, 48 were approved as dealers in the state of Ohio. However, 45 were not licensed. Two were pending in Ohio and 33 were questionable as to whether or not they should be licensed. It was noted that the NASD's Washington office monitors the Internet.

Mr. Jewell then opened the floor for discussion and comments regarding the Division's Guidelines for the Sale of Securities on Bank Premises. None were made.

Mr. Jewell next described NASAA's proposed amendment to Section 201 of the Uniform Securities Act titled "Limited Registration of Canadian Broker/Dealers and Agents." This proposal permits Canadian broker/dealers, who are members of a self-regulatory organization, such as the Investment Dealers Association of Canada, to deal with two very limited classes of clients who may be residents in the U.S. without meeting the full registration requirements. Mr. Jewell indicated that the Division is considering proposing an amendment to the Ohio Securities Act to provide this Canadian exemption. No objections were raised by the Committee.

Next on the agenda was a discussion of the Securities and Exchange Commission's Proposed Books and Records Rule. The amendments proposed will change the record-keeping requirements of broker-dealers. Comments on the proposed amendments can be submitted to the Securities and Exchange Commission up to 60 days following the date of publication in the Federal Register.

The Committee then turned to a discussion of the National Securities Markets Improvement Act of 1996 (the "NSMIA"). The committee discussed the problems with the clarity of its meaning. The Division is receiving calls from other states asking for interpretation of the Act. It would appear that Congress will submit a technical bill that may answer questions or attempt to clarify the Act.

Next on the agenda were questions regarding the redesign of the CRD system. It was understood that there would be a three-part "roll-out" in 1997. Concerns were raised on the availability of the number of "query" fields. To adequately search the system, more than one field would be necessary. Another foreseen problem was with possible filing errors. For example, in choosing states in which the applicant was seeking licensure, a question would arise as to whether there should be an easy way to obtain a refund for an error, should the wrong state be chosen.

Finally, Mr. Jewell announced that, in response to the mandate of the NSMIA, the Division may propose statutory amendments to pick up the regulation of smaller investment advisors no longer regulated by the SEC. No objections were raised.

Takeover Advisory Committee

by Donna Miglets

The Takeover Advisory Committee meeting was held in conjunction with the 1996 Ohio Securities Conference. Committee members in attendance were Co-Chairman Thomas E. Geyer, Leigh B. Trevor, Mimi Dane, John R. Gall, William C. Wilkinson, Gary P. Kreider, Jeffrey Manecke, Edward Schrag, Jr., David P. Porter, Daniel A. Malkoff, Samuel Simon, Patricia E. Snyder and Donna Miglets. Co-Chairman James Tobin was unable to attend the meeting.

Mr. Geyer began the meeting by briefly discussing each of the nine control bid filings that had been made between January 1 and November 1, 1996.

Mr. Geyer then provided an overview of the Division's control bid review procedure. He stated that initially the Division reviews the Form 041 and exhibits, including the offering document, for compliance with R.C. 1707.041(A)(2). He then described the Division's policy of sending a comment letter to the offeror if questions arose during the initial review. He noted

that common comment letter issues included: (i) the failure to file the Form 14D-1, which generally results in a failure to comply with R.C. 1707.041(A)(2)(a); (ii) the failure to provide adequate disclosure, and/or sufficient documentation, for the source and amount of funding as required by R.C. 1707.041(A)(2)(c); and (iii) the failure to specifically address each item set out in R.C. 1707.041(A)(2)(d). Mr. Geyer stated that the Division will negotiate its comments with counsel for the offeror. He indicated that the Division continues to thoroughly review the control bid filing after sending a comment letter, and may make additional comments. Mr. Geyer concluded his opening remarks by indicating that points of emphasis in the Division's review include: (i) disclosures in the offering document; (ii) responses to/disclosure regarding the particular items set out in R.C. 1707.041(A)(2); and (iii) in a cash deal, full disclosure and sufficient documentation of the source and amount of funds.

The next item on the agenda was a discussion of the United Dominion case, lead by Mr. Gall and Mr. Porter. Mr. Gall discussed the differences between the United Dominion decision and the Luxottica and Danaher cases. Mr. Porter initiated a discussion regarding the use of the date of the special shareholders meeting as the "record date" for purposes of R.C. 1707.01(CC)(2) and 1707.831. Mr. Porter also noted the vitality of the self-certifying proxy method used by Commercial Intertech. The Committee concurred that future litigation under R.C. 1707.831 may well be dependent on the proxy and meeting procedures put in place by the target company, as opposed to the constitutionality of R.C. 1707.831.

Turning to the next item on the agenda, Mr. Geyer asked for comments and opinions regarding the Division's three-calendar-day review period. First, the Committee concurred that R.C. 1.14, not O.A.C. 1301:6-1-05, governs the calculation of the three day period. Second, the Committee agreed that "day" meant 24 hours and that the Division would have until midnight on the third calendar day to suspend a bid. Mr. Geyer noted that the Fifth District Court of Appeals had recently held that a "day" consisted of a 24 period in State v. Bowman, 108 Ohio Ap. 3d 276 (Tuscarawas Cty. 1996). Third, the Committee agreed that the three-calendar-day period was too short. Mr. Kreider suggested a five-calendar-day period and the Committee agreed that would be appropriate. The Committee agreed that if the review period were extended, the total time for Division review, hearing and decision must not exceed twenty days.

Mr. Geyer then asked for opinions as to whether R.C. 1707.041 should be amended to require that withdrawal rights be included in non-Williams Act control bids. Mr. Geyer noted that one non-Williams Act control bid made in 1996 had not contained withdrawal rights. The Committee concluded that requiring withdrawal rights to be included in non-Williams Act control bids would be advisable.

Finally, Mr. Geyer sought input on establishing an exclusion from the definition of "control bid" for an offer to purchase by a person who already holds a super-majority of the shares for which the offer is made. It was noted that although the offeror may be a large, or even controlling shareholder, other shareholders, especially individuals, were still subject to the pressures of the tender offer process. Since the Control Bid Statute was designed to insure full disclosure of all material information in order to provide some assurance in an otherwise coercive circumstance for the shareholder, the Committee recommended that such an exclusion not be created.

Please see postscript on page 18.

