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DIRECTOR OF COMMERCE

**MARK V. HOLDERMAN**  
COMMISSIONER OF SECURITIES

91:1

The Division has dropped the "Autumn Quarter" and related labels with this issue. This *Bulletin* simply is "91:1." Contained herein are the Registration filings and Broker-Dealer license statistics for the period September to December 1990.

# The Ohio Securities Act and Its Unique Presumption of Knowledge

by Mary L. Spahia

It seems that, in jury trials involving violations of the Ohio Securities Act, confusion arises, especially in proposing jury instructions, as to how the presumption of knowledge as set forth in Ohio Revised Code section 1707.29 works. Hopefully, this article will shed some light on that issue.

The standard four culpable mental state levels are purpose, knowledge, recklessness and negligence, which are found in O.R.C. section 2901.22 as follows:

(A) A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.

(B) A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

(C) A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences he perversely disregards a known risk that such circumstances are likely to exist.

(D) A person acts negligently when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that his conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that such circumstances may exit.

(E) When the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, or purpose is also sufficient culpability for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability for such element.

The Securities Act has a presumption of knowledge standard in it. O.R.C. section 1707.29 states the following:

In any prosecution brought under sections 1707.01 to 1707.45 of the Revised Code, except prosecutions brought for violation of division (A) of section 1707.042 of the Revised Code, the

## Table of Contents

OHIO SECURITIES BULLETIN  
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Ohio Securities Act and Its Unique Presumption of Knowledge . . . . .	1
Ohio Securities Conference—1990 . . . . .	3
Advisory Committees . . . . .	4
Ohio Securities Conference—1991 and 1992 . . . . .	5
N.A.S.A.A. Guidelines . . . . .	5
Personnel . . . . .	5
Outstanding Employee Award . . . . .	5
Interesting Reading . . . . .	5
Broker-Dealer . . . . .	6
Registration Filings . . . . .	6
Enforcement . . . . .	7

Ohio Department of Commerce  
Division of Securities

All listings are area code (614)

<u>ADMINISTRATION</u>	
Information and Form Requests .....	644-7381
Mark Holderman Commissioner .....	644-7381
Paul Tague Deputy Commissioner .....	644-7463
Bill Leber Attorney and Legislative Liaison .....	752-8727
<u>BROKER-DEALER</u>	
Information .....	466-3466
Dale Jewell Supervisor .....	644-7465
Greg Betchkal Attorney .....	752-9186
<u>RECORDS MANAGEMENT</u>	
Information .....	466-3001
Debra Chafin Supervisor .....	644-7449
<u>FISCAL OFFICE</u>	
Information .....	644-7453
Nick Caraccilo Manager .....	644-7455
<u>ENFORCEMENT</u>	
Information .....	466-6140
Sylvia B. Robbins-Penniman Attorney Inspector .....	644-7413
Karen Terhune Assistant Manager .....	644-7411
Melanie Braithwaite Attorney .....	466-8109
Erwin Dugas, Jr. Examiner .....	644-7419
Bill Henry Attorney .....	466-1082
Bob Holodnak Attorney .....	644-7387
D. Michael Quinn Attorney .....	644-7293
Sid Silvian Attorney .....	644-7389
Mary Spahia Attorney .....	644-7395
Nancy Benton Inquiries .....	644-7385
<u>EXAMINATION</u>	
Information .....	644-7467
Richard A. Pautsch CPA—Administrator .....	752-9448
Joyce Cleary Inquiries .....	644-7467
Don Hershberger Examiner .....	644-7417
Everett L. Toland Examiner .....	466-4826
Ron Wheatley Examiner .....	466-3611
<u>REGISTRATION</u>	
Information .....	466-3444
Michael Miglets Attorney Examiner—Administrator .....	644-7295
Carol L. Barnum Attorney Examiner—Partnerships .....	644-7373
Jo Chapman Forms 3-O .....	644-7429
Mark Heuerman Attorney Examiner—Partnerships, Forms 3-Q & 3-W .....	644-9529
Jim Hunt Attorney Examiner—Forms 3-Q & 3-W .....	644-7435
Bill Lively Forms 2(B) .....	644-7459
Gordon Stott Forms 39 & 391 .....	644-7427
Kathy Veach Mutual Funds .....	644-7423
James Warneka Oil and Gas .....	644-7433

accused shall be deemed to have had knowledge of any matter of fact, where in the exercise of reasonable diligence, he should, prior to the alleged commission of the offense in question, have secured such knowledge.

