

# OHIO SECURITIES BULLETIN

A QUARTERLY PUBLICATION OF THE OHIO DIVISION OF SECURITIES

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Governor of Ohio

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Commissioner of Securities

## New Legislation Tackles Viatical Sales

by Matt Fornshell

In the Fall of 1998, the Ohio Division of Securities ("Division") published a statement detailing its analysis of viatical settlements as securities under Ohio law. The Division generally announced that it believed viatical settlements to be "investment contracts," and therefore securities, subject to the regulatory scheme of the Ohio Securities Act. In the Spring of 2000, House Bill ("H.B.") 551, sponsored by Rep. Amy Salerno, was introduced before the House Civil and Commercial Law Committee of the 123<sup>rd</sup> Ohio General Assembly. H.B. 551, also known as the Ohio Viatical Act, amended Chapter 1707 to include "life settlement interests" in the definition of securities and added the new Chapter 3916 to Ohio's insurance code to adopt the Viatical Settlements Model Act. This article will be limited to a discussion of the amendments to Chapter 1707 as a result of H.B. 551 and how these changes impact the Division's regulatory approach to viatical settlements.

The Division's Fall 1998 statement regarding the treatment of viatical settlements under Ohio Securities law was in

response to numerous inquiries being received by the Division seeking regulatory guidance on the sale of viatical settlements in Ohio. Given the nature and scope of the inquiries, the Division realized there was considerable confusion regarding how the sales of viatical settlements are regulated in Ohio. The Division published its analysis in Ohio Securities Bulletin 98:3 and thereafter posted its position on the Division's web site. The announcement stated that viatical settlements are subject to the regulatory scheme of the Ohio Securities Act by reason of satisfying the investment contract analysis announced in *State v. George*, 50 Ohio App. 2d 297 (1975). The announcement achieved two purposes: reducing the confusion associated with the applicability of the Ohio Securities Act to the sale of viatical settlements in Ohio and placing the viatical and securities industries on notice that persons who sell viatical settlements must comply with the registration, licensing and anti-fraud provisions of the Ohio Securities Act.

H.B. 551 goes a step further in eliminating the confusion associated with viatical

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## H.B. 551's "Non-Viatical" Changes to the Ohio Securities Act

by Thomas E. Geyer

In addition to clarifying the oversight of viatical transactions, H.B. 551 also makes a number of important functional and technical changes to the Ohio Securities Act. Several of the changes rewrite sections of the Act in "plain English." Another important change allows the Division to enact rules on an expedited basis to keep the Act consistent with changes made to the federal securities laws. Following is a description of H.B. 551's "non-viatical" changes to the Act.

R.C. 1707.02(E), *Exemption for "Exchange-Listed" Securities*. The bill amends R.C.1707.02(E) by replacing existing language with the language contained in the definition of "covered security" in section 18(b)(1) of the Securities Act of 1933. This change aligns the Ohio exemption for "exchange-listed" securities with the "exchange-listed" category of covered securities.<sup>1</sup> Prior to the change, R.C. 1707.02(E) was similar to section 18(b)(1) of the 1933 Act except that section 18(b)(1) extended to securities "equal in seniority," while R.C. 1707.02(E) extended only to

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## OHIO DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

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Ohio Securities Bulletin

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## New Legislation

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settlements by introducing the term “life settlement interest” into the definition of a security at R.C. 1707.01(B). “Life Settlement Interest” is thereafter defined at R.C. 1707.01(NN) as:

(T)he entire interest or any fractional interest in an insurance policy or certificate of insurance, or in an insurance benefit under such a policy or certificate, that is the subject of a life settlement contract.

For purposes of this Division, “Life Settlement Contract” means an agreement for the purchase, sale, assignment, transfer, devise or bequest of any portion of the death benefit or ownership of any life insurance policy or contract, in return for consideration or any other thing of value that is less than the expected death benefit of the life insurance policy or contract. “Life Settlement Contract” includes a viatical settlement contract as defined in Section 3916.01 of the Revised Code....<sup>1</sup>

The result of H.B. 551 is that it eliminates the necessity of engaging in the investment contract analysis and clearly vests regulatory authority over the “security” side of viatical settlements in the Division.