Registration and Exemption Advisory Committee

by Mark Heuerman

The Registration and Exemption Advisory Committee held its meeting directly after the 1996 Ohio Securities Conference. Michael Miglets called the meeting to order.

The first issue for discussion concerned the Ohio Securities Act with regards to Internet offerings. As discussed in the panel at the Conference and restated in the meeting, the Ohio Securities Act applies to offerings over the Internet. The Division suggested that an administrative rule be adopted to exempt offerings over the Internet where the issuer does not complete sales or intend to offer the securities in Ohio. A proposed rule could be modeled after the North American Securities Administrators Association ("NASAA") resolution or the order of the Pennsylvania Securities Commission's Order relating to such offerings. Those provisions create an exemption for Internet offerings if certain conditions have been satisfied by the issuer. One comment at the meeting suggested that a sophisticated practice should comply and issuers should make themselves aware of securities law implications prior to posting an offering circular over the Internet. Thus, an exemption by rule is not necessary. Attendees at the meeting do not favor pre-registration sales activities for an exemption other than the posting of the offering circular on the Internet. However, there was some agreement that issuers should not be precluded from registration when an issuer subsequently decides to register in Ohio and no sales have been completed by the issuer. (A condition of the Pennsylvania exemption prohibits any sales in that state as a result of an Internet offer. Thus an issuer may not subsequently register and sell the securities in Pennsylvania.) While registration may be unlikely after the offering is posted on the Internet,

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the Division will continue to collect comments regarding a suggested version for an exemption.

Another combined technology and registration issue concerned electronic filings. The Division is interested in accepting electronic filings which will coordinate electronic filings with the Securities and Exchange Commission. Section 1707.09 of the Revised Code and rule 1301:6-3-091 may present an obstacle as those provisions require a signed and verified application. Other state agencies and departments may have similar concerns. The state of Utah has adopted a digital signatures statute. The Division requests comments from applicants who have experience in filing forms in that state. Original signatures have been problems in proxies and subscriptions as well and this issue is not limited to state agencies.

The committee discussed Regulation D filings. The Division has considered changing the filing to a Form D. The National Securities Market Improvement Act permits state agencies to require notice filings "that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996." An issue was whether any changes may be made after September 1, 1996. One comment was that a state could probably change the filing requirement to a Form D but could not require any other form. The Form 3-Q could remain for those issuers that rely solely on section 4(2) of the Securities Act of 1933.

The committee also discussed a rule exemption for professional associations that convert from a limited partnership to a limited liability company. The Ohio Securities Act would require a filing for an exemption or registration when there are more than 10 partners that are converting to interests in a limited liability company. The filing requirement creates adverse tax consequences for the limited liability company. IRC Regulation 1.448-IT(b) would deem the limited liability company a "tax shelter." The law firm would then be precluded from using a cash basis of accounting. It is the opinion of attendees that an Ohio Securities Act exemption would be easier to accomplish then having a redraft of the tax regulation.

Jason Blackford asked if the Division has objections to an exemption that would permit an exemption for sales, including solicitations, to qualified purchasers. The exemption is similar to an exemption in California. The Division would not oppose the exemption.

The last issue for discussion was the proposed adoption of coordinated equity review. In an effort to develop more uniformity in the application of policy statements, the Division is requesting comments on the adoption of the NASAA policy statements for equity offerings. These policy statements may have some variance with the current policies applied by the Division. The most notable difference would be with regards to the escrow and subordination agreements required by the Division for promotional shares or cheap stock. The most distinctive changes are the computation of the number of promotional shares subject to the escrow agreement and the duration of the escrow agreement under the earnout provisions. The procedures for issuing comments and responding to those comments would change under coordinated equity review. One comment letter from a lead state examiner will be sent to the applicant. The comment letter of the lead state represents a compilation of the comments of the other states. Applicants will negotiate the resolution of the comments with the lead state. The Division has traditionally sent out comment letters in advance of the time period prescribed by coordinated equity review. The Division appreciates any comments on this proposal.

Technology Advisory Committee

by William Leber

The first meeting of this newly-established Advisory Committee was co-chaired by William Leber and Columbus Attorney Robert Schwartz.

The Committee expressed uniform support for the Division's proposal to adopt a safe harbor for offerings made over the Internet, but not intended for Ohio, based on the Pennsylvania and NASAA models. The Committee also discussed, at some length, the issues related to electronic filings, including the issue of electronic signatures and the use of Personal Identification Numbers (PIN's).

The Committee identified the current manual signature requirements as the single substantive impediment to electronic filings in Ohio. Columbus Attorney Russ Austin summarized the Advisory Committee consensus by noting that, in view of the experimental nature of electronic signature legislation in jurisdictions such as California and Utah, and the relatively small role of securities transactions in the overall scope of electronic commerce, the issue of electronic signatures and PIN's will likely be subject to a standard adopted for business generally. Mr. Austin suggested that the Division withhold action on electronic signatures at least until the publication of an impending ABA report on the issue.

The Committee also considered the general issues associated

with the regulation of securities transactions in the context of ever-increasing technological change in communications and the distribution of investment information. The Committee considered several issues regarding this matter, such as, when does the establishment of a web-site constitute "gun-jumping"; whether the Division should put substantial effort into protecting unsolicited investors; whether Internet technology is more comparable to a telephone call or a newspaper ad; whether Internet enforcement should be more directed towards offerings or intermediaries, and the limits to which the Division or any other regulatory agency can reach out to offshore scams.

The Committee did express consensus on the need to increase investor education in this area, and cited the Division's web-site as a very positive initial step. Committee members proposed specific changes in the web-site that would draw attention to the Division of Securities' web-site for investors browsing the web (e.g. placing "Securities, securities, securities, securities, securities, securities, securities..." at the top of one page in the site).

Columbus Attorney Sean Kelleher suggested using electronic filing as an incentive for issuers, and as an aid to capital formation. Mr. Kelleher and Mr. Schwartz reasoned that having all filings accessible over the Internet would appeal to issuers, and serve as an identifiable support by the Division for capital formation. Columbus attorney and former Commissioner of Securities Mark Holderman also suggested that the Ohio Securities Act and Division rules on the Division's web page be presented in a format where the whole statute and all the rules could be readily searched on a key word or phrase basis.