O.R.C. 1707.44 uses several *mens rea* in its long list of prohibitions, not all of which are stated in the exact language of O.R.C. 2901.22. Does "knowledge" in O.R.C. 1707.29 mean the same as "knowingly" in O.R.C. 2901.22(B)?<sup>1</sup> No. The meaning of "knowledge" is more accurately reflected in O.R.C. 2901.22(D).<sup>2</sup>

It must be remembered that when certain provisions in 1707 appear to be inconsistent with provisions adopted in the General Criminal Code, Chapter 2901, the specific provisions of 1707 prevail.<sup>3</sup>

Ohio court interpretation of O.R.C. 1707.29 begins with the *State v. Walsh* case.<sup>4</sup> The *Walsh* court stated that 1707.29 does not constitute a mandatory, conclusive presumption, but instead constitutes a permissive rebuttable presumption. The *Walsh* court stated that the word "knowingly" is to be viewed more in terms of "negligently" as defined by O.R.C. 2901.22(D), rather than "knowingly" as defined by 2901.22(B).

The culpable mental state under section 1707.29 was recently addressed by the Ohio Supreme Court in *State v. Warner*, 55 Ohio St. 3d 31, 56 (1990). Predictably so, the constitutionality of 1707.29 was once again questioned. The appellee and cross-appellant, Warner, argued that section 1707.29 created a mandatory presumption of knowledge which is violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This proposition of law was promptly overruled by the state's highest court.

Warner claimed that the trial court improperly instructed the jury that under 1707.29 defendant could be presumed to have knowledge of certain facts. The court found this argument to be without merit. Justice Holmes, writing for the majority, turned to the language of the court in *Walsh*, supra. He reminded us that the word "... 'knowingly', R.C. 1707.29 has the general effect of defining 'knowingly' more in terms of 'negligently' as defined by R.C. 2901.22(D), rather than 'knowingly' as defined by R.C. 2901.22(B)." Although the court was addressing violations of the Ohio Securities Act fraud provisions as codified in sections 1707.44(B)(4) and (G), the presumption of knowledge as explicitly stated in 1707.29 is applicable to "... any prosecution brought under sections 1707.01 to 1707.45 of the Revised Code..." (1707.29). Emphasis added.

On page 57 the court wrote the following:

We are persuaded by the *Walsh* rationale which interprets the legislative intent of R.C. 1707.29 to, in effect, define the knowledge requirement for certain violations of Ohio's Securities Act, R.C. Chapter 1707. Thus, instead of creating a presumption as alleged by Warner, R.C. 1707.29 merely sets forth what the term knowledge encompasses for purposes of criminal liability under R.C. Chapter 1707. Therefore, we hold that under R.C. 1707.44(B)(4), (G) and (J), a person is criminally liable if he represents facts to be different than he should have known them to be if he had exercised reasonable diligence to ascertain the facts prior to the commission of the offense.

Courts have examined whether a defendant who in fact had no knowledge has exercised reasonable diligence. Such an exam is undertaken in order to determine whether in the exercise of reasonable diligence the defendant should have secured the relevant knowledge. *State v. Trevedi*.<sup>5</sup> In this criminal prosecution for the sale of unregistered securities, the court tersely stated the following:

Where the constitutionality of a statute is challenged, it is axiomatic that there is a strong presumption in favor of the legislation's constitutionality. Despite the fact that a presumption of knowledge provision has been part of Ohio's securities law since the first securities statute was enacted in 1913, judicial interpretation of R.C. 1707.29 is sparse. R.C. 1707.29 appears unique to Ohio. (footnote omitted). Page 413.

In *Trevedi*, the defendant who failed to learn his obligations regarding the sale of securities should have learned what they were, and should have complied with them.

Is the "knowledge" of defendant in Chapter 1707 cases, defendant's knowledge of facts or defendant's knowledge of the illegality of the acts in question? The court of appeals for Greene County relied on a California case and concluded the following: "... the term 'knowingly' meaning with knowledge of the essential facts and not knowledge of the legal consequences, ..." *Catterlin v. State*.<sup>6</sup> That case involved the unlicensed sales of securities.

Courts have stated that securities brokers are held to a very high standard of conduct. In *Ross v. Couden*, 22 Ohio App. 330 (Franklin, 1926), the court addressed the issue of misrepresentations made by security dealers: The majority opinion stated the following: "... a dealer in securities [is placed] in a class apart from other men, and does place upon him additional duties, burdens, and responsibilities, not common to business men generally, even in the disposition of securities in which he may have an interest. This situation arises because of special privileges conferred by the act upon a dealer in securities." Pages 337-338. The reasonable man standard has been and continues to be the applicable standard supported by Ohio courts when the provisions of 1707.29 apply. Ohio courts continue to hold that the standard of mental culpability incorporated in the Ohio Securities Act to be equivalent to that of negligence. See also *Diversified Property Corp. v. Winters National Bank & Trust Co.*,<sup>7</sup> which was an unlicensed broker's sale of stock case. Even though 1707.29 contains the words "prosecution" and "accused," a Franklin County common pleas court held that the presumption of knowledge in 1707.29 was applicable to cases that go beyond the criminal scope. The presumption of knowledge set forth is the same and can apply to any litigation. *Department of Securities v. American Equitel Corp.*<sup>8</sup> In that case defendant violated sections 1707.44(B)(1), (2), and (4) and 1707.44(C)(1), securities not registered or exempt, sold by an unlicensed broker. See also *Warner* above. In *Cincinnati Bar Association v. Short*,<sup>9</sup> money was borrowed by the defendant, an attorney, in exchange for promissory notes that provided for usurious rates of interest. The notes were not registered under provisions of the Ohio Securities Act. The defendant was convicted of selling unregistered securities in violation of 1707.44(C)(1). In an attempt to remain a licensed attorney in Ohio, defendant explained that he was ignorant of Ohio's securities statute. Moreover, he stated that prior to the transactions in question, an assistant city prosecutor said the act he engaged in was permissible. The court disagreed, upheld the conviction and disbarred him.