R.C. 1707.01(NN) also includes six exceptions from the definition of “Life Settlement Contract”:

- a loan by an insurer under the terms of a life insurance policy, including, but not limited to, a loan secured by the cash value of the policy;
- an agreement with a bank that takes an assignment of a life insurance policy as collateral for a loan;
- the provision of accelerated benefits as defined in Section 3915.21 of the Revised Code;
- any agreement between an insurer and reinsurer;
- an agreement by an individual to purchase an existing life insurance policy or contract from the original owner of the policy or contract, if the individual does not enter into more than one life settlement contract per calendar year; and

- the initial purchase of an insurance policy or certificate of insurance from its owner by a viatical settlement provider, as defined in Section 3916.01 of the Revised Code, that is licensed under Chapter 3916. of the Revised Code.<sup>2</sup>

Governor Taft signed the legislation on January 4, 2001, and it becomes effective October 5, 2001. The legislation provides for dual regulatory authority over the sale of viatical settlements in Ohio, authority that is bifurcated between the Ohio Division of Securities and the Ohio Department of Insurance. By explicitly including the term “*life settlement interest*” in the definition of security the Ohio General Assembly has effectively eliminated any confusion relating to the applicability of the Ohio Securities Act to the sale of viatical settlements in Ohio.

### Endnotes

<sup>1</sup> Viatical Settlement Contract is also defined at R.C. 3916.01(L) as part of the Viatical Settlements Model Act.

<sup>2</sup> R.C. 3916.01(M)(1) defines a Viatical Settlement Provider as a “person, other than a viator, that enters into or effectuates a viatical settlement contract.” R.C. 3916.01(M)(2) includes eight exceptions

to the definition of Viatical Settlement Provider:

- a bank, savings bank, savings and loan association, credit union, or other financial institution that takes an assignment of a life insurance policy or certificate as collateral for a loan;
- the issuer of life insurance policy or certificate providing accelerated benefits as defined in Section 3915.21 of the Revised Code and pursuant to the contract;
- an individual who enters into or effectuates not more than one agreement in any calendar year for the transfer of life insurance policies or certificates for any value less than the expected death benefit;
- an authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
- a financing entity;
- special purpose entity;
- a related provider trust; and
- a viatical settlement purchaser.

*Editor’s Note: Mr. Fornshell is the Attorney-Inspector, and head of the Enforcement Section at the Ohio Division of Securities.*

## OHIO SECURITIES BULLETIN

Desiree 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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### Ohio Division of Securities

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*All listings are area code (614)*

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## H.B. 551

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securities “senior to.”<sup>2</sup> After the change, R.C. 1707.02(E) is substantively identical to section 18(b)(1)<sup>3</sup>, and extends exempt security status to securities (and securities equal in seniority or senior to such securities) listed, or authorized for listing, on the New York Stock Exchange, the American Stock Exchange, the NASDAQ National Market System, and exchanges, tiers and systems listed in SEC rule 146(b).

Effective May 25, 2000, the Division added an administrative rule recognizing that securities listed on Tier I of the Pacific Exchange, Tier I of the Philadelphia Stock Exchange and the Chicago Board Options Exchange are exempt securities pursuant to R.C. 1707.02(E).<sup>4</sup> This rule, which incorporates SEC rule 146(b) into Ohio law, remains in effect after the amendment of R.C. 1707.02(E).

**R.C. 1707.11, *Consent to Service of Process.*** H.B. 551 re-writes the Ohio Securities Act’s consent to service of process requirement in “plain English” and organizes the section by using lettered paragraphs and numbered sub-paragraphs.

New paragraph (A) lists the persons that must file a consent. Specifically, each person that is not organized under Ohio law, is not licensed under R.C. 1703.03, or does not have its principal place of business in Ohio must file a consent in connection with:

- filings under R.C.1707.03(Q), (W), (X) and (Y);
- applications for registration by description, qualification or coordination;
- notice filings for securities or investment advisory activities; and
- applications for securities dealer or investment adviser licensure.

New paragraph (B) restates the contents of the consent:

- a designation of the Secretary of State as agent for service;<sup>5</sup>
- a statement that an action may be commenced in the county where the action arises or where the plaintiff resides; and
- a stipulation that service on the Secretary of State is valid and binding.

New paragraph (C) restates the procedure for making service of process. New paragraph (D) permits the Division to provide by rule for the electronic filing of a consent to service of process.<sup>6</sup>

The changes to R.C. 1707.11 do not effect the forms currently used to file a consent with the Division: uniform form U-2 (and form U-2A if necessary), and Division forms 11, BD-11 and IA-11.

**R.C. 1707.15, *Application for and Issuance of Dealer’s License.*** The bill re-writes R.C. 1707.15 in “plain English,” and makes the section parallel to R.C. 1707.151 (application for and issuance of investment adviser license).