Enforcement Advisory Committee

by Caryn Francis

The annual Enforcement Advisory Committee meeting was held in conjunction with the Ohio Securities Conference. Several Division attorneys were present, and the meeting was chaired by Caryn Francis, Attorney Inspector, Ohio Division of Securities. Robert N. Rapp served as Co-Chairman. Also present were Mark Anderson, Allan Blue, George W. Humm, William H. Jackson Jr., Philip Lehmkuhl, Ross Tulman and Gregg Zelasko.

Chairman Francis opened the meeting by addressing old business. The Chairman stated that the Commissioner is philosophically opposed to legislation which would allow the Division to impose fines on individuals and companies who violate Ohio securities laws. He believes that potential defendants should not be able to "buy their way out" of an enforcement action. The Division does not intend to pursue the proposed fining legislation further.

It was also noted that the Commissioner has tabled further consideration of the proposed rule regarding delivery of stock. He based his decision on feedback received from the Broker/Dealer Advisory Committee and the Enforcement Advisory Committee.

Committee members next discussed the Division's position regarding brokers with numerous complaints and/or arbitration actions. The Chairman stated that the Division takes a proactive approach to enforcement by attempting to keep "bad apples out" by denying licenses to brokers with large numbers of complaints and/or arbitration hearings.

The Committee discussed the impact of the *Columbus Skyline* case on fraud cases pursued by the Division. The Chairman stated that the Division will continue to pursue similar cases as they surface. She noted that the Skyline decision has been applied to two cases thus far.

Discussion turned to the recently-enacted National Securities Markets Improvement Act of 1996. The Chairman stated that the States retained authority to take enforcement action regarding violations which involve fraud, and other areas not specifically mentioned in the Act. The Division will continue to investigate unlicensed salesman cases.

Co-Chairman Rapp and Mr. Jackson raised concerns about investment advisors. Co-Chairman Francis responded that the Division will continue to refer such cases to the SEC.

The Committee turned its attention to CRD disclosure issues. Co-Chairman Rapp noted that states have conflicted with the NASD, since state regulators release all information on the CRD, while the NASD only releases some of the information. He noted that tension has decreased as the NASD has increased the amount of its disclosure. Mr. Jackson noted that the CRD is not sufficiently updated and should reflect a more complete picture regarding complaints, arbitration, and settlements. The NASD is revising applications, and looking into purging complaints where no wrongdoing was found. Mr. Jackson added that CRD information tends to be repetitive, particularly in multi-faceted matters. Co-Chairman Rapp and Mr. Tulman concurred, noting that it is often difficult to interpret.

Co-Chairman Rapp raised the possibility of adopting a quantified level of complaint, such as a $5000 threshold. He noted it would cause some difficulties but would contribute to consistent disclosure.

After electing a new Co-Chairman for 1997, Allan Blue, the meeting was adjourned.

Control Bid Summary

by William Leber, Esq.

The onslaught of Control Bid filings under the Ohio Securities Act has continued at its unprecedented 1996 pace. Following the six Form 041 filings reported in the last issue of the *Ohio Securities Bulletin* (Issue 96:3), five more Control Bids filed with the Division during the fourth quarter of 1996.

Nash Finch Company / Super Food Services, Inc.

The review period for the Division of Securities to complete its review of the control bid of Nash Finch Company for Dayton-based Super Food Services, Inc. ended on Saturday, October 12th without action to suspend. Both companies are traded on the Nasdaq National Market System (Nasdaq NMS). Nash Finch (NAFC on the Nasdaq NMS), of Minneapolis, Minnesota, made the tender offer subject to an agreement with Super Food Services (SFS on the Nasdaq NMS).

Super Food Services is a wholesale grocery distributor, supplying food and non-food products to more than 850 retail stores in six states. Nash Finch is one of the largest food wholesalers in the country, supplying products to supermarkets, independent retailers and military bases in approximately 30 states. The acquisition of Super Food Services will make Nash Finch the third largest public grocery wholesaler in the United States with 1997 sales, on a consolidated basis, of approximately $4.5 billion.

On October 29th, Nash Finch announced that it had received official notification that the waiting period under the Hart-Scott-Rodino Act had terminated, and on November 7th announced that the tender offer had been completed.

Marshall T. Reynolds / Broughton Foods Company

The period for review of the control bid of West Virginia-resident Marshall T. Reynolds for Marietta-based Broughton Foods Company ended on Saturday, October 19th without action to suspend by the Division of Securities. The $8,000,000 bid for Broughton Foods Company was characterized as "friendly" by Broughton management, and represented a 50% premium over the most recently reported OTC bulletin board price for Broughton Foods Company shares. Broughton is a dairy and restaurant operator which employs approximately 200 people at various locations in southeast Ohio.

Counsel for Reynolds submitted complete documentation in its initial Form 041 filing, and in response to the Division of Securities' request for additional information in accordance with the Control Bid provisions of the Ohio Securities Act. As a result of the Division's demand for additional information and documentation, the offeror transmitted a supplementary disclosure document to all Broughton shareholders.

The bid for Broughton Foods Company presented some unique documentation considerations because it was the first control bid or takeover filing made under the Ohio Securities Act where the offeror was an individual.

Renco Group, Inc. / WCI Steel

On October 28, 1996, the Division received a Form 041 filing by Renco Group, Inc. for WCI Steel of Warren, Ohio. Renco Group Inc, is the company's major shareholder, and owned 84 percent of WCI's common stock prior to the bid. On October 23th , WCI's board of directors approved, subject to certain modifications, the proposal from The Renco Group, Inc. that WCI "go private" as previously announced on October 10, 1996. The purchase price for the outstanding public shares not owned by Renco was $10 per share.

WCI is an integrated steel producer with products that are used in the manufacture of a variety of applications such as saw blades, golf club shafts, lawn mower blades, chain links, seat belts, razor blades, hand and garden tools, electric motors, fuel tanks, and pressure tank heads. WCI Steel markets its products directly to value-added steel manufacturers. WCI is traded on the New York Stock Exchange and has over 2,000 employees in the Warren area.

After Renco responded to comments by the Division, the review period ended without action to suspend by the Division on Thursday, October 31th.

Furon Co. / Medex, Inc.