Ohio courts have been quite clear in upholding the constitutional attacks against O.R.C. 1707.29. The result unique to Ohio has been in effect to construe "knowingly" under the Ohio Securities Act as "negligently" in Ohio case law. Since Ohio courts have consistently acknowledged the same, maybe it is time to simplify things and eliminate confusion by adopting the appropriate parts of O.R.C. 2901.22 in the Ohio Securities Act.

The author is an Enforcement Attorney with the Division.

<sup>1</sup>Ohio Securities Law & Practice, Howard M. Friedman, 1987, and updated, Banks-Baldwin Law Publishing Company, Text 45.02.

<sup>2</sup>Ohio Securities Bulletin, ("Bulletin") Spring, 1989, Heurman, "Scienter in Ohio Securities Act Fraud"; also in Friedman (above) at OSB 19.16.

<sup>3</sup>Bulletin, Spring 1990, Spahia "In O.R.C. 1707.45, Who has the Burden?"

<sup>4</sup>66 Ohio App.2d 85 (Franklin, 1979).

<sup>5</sup>8 Ohio App.3d 412 (Hamilton, 1982), 8 Ohio B.R. 534.

<sup>6</sup>16 Ohio L.Abs. 410 (2nd, Greene, 1934), appeal dismissed 128 Ohio St.110 (1934); appeal dismissed 292 U.S. 614 (1934).

<sup>7</sup>13 Ohio App.2d 190 (Montgomery, 1967).

<sup>8</sup>60 Ohio Misc. 7 (Franklin, 1979).

<sup>9</sup>10 Ohio St.2d 117 (1967).

## Ohio Securities Conference—1990

The Ohio Securities Conference was continued in 1990 with approximately 180 members of the bar and representatives of the securities industry in attendance at the Conference program on Monday, November 5, 1990. For the second year, the Conference was held at the Columbus Marriott North in Columbus, Ohio.

The Conference program was presented by four panels and an individual speaker discussing interesting and current securities topics and practices. The subjects included "What is a Security?", Exempt Sales and Small Private Offerings, Small Public Offerings under Federal and Ohio Law, Liabilities and Corrective Filings under Ohio Securities Act and rule amendment proposals of the Division. William B. Summers, Jr., President and Chief Operating Officer, McDonald & Company Securities, Inc., Cleveland, Ohio, presented a timely and informative overview of the securities industry, as the luncheon speaker.

On Tuesday, November 6, 1990, the Advisory Committees met at the Columbus Marriott North and discussed issues and legislative proposals pertaining to the interests of each committee. Approximately 80 committee members were in attendance at the meetings. Reports of those meetings are included in this Bulletin.

# Advisory Committees

## Enforcement Advisory Committee

The Enforcement Advisory Committee met on November 6, 1990, during the Ohio Securities Conference. A new co-chair was elected by the Committee. Serving for the next two years is Joseph Carney of Calfee, Halter and Griswold in Cleveland.

The primary focus of the group was to review drafts of new and amended administrative rules developed by the Division. Many of the changes to the rules were based on recommendations devised by the various advisory committees, including the Enforcement Advisory Committee. The Committee recommended promulgation of the amendment of the "date of sale" definition in O.A.C. Rule 1301:6-3-03(K), as developed by the Committee and later modified by the Division.

Considerable time was spent in lively discussion of the wide variety of other rule amendments. Refinements and disagreements were discussed and recorded for further review and consideration by the Division. Most controversial were rules regarding licensees, including a proposal to require S.E.C. registration for all Ohio Securities dealers, and changes to the rule prohibiting certain conduct by securities dealers and salesmen.

The members of the Enforcement Advisory Committee are thanked for providing insightful and useful input into the Division's ongoing efforts to responsibly and vigorously administer the Ohio Securities Act.

## Exemption Advisory Committee

The Exemption Advisory Committee met on November 6, 1990, the second day of the 1990 Ohio Securities Conference. Eighteen members of the Committee were in attendance. With the expiration of the two year terms of industry and bar co-chairs, Albert N. Salvatore of McDonald, Hopkins & Hardy Co., LPA, Richard McQuown of Porter, Wright, Morris & Arthur and Ty M. Votaw of Taft, Stettinius & Hollister, the Committee selected Susan E. Brown of Vorys, Sater, Seymour & Pease as the co-chair for the next two years.

The Committee reviewed the draft of a proposal amending O.A.C. Rule 1301:6-3-02(C) by providing a new definition of commercial paper and promissory notes not offered for sale to the public, which are exempted under section 1707.02(G) of the Revised Code. The proposed amendment would extend to officers and directors of the issuer or parent corporation of the issuer, general partners of the issuer or any person controlling management and policies of the issuer. Several objections were made to provisions inconsistent with the proposed amendment earlier circulated to the Committee membership and prepared by an *ad hoc* subcommittee. The Committee thereafter agreed to have a position paper prepared and submitted to the Division by Rick Wetzel and Susan Brown setting forth the Committee's proposals. That report was submitted on November 19, 1990.

Another proposal reviewed by the Committee provides an additional exemption of O.A.C. Rule 1301:6-3-03(N) for a security exempted from registration pursuant to Rule 701 of the Securities Act of 1933. The Committee suggested further changes involving effective registration with the Securities Exchange Commission and an updating of the Internal Revenue Code reference, along with other minor changes. These changes were referred to the Division.

Various other suggestions were made with respect to other proposed amendments to Rules 1301:6-3-02 and 1301:6-3-03. The members of the Committee were invited to submit specific comments regarding any proposed amendments to the Division.

## Licensing Advisory Committee

The November 6, 1990, Licensing Advisory Committee meeting produced the following recommendations to the Division's proposed rule changes:

1301:6-3-15(A) S.E.C. Registration required: After a spirited discussion, the Committee was unable to make a unified recommendation. Members expressed both support and opposition to the proposal. Among those supporting the rule, there was a consensus that it should be drafted to exempt certain issuers from S.E.C. registration.

1301:6-3-15(D) License exam requirements: The proposed rule does not grandfather presently licensed broker-dealers, a change should be made to do so.

The financial and operations principal examinations, series 27, is an unacceptable test for an Ohio principal and should be deleted from the rule.

1301:6-3-15(F) Determination of net capital: The Committee felt that the exclusion of real estate from the determination of net capital was inconsistent with the S.E.C. requirement and should be changed for the sake of uniformity.

1301:6-3-15(G) Records of dealer: In order to clarify the rule, the term "books and records" used in (G)(1) should be changed to the term "general ledger."

1301:6-3-15(H) Branch offices: The proposed definition of "branch office" is too broad and will include locations of dealers which are not branch offices. The present definition of "branch office" which is much like the National Association of Securities Dealer's ("NASD") definition should be retained.

1301:6-3-15(K) Notice required upon discontinuance of a salesman's employment: The requirement that a broker-dealer state "Whether the services of the salesman were or were not satisfactory" due to potential liability is virtually unanswerable. The rule and the Division's form should be changed to coincide with the questions on the NASD's form U-5.

## Registration Advisory Committee

The Registration Advisory Committee met on November 6, 1990 in conjunction with the 1990 Ohio Securities Conference. Chairman Warren Udisky of Benesch, Friedlander, Coplan & Aronoff and Michael Miglets of the Division opened the meeting.

A summary of amendments to the administrative rules proposed by the Division was presented. Most of the discussion focused on the proposed rule changes for registrations by description and qualification. The main change under the proposed rules for registration by description would be a prospectus delivery requirement for offerings over \$250,000 and all oil and gas offerings. The prospectus would have to be delivered to an investor prior to the earlier of the signing of a subscription agreement or when a purchaser loses control of the purchase funds. The Committee agreed that a delivery requirement was implied when the rule requiring a prospectus for registrations by description of offerings over \$250,000 or

offerings of oil and gas interests. The proposed amendment to the rules would also clarify that registration by description could be used when the issuer was claiming Rule 504 of Regulation D.

For registrations by qualification, the proposed rule amendments would add a similar prospectus delivery requirement for offerings under section 3(a)(11) of the Securities Act of 1933 and Rule 504 of Regulation D. The prospectus would have to be delivered prior to the earlier of the signing of a subscription agreement or when the purchaser loses control of the purchase funds. The current rule requires delivery of a prospectus three days before the sale for an offering under Rule 504 of Regulation D. Under the proposed rule amendments, the minimum disclosure standard and prospectus delivery requirement would be uniform for all registrations by description and registrations by qualification under either Rule 504 or the intrastate offering exemption.