On Friday afternoon, November 15, 1996, the Division of Securities received a Form 041 filing made by Furon Co. of Laguna Niguel, California which was making a control bid for the shares of Medex, Inc. of Hilliard, Ohio. The review period on the Furon offer ended on November 18th without action to suspend the bid. Also on November 15th, Furon filed a form 14d-1 with the Securities and Exchange Commission under the Williams Act. Medex (MEDX) trades on the Nasdaq NMS, and Furon (FCY) is listed on the New York Stock Exchange.

On November 13th, Furon and Medex had announced that

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Miglets Named to Fill Control Bid Attorney Spot

Division of Securities registration attorney Michael P. Miglets has been named to fill the statutory Control Bid Attorney position authorized by R.C. 1707.36. The appointment formalizes the Division's approach to control bid filings and is especially timely in the wake of the increasing number of control bid filings received by the Division. Miglets will take the lead on the Division's control bid review team and will be responsible for reporting on all maters pertaining to control bids. Miglets has been with the Division since 1982 and most recently served as Supervisor of the Division's Registration Section. In addition to his control bid responsibilities, Miglets will continue to serve as an attorney/examiner in the Registration Section.

In connection with Miglets' promotion, Division registration attorney Deborah Dye Joyce has been named Registration Supervisor. Dye Joyce originally joined the Division in 1986 and served as a registration attorney until moving to the Division of Savings and Loans in 1989, where she served in several capacities, including Acting Superintendent. She returned to the Division of Securities in 1994 as the attorney/examiner in charge of mutual funds.

Control Bids

Continued

they had entered into a definitive agreement, approved by the boards of directors of each company, to merge through a newly created Furon subsidiary, FCY, Inc. In a total deal valued at $160 million, Furon offered $23.50 a share for all of Medex's outstanding common stock, a premium of approximately 50% over the Medex average trading price for the month preceding the announcement. Furon planned to acquire any remaining Medex shares at the same price as paid in the tender offer following the end of the offer.

Medex makes polymer-based critical care products and infusion systems for medical and surgical use that are sold in over 50 countries. Furon makes polymer components for products in a number of industries including health care.

On December 4th, Furon announced that the waiting period under the Hart-Scott-Rodino Act for the Medex acquisition had expired and that no antitrust concerns were raised by the Federal Trade Commission or the Department of Justice. At a December 13th special meeting, the Medex shareholders voted to approve the proposed acquisition by FCY, Inc., a Furon subsidiary, in accordance with Section 1701.831 of the Ohio Revised Code. Furon later reported that it had acquired over 81% of Medex's shares and that it was extending its offer until December 19, 1996.

Intermet Corp. / Sudbury, Inc.

On November 26, 1996 the Division received a form 041 filing by Intermet Corp. With the assent of the target's board, Intermet's I M Acquisition Corp. subsidiary, made a bid for all outstanding common shares of Sudbury, Inc. at $12.50 per share. Sudbury, which has its headquarters in suburban Cleveland, is traded on the Nasdaq NMS under the symbol SUDS and has approximately 260 employees in the Norwalk, Ohio area. After a thorough review of the filing, augmented by an advance view of essential documentation taken from the EDGAR archives, the review period for the filing passed without suspension on Friday, November 29th.

Intermet (INMT on the Nasdaq NMS) is an independent manufacturer of precision castings used in the automotive industry and in railroad, municipal, and construction applications. Intermet's headquarters are located in Troy, Michigan. On December 9th, Intermet reported that the Hart-Scott-Rodino waiting period for its cash tender offer expired on December 6th. The cash tender offer is scheduled to expire at midnight on December 20th.

Notably, the value of shares of both the bidder and the target has risen during the period of this merger - control bid.

Earlier this year, in September, Park Ohio Industries, Inc. (PKOH on the Nasdaq NMS) had made an $11 per share offer to Sudbury. After the Sudbury Board of Directors rejected the offer, PKOH announced that it would not make an offer to the Sudbury shareholders, and no form 041 or Williams Act filing was made. Park-Ohio is a diversified manufacturing and logistics company which, like Sudbury, has headquarters on Chagrin Boulevard in Cleveland.

Division Proposes Rule Amendments:
Form D and Internet Offers

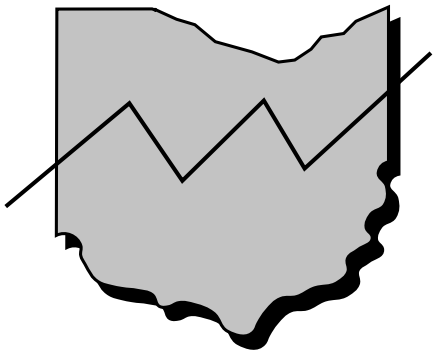
The National Securities Markets Improvement Act of 1996 ("NSMIA") included securities sold pursuant to Rule 506 ("Rule 506") in its definition of covered securities. NSMIA authorizes states to collect fees and to require a notice filing for Rule 506 offerings provided that the filing requirement is "substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996." The Division's proposed rule amendment will allow issuers or dealers to report sales made in Ohio pursuant to R.C. 1707.03(Q) and Rule 506 on either Form D or the Division's Form 3-Q. A consent to service must also be included if applicable.

While the Form D does not require that a copy of the materials under Rule 502 of Regulation D be included, the Division requests that a copy of the private placement memorandum be filed with the Form D. If a private placement memorandum is not included, the Division will request confirmation that the offering is limited to accredited investors as defined in Rule 501 of Regulation D or a copy of the private placement memorandum pursuant to R.C. 1707.23(A) and 1707.45. The private placement memorandum is necessary to insure compliance with Regulation D and to investigate for fraud or misrepresentations. The Division may also request confirmation that any securities dealers selling securities in Ohio are licensed under R.C. §1707.14 or subject to the "de minimus" provisions of the NSMIA.

For offerings under section 4(2) of the Securities Act of 1933 ("section 4(2)"), issuers or dealers will still be required to report sales in Ohio on the Division's Form 3-Q. As offerings under section 4(2) are not covered securities under the NSMIA, the commission, discount and other remuneration limitation of 10% under R.C. 1707.03(Q)(2) will still apply to offerings under section 4(2).