If you need copies of the minutes of the Committee meeting or the proposals, you may contact Michael Miglets at the Division.

## Ohio Securities Conference—1991 and 1992

Plans are underway for the presentation of the Ohio Securities Conference in 1991 and 1992. The dates and location have been selected and you are urged to mark your calendar and plan to attend.

This year's Conference will be held on September 30 and October 1, 1991 (Monday and Tuesday) and next year's Conference is scheduled for November 16 and 17, 1992 (Monday and Tuesday). Both Conferences will be held at Columbus Marriott North, 6500 Doubletree Avenue, Columbus, Ohio 43229-1145, which was the location of the 1989 and 1990 Conferences.

Applications for continuing professional education credits for lawyers and accountants will be requested for each Conference.

## N.A.S.A.A. Guidelines

The Division had noted in the 90:1 Winter Quarter *Bulletin* several standards of the North American Securities Administrators, Inc., which are used in Ohio. It is necessary to update the current amendments used. For Commodity Pool Programs the most recent amendment is dated August 30, 1990. For Real Estate Programs the most recent amendment is dated August 27, 1990.

Also, Ohio reviews non-profit church promissory note offerings with the N.A.S.A.A. Church Bond guidelines, dated April 29, 1981. Two other issues often occur in such offerings:

The Division may allow the issuer to submit financial statements which have been reviewed or

compiled by an independent certified public accountant for smaller offerings.

The Division also requires the issuer or dealer to obtain a signed subscription agreement from each investor. The subscription agreement acknowledges that the investor has received and read a copy of the prospectus and is aware of risks inherent in the investment, which may include the issuer's reliance on member contributions and the non-profit structure of the entity being financed. Copies of the subscription agreement form may be obtained from the Division.

## Personnel

Counsel to the Commissioner, Clyde C. Kahrl, has resigned. Clyde's counsel and abilities will be missed by the Division. Winner of a quarterly Outstanding Employee Award, he brought computers into Division operations. He also represented the Division on the Takeover Advisory Committee. Clyde has entered the private practice of law in Mount Vernon, Ohio.

With the organization of the Examination Section, Examiners handling field examinations are based, in part, at the Columbus Division office. They are listed in the Directory section of this *Bulletin*.

## Outstanding Employee Award

Paul Tague, Deputy Commissioner, is the Division's Outstanding Employee for the quarter ended September 30, 1990. In making this award, the Commissioner cited Paul's considerable efforts in successfully planning and completing several annual Ohio Securities Conferences. Since joining the Division, Paul, an attorney, has served as the Attorney Inspector from 1981 to 1987, and since 1987, as the Deputy Commissioner.

## Interesting Reading

Recent issues of the *Ohio State Bar Association Report* have contained court reports, which *Bulletin* readers may wish to review:

Vol. 63, No. 42, dated 10-29-90 reported *Obenauf v. CIDCO Investment Services, Inc.*, 54 Ohio App. 3d 131. This 6-18-90 decision considered the late filing of a Form 3-Q and rescission rights of a security purchaser.

Vol. 63, No. 42, dated 10-29-90 reported *State v. Walden*, 54 Ohio App. 3d 160. This 10-11-88 decision considered probation and revocation, when restitution has not been made.

Vol. 63, No. 44, dated 11-12-90 reported *Galloway v. Lorimar Motion Picture Mgmt, Inc.*, 55 Ohio App. 3d 78. This 12-6-89 decision considered breach of fiduciary duty claims in a limited partnership.

Vol. 63, No. 46, dated 11-26-90 reported *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Stark*, 55 Ohio App. 3d 164.

This 8-14-89 decision considered a securities customer account and payment of that account.

# Broker-Dealer

Vol. 63, No. 46, dated 11-26-90 reported two related cases decided in 1990 considering misrepresentation in securities transactions. *State v. Warner*, 55 Ohio St. 3d 31, and *State v. Schiebel*, 55 Ohio St. 3d 71.

## LICENSES ISSUED:

Available from the U.S. Government Printing Office is *Modernizing the Financial System: Recommendations for Safer, More Competitive Banks*, dated February 1991. This is a U.S. Treasury Department report that looks at changes in deposit insurance and bank reforms that are expected to be seen in forthcoming legislation.

	Current Year 1-90 to 12-90	Year 1-89 to 12-89
Broker-Dealer	1,500	1,648
Salesman	48,977	56,501
Total	50,477	58,149

# Registration Filings

Form Type	Current Quarter 10-90 to 12-90	Quarter 10-89 to 12-89	Current Year 1-90 to 12-90	Year 1-89 to 12-89
2(B)	234	354	983	1,175
2(E)	1	0	3	0
3-O	2,573	2,491	11,507	11,639
3-Q	270	339	1,261	1,461
3-W	36	34	134	149
04	0	0	1	2
041	1	0	1	1
6(A)(1)	58	62	231	258
6(A)(2)	15	14	75	81
6(A)(3)	10	15	41	48
6(A)(4)	12	11	50	66
09	482	421	1,711	1,431
091	265	278	1,090	1,424
39	30	47	110	188
391/3-O	211	180	817	782
391/3-Q	42	49	152	167
391/3-W	0	2	6	8
391/6(A)(1)	0	0	3	5
391/6(A)(2)	0	1	0	1
391/6(A)(3)	1	0	4	3
391/6(A)(4)	0	0	0	0
391/09	1	3	15	14
391/091	1	1	2	1
TOTAL	4,243	4,302	18,197	18,904

# Enforcement

## FINAL ADMINISTRATIVE ORDERS

The following are recent enforcement administrative orders. The orders have been issued by the Division after notice of the parties' opportunity for an administrative hearing in accordance with Ohio Revised Code Chapter 119. Orders which have been appealed to Common Pleas Court are so noted.

<u>Respondent</u>	<u>Date Issued</u>	<u>Order No.</u>	<u>Action Taken/ Type of Order</u>
<b>Robert John Chapman</b> Malibu, California	9/12/90	90-130	Cease and Desist
<b>Gerald Michael Fitzgerald</b> Denver, Colorado	9/14/90	90-147	Denial of Application for Securities Salesman's License
<b>AEI Group, Inc.</b> Columbus, Ohio	9/26/90	90-169	Final Order; Revocation of Dealer's License
<b>First Ohio Securities Company</b> Cleveland, Ohio	10/3/90	90-182	Revocation of Dealer's License
<b>Glenn Dean Swope</b> Reynoldsburg, Ohio	10/15/90	90-201	Suspension of Securities Salesman's License
<b>UR Financial, Inc.</b> New York, New York	10/22/90	90-212	Revocation of Dealer's License
<b>William M. Marks</b> Cuyahoga Falls, Ohio; <b>Marks Energy, Inc.,</b> <b>Marks-Walters &amp;</b> <b>Associates, Inc., dba</b> <b>Marks-Walters</b> <b>Contracting Company</b> Brecksville, Ohio	10/31/90	90-220	Cease and Desist; Null and Void of Filings
<b>Wellshire Securities, Inc.</b> New York, New York	11/2/90	90-229	Revocation of Dealer's License
<b>Carol Catherine Martino</b> New York, New York	11/2/90	90-230	Revocation of Securities Salesman's License
<b>John Godfrey Hunter</b> Syosset, New York	11/13/90	90-244	Denial of Application of Securities Salesman's License
<b>Forrest Walters</b> Erie, Pennsylvania	11/15/90	90-245	Revocation of Securities Salesman's License
<b>Imre Beke, dba NYTEX</b> Poughkeepsie, New York	11/21/90	90-252	Final Order; Cease and Desist

**FINAL ADMINISTRATIVE ORDERS—continued**

<u>Respondent</u>	<u>Date Issued</u>	<u>Order No.</u>	<u>Action Taken/ Type of Order</u>
<b>Comprehensive Financial Services</b> Severna Park, Maryland	11/23/90	90-253	Final Order; Dealer's License Not Denied
<b>William Harvey Boroff</b> Mason, Ohio	11/23/90	90-254	Final Order; Denial of Application for Securities Salesman's License
<b>Terry Gallimore</b> Troy, Ohio; <b>A.C. Med-Co., Inc.</b> Sidney, Ohio	11/27/90	90-258	Cease and Desist
<b>Jeffrey Lynn Bohn</b> San Diego, California	11/30/90	90-296	Denial of Application for Securities Salesman's License

**OTHER RECENT ENFORCEMENT ACTIONS AND DECISIONS**

*Nappy M. Hetzler, Director, and Mark V. Holderman, Commissioner, v. David A. Corna*

On September 13, 1990, a permanent injunction was obtained by consent entry in Franklin County Court of Common Pleas by the Division against David A. Corna, which effectively bars him from involvement in every aspect of the Ohio securities industry. As a result of the injunction, Corna is "restrained and enjoined from serving as an employee, officer, director, principal, general partner, consultant, or in any other capacity for compensation, direct or indirect, for any securities dealer in Ohio until he is licensed as a securities dealer or salesman in full compliance with the provisions of the Ohio Securities Act, Ohio Revised Code Chapter 1707, and he has been registered as a principal or representative by the National Association of Securities Dealers, Inc." ("NASD").

Under the same conditions, Corna is restrained from beneficially or legally owning any securities dealer in Ohio, or from owning or holding 5% or more of the shares or limited partnership interests of any securities dealer in Ohio.