The Division is also proposing creating a safe harbor under R.C. 1707.03(V) for notices of securities offerings on the Internet. As the definition of sale under R.C. 1707.01(C) includes offers, notices on the Internet, without proper registration or exemption, constitute the sale of unregistered securities in violation of R.C. 1707.44(C)(1). The Division's proposed rule creates a safe harbor by exempting the Internet notice provided that the offer indicates, directly or indirectly, that it is not available to Ohio residents, the issuer does not otherwise attempt to sell securities in Ohio and the notice is not directed to Ohio residents. Any sales resulting from an Internet offering or notice may be made only after the securities are properly registered or exempted under the Ohio Securities Act with the delivery to Ohio investors of a prospectus, offering circular or Form U-7 if required under the Division's rules and regulations.

Public notice of the hearing on the rules amendments is included in this issue of the *Ohio Securities Bulletin*. Written comments on the proposed rules may also be submitted to the Division.



PUBLIC NOTICE

At 10:00 a.m. on Monday, March 17, 1997, the Ohio Division of Securities will hold a public hearing regarding proposed changes to Ohio Administrative Code (OAC) rule 1301:6-3-03. The hearing will be held in the offices of the Division located at 77 South High Street, 22nd Floor, Columbus, Ohio 43215. The Division has proposed the following changes:

OAC 1301:6-3-03(B) Exempt transactions: One aspect of the proposed amendment to this paragraph is to add a new provision giving an applicant the option to report sales made in Ohio pursuant to Revised Code 1707.03(Q) and Rule 506 of Regulation D of the Securities Act of 1933 on either a Form D or the Division's Form 3-Q. Currently, the applicant must submit a Division Form 3-Q.

The proposed amendment to this paragraph also clarifies that the Form 3-Q or Form D must be manually executed in order to properly claim the exemption.

OAC 1301:6-3-03(D) Exempt transactions: The proposed amendment to this paragraph is the addition of a new provision granting a safe harbor to certain offerings on the Internet.

The purpose of the amendments to OAC 1301:6-3-03(B) stems from the enactment of the National Securities Markets Improvement Act of 1996 (NSMIA) on October 11, 1996. The NSMIA included securities sold pursuant to Rule 506 in its definition of the term "covered securities." The NSMIA authorizes states to collect fees and to require a notice filing for Rule 506 offerings provided that the filing requirement is, "...substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996." To assure compliance with the NSMIA, the Division's proposed rule amendment will allow issuers or dealers to report sales made in Ohio pursuant to Revised Code 1707.03(Q) and Rule 506 on either Form D or the Division's Form 3-Q.

The purpose of clarifying that these forms must be manually executed is to assure the Division of the accuracy and authenticity of the forms filed.

The purpose of the amendments to OAC 1301:6-3-03(D) is to update the Ohio securities laws as a result of the increasing availability of the Internet to the public. The definition of the term "sale" under Revised Code 1707.01(C) includes offers. Therefore, notices on the Internet, without proper registration or exemption, constitute the sale of unregistered securities in violation of Revised Code 1707.44(C)(1). The Division's proposed rule creates a safe harbor by exempting the Internet notice provided that the offer indicates that it is not available to Ohio residents, the issuer does not otherwise attempt to sell securities in Ohio and the notice is not directed to Ohio residents. Any sales resulting from an Internet offering may be made only after the securities are properly registered or exempted under the Ohio Securities Act .

Copies of the proposed amendments to OAC 1301:6-3-03 may be obtained by contacting the Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43215.

Division Enforcement Section Reports

Administrative Orders

Weatherly Securities Corporation

On July 2, 1996, The Division issued Order No. 96-091, a Final Order, to Weatherly Securities Corporation, located in the state of New York. The Order grants a license to Weatherly Securities as a dealer of securities in Ohio.

R.C. 1707.19 allows the Division to refuse an application for a securities dealer license if the applicant is not of "good business repute." On October 10, 1995, the Division issued Order No. 95-079 alleging that Weatherly Securities was not of "good business repute" as that phrase is used in Revised Code sections 1707.16 and 1707.19, and Ohio Administrative Code rules 1301:6-3-19(D)(2),(7) and (9). The Order also gave notice of the Division's intent to deny it's application for licensure as a dealer of securities in the State of Ohio.

Division Order No. 95-079 was properly served on Weatherly Securities, who timely requested a hearing pursuant to Chapter 119 of the Ohio Revised Code. The hearing was held, and the Hearing Officer issued a report in May, 1996, recommending that Weatherly Securities be granted a license. The Division accepted the Hearing Officer's recommendation, thereby issuing Final Order 96-091.

Consolidated Associates Real Estate, Inc., Consolidated Associates Real Estate Investment, Inc., and Melvin W. Mitchell

On July 3, 1996, the Division issued a final Cease and Desist Order, Division Order 96-092, to Consolidated Associates Real Estate, Inc., Consolidated Associates Real Estate Investment, Inc., and Melvin W. Mitchell. Mitchell serves as president of both companies, which are located in North Olmsted, Ohio.

On or about April 15, 1996, the Division had issued and subsequently served on each of the Respondents Division Order No. 96-060, a Notice of Opportunity for Hearing, which alleged that Respondents violated Revised Code sections and 1707.44(C)(1) and that Mitchell alone violated 1707.44(A). The Division claimed it had discovered through an investigation that Mitchell had sold promissory notes to several Ohio investors. It also deemed some of these transactions as unregistered sales of securities, since they were not registered by description, coordination or qualification, or not the subject matter of a transaction that had been registered by description. The Division also concluded that no effective claim of exemption had been perfected for the prohibited transactions.

The Division properly served Order No. 96-060 upon the Respondents, but could not obtain service. Notice of the Order was published in the *Daily Legal News*, on April 30, May 7, and May 14, 1996. Having received no response from the Respondents, the Division issued its final Cease and Desist Order, Order No. 96-092.

Timothy Sean Mulloy

On July 10, 1996, the Division issued Order No. 96-093, a Final Order To Deny Application For License, to Timothy Sean Mulloy, a resident of Birmingham Michigan. The Order denies Mulloy's application for a securities salesman license.

R.C. 1707.19 allows the Division to refuse an application for a securities salesman license if the applicant is not of "good business repute." On February 20, 1996, the Division issued Order No. 96-031, which alleged that Mulloy was not of "good business repute" as that phrase is used in Revised Code sections 1707.16 and 1707.19, and Ohio Administrative Code rule 1301:6-3-19(D)(7) and (9). This allegation was based on the fact that Mulloy had been censured in 1989 by the Chicago Board of Options Exchange (CBOE) and barred from associating with any CBOE member for five years. The CBOE claimed that Mulloy failed to accept clearance of an order he had entered, misrepresented those trades to the Options Clearing Corporation and allowed the resulting transactions to receive specialist exempt credit for margin purposes. The Order also gave him notice of the Division's intent to deny his application for licensure as a salesman of securities in the State of Ohio.

Division Order No. 96-031 was properly served on Mulloy, who timely requested a hearing pursuant to Chapter 119 of the Ohio Revised Code. The hearing was held, and the Hearing Officer issued a report in May, 1996. The Hearing Officer recommended that the Division deny Mulloy a salesman license. The Division accepted the Hearing Officer's recommendation, thereby issuing a Final Order to Deny Application For License, Division Order No. 96-093.

Stewart Ross Moscov

On July 29, 1996, the Division issued Order No. 96-115, a Final Order, to Stewart Ross Moscov, a resident of New York state. The Order grants Moscov's application for an Ohio securities salesman license.

R.C. 1707.19 permits the Division to refuse an application for a securities salesman license if the applicant is not of "good business repute." On December 27, 1995, the Division had issued Division

Order No. 95-105, to Moscov. The Order alleged that he was not of "good business repute" as that phrase is used in Revised Code sections 1707.16 and 1707.19, and Ohio Administrative Code rule 1301:6-3-19(D)(7) and (9). The Order also gave Moscov notice of the Division's intent to deny his application for licensure as a salesman of securities in the State of Ohio.

Division Order No. 95-105 was properly served on Moscov, and he timely requested a hearing pursuant to Chapter 119 of the Ohio Revised Code. The hearing was held, and the Hearing Officer issued a report in July, 1996 recommending that Moscov be denied a license. Moscov filed objections to the Hearing Officer's Report and Recommendation. The Division exercised its discretion pursuant to Revised Code section 119.09 to reject the Hearing Officer's recommendation and granted Moscov a salesman license.

Helix Securities, Inc.

On August 30, 1996, the Division issued Division Order 96-130, a Final Order of Revocation of Ohio Securities Dealers License No. 25862, held by Helix Securities, Inc., Salt Lake City, Utah. The Division found that Helix Securities, Inc. had conducted business in violation of such rules and regulations as the Division prescribes for the protection of investors, and revoked its license under the authority of R.C. section 1707.19.

Ohio Administrative Code Rule 1301:6-3-15(H)(1), a rule prescribed for the protection of investors, requires every dealer to file a financial statement within 90 days of the end of its fiscal year. Helix Securities failed to file its financial statement within 90 days, after repeated requests from the Division. As a result, the Division found that Helix had violated 1707.19(I), which provides for the revocation of a dealer's license if the dealer conducts business in violation of such rules and regulations as the Division prescribes for the protection of investors.

On July 30, 1996, the Division issued and mailed to Helix Securities, Division Order No. 96-116, an order captioned "Notice of Intent to Suspend or Revoke Ohio Securities Dealer License No. 25862 Notice of Opportunity for Hearing." The notice order was properly served upon Helix Securities by certified mail. However, Helix failed to request an administrative hearing on the matter. Consequently, the Division issued the final order revoking Helix's Ohio securities dealer license.

Bjarne Sorensen, World Network Holdings and House of Free Enterprise

On September 3, 1996, the Division issued a final Cease and Desist Order, Division Order No. 96-132 to Bjarne Sorensen, World Network Holdings and House of Free Enterprise. Sorensen served as a salesperson for World Network Holdings and House of Free Enterprise. World Network Holdings and House of Free Enterprise are Florida business entities transacting business within the State of Ohio.

On June 17, 1996, the Division issued to Respondents its Division Order No. 96-083, a Notice of Opportunity for Hearing, alleging that Respondents solicited the sale of unregistered, non-exempt securities in Ohio, in violation of R.C. 1707.44(C)(1); knowingly made or cause to be made false representations concerning a material and relevant fact for the purpose of selling securities in Ohio, in violation of R.C. 1707.44(B)(4); and, in selling securities in Ohio, knowingly engaged in an act or practice declared as illegal, defined as fraudulent or prohibited, in violation of R.C. 1707.44(G).

On June 26, 1996, the U.S. Postal Service returned undelivered the certified mailing containing Division Order No. 96-083. On August 8, 15, and 22, 1996, the Division properly served by publication its Division Order No. 96-083 upon the Respondents. Notice of the Order was published in the Orlando Sentinel of Florida, a general circulation newspaper. Respondents failed to timely request an adjudication hearing. Subsequently, on September 3, 1996, the Division issued its final Cease and Desist Order, No. 96-132. The Final Order found Respondents violated R.C. 1707.44(B)(4), (C)(1) and (G), as alleged in Division Order No. 96-083.

Charles N. Diamond; COPLAY, Inc.; COBEREA, Inc.

On September 30, 1996, the Division issued Order No. 96-141, an Order to Cease and Desist, against Charles N. Diamond, COPLAY, INC., and COBEREA, INC. Charles N. Diamond formed COPLAY, Inc. in 1993, and COBEREA, Inc. in 1994, to raise money to form one or more coffee houses in the Cleveland area. Between November, 1993, and October, 1994, Diamond, COPLAY, and COBEREA sold, and caused to be sold, units of stock and promissory notes in COPLAY and COBEREA on at least eleven occasions.

On July 23, 1996, the Division had issued an Order of Notice of Opportunity for Hearing, Division Order No. 96-110, which was supported by the facts stated above. The Order alleged that Diamond, COPLAY and COBEREA engaged in selling securities without being licensed to do so, in violation of O.R.C. 1707.44(A), and selling securities which were not registered, nor exempt from registration, in violation of O.R.C. 1707.44(C). Since

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none of the Respondents requested a hearing, the Division issued Division Order 96-141, which ordered the Respondents to cease and desist from practices violating the Ohio Securities Act.