Corna also withdrew his Ohio securities license on September 13, 1990, as well as the Ohio securities dealer license of Corna & Co., Inc., an interstate firm. In addition, he resigned from any and all positions he held as an officer or director of Corna Company, an intrastate securities dealer. The complaint alleged that in June and July, 1989, the defendant made false reports of securities transactions to NASD with reference to fictitious customer accounts, that he served as a principal for a licensed securities dealer and effected securities transactions while not maintaining regulatory net worth, and that he failed to maintain books and records of his securities dealer which were adequate to determine the status of transactions or the net worth of the dealer.

*Dublin Corporation v. Department of Commerce*

A Cease and Desist Order was issued against the Dublin Corporation on August 1, 1985, after an administrative hearing

was requested and held, for the sale of unlicensed securities. The decision was appealed by Dublin Corporation to the Franklin County Court of Common Pleas on August 19, 1985. The Court upheld the decision of the Division on March 14, 1990. The decision was appealed by Dublin Corporation on May 25, 1990, to the Franklin County Court of Appeals. Oral arguments were held on September 20, 1990.

*AEI Group, Inc. v. Mark V. Holderman*

On January 19, 1989, AEI Group, Inc. sued Mark Holderman, in his individual capacity, in U.S. District Court for Southern Ohio. The lawsuit requested a judgment of \$50 million plus many millions more in damages. AEI alleged that Mark Holderman and others "engaged in a series of acts reasonably calculated to harass, intimidate and destroy (AEI) and its business." AEI alleged that these acts violated its civil rights and deprived it of "property without due process of law and willful infliction of economic harm." The lawsuit was filed after the Division had suspended the dealer's license of AEI for failure to maintain net worth.

A Motion to Dismiss was filed on March 1, 1989. On September 21, 1990, U.S. Judge George C. Smith granted the motion to dismiss in a 19-page opinion. Judge Smith stated in his opinion that the brokerage firm "has not presented any set of facts in support of its claim" that would entitle it to relief. Further, he noted that Mark Holderman had used "objective legal reasonableness" and that AEI had other remedies available. The decision was not appealed.

*Blinder, Robinson & Co., Inc. v. Ohio Department of Commerce, Division of Securities*

On February 3, 1988, Blinder, Robinson & Company, Inc.'s application for an Ohio securities dealer license was denied on the basis of lack of good business repute, after notice had been given of the Division's intent, and an administrative hearing had been requested and held on September 8 and 9, 1987. The Division's Order was appealed to Franklin County Court of Common Pleas on February 16, 1988. On March 17, 1989, the Division's decision was affirmed. Blinder, Robinson appealed the decision to the Franklin County Court



of Appeals and the Division's decision was upheld on March 23, 1990. An appeal to the Ohio Supreme Court was filed on April 20, 1990. On October 3, 1990, the Ohio Supreme Court declined to accept jurisdiction.

*AEI Group, Inc. v. Department of Commerce, Division of Securities*

On April 17, 1990, the Division suspended the securities dealer license of AEI Group, Inc., for failure to file the required annual audited financial statements with the Division. AEI failed to obtain a Temporary Restraining Order against the Division from the Franklin County Court of Common Pleas on April 18, 1990. A preliminary injunction hearing was scheduled for May 2, 1990, and subsequently continued indefinitely. A Motion to Dismiss was filed December 3, 1990, on behalf of the Division.

An administrative hearing was requested by AEI on their license suspension and was held April 23, 1990. A final administrative order confirming the suspension of the dealer license was issued by the Division on May 17, 1990. A Notice

of Appeal was filed with the Franklin County Court of Common Pleas on May 29, 1990 by AEI. An administrative hearing was held on the revocation of AEI's license on June 8, 1990. The securities dealer license of AEI was revoked on September 26, 1990. A Motion to Dismiss the May 29, 1990 appeal was filed on November 29, 1990, on behalf of the Division.

*Keystone National Development Corporation v. Ohio Department of Commerce*

On June 2, 1988, the Division issued a Final Order against Keystone National Development Corporation of Westerville, Ohio, ordering it to Cease and Desist from the sale of unregistered securities and declared null and void a Form 3-O claim of exemption filed with the Division. An appeal was filed in Franklin County Court of Common Pleas on June 15, 1988. On February 22, 1990, the Division's decision was affirmed by the Court. An appeal was filed on April 20, 1990, with the Franklin County Court of Appeals. On December 10, 1990, the Division's Order was upheld. On January 10, 1991, an appeal was filed with the Ohio Supreme Court requesting that the Court exercise jurisdiction to review the case.