Terry Allen McGill

On October 7, 1996, the Division issued Division Order 96-146, a final Cease and Desist Order against Terry Allen McGill, CRD No. 1270731. In connection with the Cease and Desist Order, the Division and McGill entered into a Consent Agreement, in which McGill waived his right to an administrative hearing and consented to the issuance of a final order.

An investigation by the Division revealed that McGill failed to pay an Ohio investor the full proceeds for the sale of his stock. McGill owed the investor $12,500, an amount that had been outstanding since February 2, 1995. The Division found that McGill violated R.C. section 1707.19(I) and O.A.C.1301:6-3-19(A)(10), by failing to deliver the proceeds of sale promptly.

On April 5, 1996, the Division issued Order No. 96-055, a Notice of Intent to Suspend Ohio Securities Salesman License, Notice of Opportunity for Hearing, setting forth the Division's allegations and describing the right to request an administrative hearing on the matter. The Division perfected service by certified mail as required by R.C. Chapter 119. McGill requested an administrative hearing. No hearing was ultimately held as the Division and McGill entered into a Consent Agreement, following full repayment plus interest to the investor. The Division issued the final order, which requires McGill to cease and desist from violations of the Ohio Securities Act.

The Maxsrom Corp. and James M. Stanzak, Sr.

On October 28, 1996, the Ohio Division of Securities issued Division Order No. 96-171, a Final Order to Cease & Desist against The Maxsrom Corporation and its President, James M Stanzak, Sr. The Division issued the final order after Maxsrom and Stanzak failed to request an administrative hearing pursuant to Division Order No. 96-136, a Notice of Opportunity for Hearing, which was issued to Maxsrom and Stanzak on September 13, 1996. The notice order set forth the Division's allegations of violations of the Ohio Securities Act by both Maxsrom and Stanzak.

The Division found that between September and October 1993, Stanzak sold to at least seven Ohio residents shares of stock in The Maxsrom Corp. Stanzak's sale of those securities violated Section 1707.44(A) of Ohio Revised Code because, at the time of the sales, Stanzak was not properly licensed by the Ohio Division of Securities to sell securities to Ohio residents. The Division also found that the shares of Maxsrom stock sold by Stanzak were not registered for sale in the state of Ohio, or exempt from such registration, in violation of Ohio Revised Code Section 1707.44(C)(1).

Dena M. Halfacre

On November 12, 1996, the Division issued a final Cease and Desist Order, Division Order 96-190, against Dena M. Halfacre of Amarillo, Texas. The Division issued the final order after Halfacre failed to request an administrative hearing as permitted by Division Order No. 96-147, a Notice of Opportunity for Hearing, issued on October 8, 1996. The notice order set forth the Division's allegations of violations of the Ohio Securities Act by Halfacre in connection with the activities of Gilbert Marshall & Company.

The Division found that in September and October of 1994, Halfacre sold to at least one Ohio resident shares of stock in Sky Scientific, Inc. and fraudulently withheld information in connection with those sales, in violation of 1707.44(G). Further, at the time of those sales, Halfacre was not licensed to sell securities in Ohio, in violation of 1707.16.

Richard E. Krug; Magnem Financial Services, Inc.

On November 19, 1996, the Division issued Division Order No. 96-209, a final Cease And Desist Order, against Richard E. Krug and Magnem Financial Services, Inc., formerly of Canton, Ohio. Krug conducted business using the name of Magnem Financial Services, Inc.

An investigation by the Division revealed that Ohio residents invested $20,000 in Magnem through Krug after he promised an annual guaranteed return of 9.5%. He also represented that the purported trust in Magnem that the funds were to be invested in was a very safe investment. The Division found that the money was not invested as promised, but was deposited into a personal checking account of Krug. In addition, Krug was found to have disbursed the $20,000 for personal uses. The investors did not receive a return of principal or any funds constituting a return on the investment.

Krug and Magnem were not licensed by the Division at the time of the sale. In addition, the interests in the trust were not registered under the Ohio Securities Act properly, nor exempted from registration. There were also false representations and omissions of material fact made to the investors. Consequently, the sales by Krug and Magnem violated R.C.

sections 1707.44(A), 1707.44(B)(4), 1707.44(C)(1) and 1707.44(G).

On August 31, 1995, the Division had issued Division Order No. 95-052, a Notice of Opportunity for Hearing to Krug and Magnem setting forth the Division's allegations and giving Notice of their rights to request an administrative hearing. After a copy of the notice order which had been mailed to Krug and Magnem by certified mail was returned undelivered, the Division attempted service through Krug's counsel. This attempt was unsuccessful, and the Division published notice of Division Order No. 95-052, as required by R.C. Chapter 119. The statutory publication requirements being satisfied, neither Krug nor Magnem requested an administrative hearing. The Division issued the final order, which ordered Krug and Magnem to cease and desist from violations of the Ohio Securities Act.

Creative Pet Products, Inc.

On November 25, 1996, the Division issued a final Cease and Desist Order, Division Order No. 96-213, against Creative Pet Products, Inc. (CPPI) of Costa Mesa, California. The Division issued the final order after CPPI failed to request an administrative hearing as permitted by Division Order No. 96-161, a Notice of Opportunity for Hearing, issued on October 21, 1996. The notice order set forth the Division's allegations of violations of the Ohio Securities Act by CPPI in connection with the sale of CPPI stock to Ohio residents.

The Division found that during February 1996, CPPI solicited at least one Ohio resident for the purpose of selling CPPI convertible preferred stock and common stock. In addition to several telephone solicitations, CPPI provided Ohio residents with a private placement offering memorandum as well as CPPI marketing and promotional materials. R.C. 1707.44(C)(1) prohibits the sale in Ohio of securities that are not exempt from registration, not the subject matter of an exempt transaction, not registered by description, coordination or qualification, or not the subject matter of a transaction that has been registered by description. At the time of these sales, CPPI securities were not registered with the Division, not the subject matter of an exempt transaction, or otherwise exempt from the registration provisions of the Ohio Securities Act, and therefore in violation of R.C. 1707.44(C)(1).

Phillip E. Downing

On November 27, 1996, the Division issued Division Order No. 96-215, a Final Order to Cease and Desist against Phillip E. Downing of Van Nuys, California. This order involved the sale of securities by Downing through Brokers Investment Corporation. A final Cease and Desist Order, Division Order No. 95-018, was issued against Brokers Investment Corporation on April 10, 1995 and described in Bulletin Issue 95:2.

The Division's investigation found that Downing, while licensed through Brokers Investment Corporation, solicited Ohio investors to purchase E-Mail Partners limited partnership units. E-Mail Partners was a Nevada limited partnership with a principal office located in Pomway, California. An Ohio resident purchased a limited partnership unit in E-Mail Partners limited partnership for $12,500. Scott Noreuil was the general partner of E-Mail Partners. A final Cease and Desist Order was issued against E-Mail Partners and Noreuil as described in Bulletin Issue 95:2.

The limited partnership unit was not registered with the Division, not the subject matter of an exempt transaction or otherwise exempt from the registration provisions of the Ohio Securities Act. Therefore, the sale was in violation of R.C. 1707.44(C)(1).

On October 31, 1994, the Division had issued Division Order No. 94-215, a Notice of Opportunity for Hearing to Downing alleging the sale of unregistered, nonexempt securities in Ohio. Notice of Division Order 94-215 was published as required by R.C. Chapter 119, after the copy of the notice order sent to Downing by certified mail was returned undelivered. Downing requested an administrative hearing on the matter upon receiving a copy of the published notice. An administrative hearing was held on March 21, 1995, at the offices of the Division. However, Downing did not appear at the hearing. The hearing proceeded with the Division presenting evidence.

On January 30, 1996, the Hearing Officer issued his Report and Recommendation, recommending that an order to Cease and Desist be issued. The Division's attempts to serve the Report and Recommendation by certified mail were unsuccessful, so notice of the availability of the Hearing Officer's Report and Recommendation was published. The Final Order approves the recommendation of the Hearing Officer and orders that Downing cease and desist from violations of the Ohio Securities Act.

Editor's note: Reports of final administrative orders issued by the Division during December 1996 will appear in the next issue of the Bulletin.

Control Bid Statute

Continued from page 5

and any affiliate or associate of that person.

[9] See § 14(d)(1) of the Securities Exchange Act of 1934.

[10] See the definition of "control share acquisition" set out in R.C. 1701.01(Z).

[11] R.C. 1707.01(G) states: "Issuer" means every person who has issued, proposes to issue, or issues any security.

[12] See § 14(d)(1) of the Securities Exchange Act of 1934.

[13] The OCSAA applies only to "issuing public corporations" which, by definition, includes only corporations incorporated under the laws of Ohio. See R.C. 1701.01(Y).

[14] For convenience, as used in the rest of this article, "tender offer" will refer to the entire statutory phrase "tender offer or request or invitation for tenders."

[15] See §§ 14(d) and(e) of the Securities Exchange Act of 1934.

[16] Since there is no Ohio case law on point, it is likely that a court called upon to interpret the OCBS would apply the federal case law construction of tender offer. The authors wish to acknowledge the research of legal intern Maria C. Petit on the issue of federal case law interpretations of "tender offer."

[17] Kennecott Copper Corp. v. Curtiss-Wright Corp., 584 F.2d 1195, 1206 (2nd Cir. 1978).

[18] 466 F.Supp. 1114 (D. Mass. 1978).

[19] Id. at 1126-7. An even broader view was expressed in Nachman Corp. v. Halfred, Inc., [1973-74 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,455 (N.D. Ill. 1973) where the court held that the definition of tender offer "should extend beyond its conventional meaning to offers likely to pressure shareholders into making uniformed, ill-considered decisions to sell."

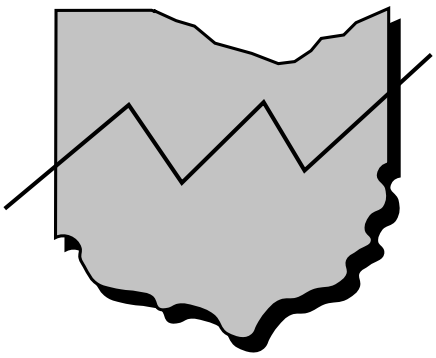
[20] 760 F.2d 945 (9th Cir. 1985).

[21] Id. at 950. This standard was first articulated in Wellman v. Dickinson, 475 F.Supp. 783 (S.D.N.Y. 1979), and is sometimes referred to as the "Wellman test."

[22] See 1701.831(A) and 1701.01(Z).

Postscript to Summary of Takeover Advisory Committee meeting:

By letter dated January 14, 1997, committee member James H. Gross (who was not present at the meeting) registered a formal dissent to the views of the committee expressed in the minutes. Mr. Gross particularly objected to the suggestion that the United Dominion case has resolved the constitutional uncertainties surrounding R.C. 1701.831.



Registration Statistics

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

1707	*4Q'96*	*YTD '96*	*4Q'95*	*YTD '95*
.03(Q)	306	1,130	273	1,158
.03(W)	25	132	28	119
.04	0	0	0	0
.041	5	11	0	1
.06(A)(1)	24	87	26	113
.06(A)(2)	5	35	6	35
.06(A)(3)	7	25	3	22
.06(A)(4)	2	15	4	26
.09	134	401	87	441
.091	862	3,849	866	3,412
.39	7	29	9	47
.391/.09	1	2	0	0
.391/.091	3	13	5	23
.391/.03(O)	4	15	6	191
.391/.03(Q)	10	112	30	133
.391/.03(W)	0	4	2	3
.391/.06(A)(1)	0	0	0	0
.391/.06(A)(2)	0	1	0	0
.391/.06(A)(3)	0	0	0	1
.391/.06(A)(4)	0	0	0	0
Totals	1,395	5,861	1,345	5,730

Licensing Statistics

The table below sets out the number of Salesmen and Dealers licensed by the Division at the end of each quarter of 1996, compared to the same quarter of 1995.

	End of Q1 1996	End of Q1 1995	End of Q2 1996	End of Q2 1995	End of Q3 1996	End of Q3 1995	End of Q4 1996	End of Q4 1995
Number of Salesmen Licensed:	78,890	69,143	81,795	70,580	83,438	72,062	82,498	71,658
Number of Dealers Licensed:	1,928	1,837	2,011	1,873	2,061	1,891	2,060	1,863

OHIO SECURITIES BULLETIN

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