**CRIMINAL CASES**

<u>Case Name</u>	<u>Jurisdiction/ Referring Staff Person</u>	<u>Action Taken</u>	<u>Comments</u>
Richard F. DeTillio, Sr.; Richard F. DeTillio, Jr.; University Quarters, Inc.	Summit County/ Referred by D. Michael Quinn and Corey Crognale	<b>Indicted</b> on 9/12/90 on 6 counts each; as follows: 1. 1 count of the sale of an unregistered security; 2. 1 count of the unlicensed sale of a security; 3. 1 count of making a misrepresentation in the sale of a security; 4. 1 count of securities fraud; 5. 1 count of false securities publications; and 6. 1 count of grand theft.	Commencing in 1986, Richard F. DeTillio, Sr. and Richard F. DeTillio, Jr. sold common stock and promissory notes in their company, University Quarters, Inc., to investors throughout the state. The purpose of the business was allegedly to have been the designing and building of condominiums near various universities.
Forest S. Walters; Western Financial Group, Inc.; Western Retail Management; Western Retail Investors, Ltd.	Cuyahoga County/ Referred by Bob Holodnak	1. <b>Guilty plea entered 9/25/90</b> by Forest S. Walters to the following: a. 1 count of the sale of an unregistered security; b. 1 count of the unlicensed sale of a security; and c. 1 count of theft. 2. Payment of \$5,000 was made to the investor. 3. Charges were dismissed against Western Financial Group, Inc., Western Retail Management, and Western Retail Investors, Ltd. on 9/25/90 4. <b>Sentenced on 10/23/90</b> to the following: a. 6 months confinement; and b. Sentence was suspended and probation of 3 years was imposed.	Forest S. Walters was an officer in Western Financial Group, Inc., Western Retail Management and Western Retail Investors, Ltd., all Tempe, Arizona entities. Forest Walters sold unregistered limited partnership units in Western Retail Investors, Ltd. Forest Walters' securities salesman license with Waddell & Reed was suspended on 10/10/90 and revoked on 11/15/90 on the basis of his felony conviction.

**CRIMINAL CASES—continued**

Case Name	Jurisdiction/ Referring Staff Person	Action Taken	Comments
Jack Everett Harper	Cuyahoga County/ Assisted by Mary Spahia	<ol style="list-style-type: none"> <li>1. <b>Pled no contest</b> on 10/1/90 to 43 counts of securities and securities-related charges.</li> <li>2. <b>Found guilty</b> on 10/1/90 on all 43 counts. A presentence investigation was ordered by the Court.</li> </ol>	Jack Everett Harper sold stock to Ohio investors in various entities, including Sound and Sight Studios, Inc., Harper Manufacturing Corp., and NiteKlub, Inc.
John H. Davis; Donnie E. Roberts	Summit County/ Referred by Karen Terhune	<p><b>Arrested</b> on 10/18/90 after the following criminal charges were filed:</p> <ol style="list-style-type: none"> <li>1. John H. Davis               <ol style="list-style-type: none"> <li>a. 1 count of the sale of an unregistered security;</li> <li>b. 1 count of the unlicensed sale of a security;</li> <li>c. 1 count of making a misrepresentation in the sale of a security;</li> <li>d. 1 count of securities fraud; and</li> <li>e. 2 counts of grand theft.</li> </ol> </li> <li>2. Donnie E. Roberts               <ol style="list-style-type: none"> <li>a. 1 count of forgery.</li> </ol> </li> </ol> <p>Preliminary hearing was held 10/31/90, where <b>probable cause</b> was found on all charges filed against both men.</p>	John H. Davis was president of Sports Enterprises, Inc., a Munroe Falls-based company. Donnie E. Roberts was the national operations director, and the secretary-treasurer of the National Horseshoe Pitchers Association. Close to \$1 million was allegedly raised from more than 200 investors throughout Ohio for development of indoor horseshoe pitching complexes. Investors who bought unregistered stock and/or promissory notes were allegedly informed that their investments were risk-free. In addition, investors were not informed that a Cease and Desist Order was issued against Davis, Roberts, Sports Enterprises, Inc., and 11 salespeople by the Division on 10/23/87, for unregistered and unlicensed sales of securities.
Henry M. Cool	Cuyahoga County/ Referred by Bob Holodnak	<p><b>Indicted</b> on 11/13/90 for the following:</p> <ol style="list-style-type: none"> <li>1. 1 count of the sale of an unregistered security;</li> <li>2. 1 count of the unlicensed sale of a security;</li> <li>3. 1 count of securities fraud; and</li> <li>4. 2 counts of theft.</li> </ol>	Henry M. Cool allegedly sold unregistered shares of common stock in Agri-World Trade Development Corporation, an Ohio corporation, in which he was secretary-treasurer, to Ohio investors. He allegedly promised to pay 12% interest on the shares, which were to be transferred in the future. Henry M. Cool allegedly never delivered the stock to investors, failed to transfer the shares, and failed to deliver promised interest checks. A Cease and Desist Order was issued against Henry M. Cool and Agri-World Trade Development Corporation for numerous securities law violations on July 12, 1990.