In new paragraph (A), the requirement that the application be “verified by oath” has been eliminated, which recognizes that applications may be filed electronically.<sup>7</sup> New paragraph (B) simplifies the consent to service of process requirement by making a cross-reference to new R.C. 1707.11. The Division’s authority to investigate an applicant is restated in new paragraph (C). Previous paragraph (D), which required the names and addresses of all salespersons, and previous paragraph (E), which required a listing of the nature of the applicant’s business and address for the ten years prior to the application, have been deleted. New paragraph (D) clarifies that a natural person must pass an examination on behalf of a dealer, and that that person will serve as the designated principal of a non-natural person dealer. New paragraph (E) restates that dealers shall employ as salespersons only those salespersons who are licensed by the Division. New paragraph (F) restates that the Division shall issue a license upon a finding a “good business repute,” compliance with the application requirements, and the payment of required fees.

**R.C. 1707.151, *Application for and Issuance of Investment Adviser License.*** The bill simplifies the consent to service of process requirement by combining previous paragraphs (B) and (C) into new paragraph (B), which simply cross-references new R.C. 1707.11.

**R.C. 1707.16, *Application for and Issuance of Salesperson License.*** The bill re-writes R.C. 1707.16 in “plain English,” and makes the section parallel to R.C. 1707.15 (dealer license application and issuance) and

R.C. 1707.151 (investment adviser license application and issuance). Similar to one of the changes made to R.C. 1707.15, the required listing of the nature of the applicant’s business and address for the ten years prior to the application has been deleted.

**R.C. 1707.20(F), *Parity Authority.*** H.B. 551 adds new paragraph (F) to R.C. 1707.20. Essentially, this new paragraph permits the Division to promulgate, on an expedited basis, rules to keep the Ohio securities laws consistent with federal securities law. This “parity authority” provides that in the event there is a change to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or rules, releases or statements thereunder, or rules, regulations or guidelines of the NASD, and the change affects any matter within the scope of R.C. 1707, the Division may by rule promulgate a similar provision on an expedited basis.

**R.C. 1707.23(C), *Service of Subpoenas.*** The bill amends R.C. 1707.23(C) to allow for personal service of subpoenas in addition to service by certified mail.

**R.C. 1707.432 through 1707.439, *Securities Litigation Standards.*** H.B. 511 repeals R.C. 1707.432 through 1707.438, which established certain standards for “private civil actions” arising from the sale of securities. The sections were enacted in 1996 as a part of the 121<sup>st</sup> General Assembly’s H.B. 350, also known as the “Tort Reform Bill.” The Ohio Supreme Court declared the Tort Reform Bill unconstitutional in 1999.<sup>8</sup> R.C. 1707.432 through 1707.438 were invalidated at that time, and H.B. 551 cleans up the Ohio Securities Act by deleting them. In addition, H.B. 551 repeals R.C. 1707.439, which had been added in 1999<sup>9</sup> to clarify that actions for rescission under R.C. 1707.43 were not subject to the litigation standards set out in R.C. 1707.432 through 1707.438.

**R.C. 1707.44(C)(1), *Prohibition on Sale of Unregistered, Nonexempt Securities.*** Finally, the bill corrects a typographical error in R.C. 1707.44(C)(1) by replacing the “and” between “1707.04” and “1707.34” with “or.”

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*Endnotes*

- 1 Some practitioners take the position that since State law securities registration requirements are preempted with respect to “covered securities,” a State is without authority to recognize a securities registration exemption for such securities. With all due respect to that position, the Division believes that including in the Ohio Securities Act a recognition of the exempt status of “exchange-listed” securities is useful to make clear that such securities are exempt from the Ohio securities registration requirements.
- 2 See “Covered Securities Under the Ohio Securities Act,” Ohio Securities Bulletin 96:4.

- 3 New 1707.02(E) varies from section 18(b)(1) only in that the Ohio law allows the Division to designate additional exchanges or tiers as conveying exempt security status.
- 4 O.A.C. 1301:6-3-02(A). The designation of such securities as exempt securities is conditioned on such exchanges’ listing standards, or segments or tiers thereof, continuing to be substantially similar to those of the NYSE, AMEX, or the NASDAQ/NMS. O.A.C. 1301:6-3-02(B).
- 5 Nothing prohibits a person from using a commercial service as statutory agent in addition to the designation of the Secretary of State.
- 6 The following new paragraph (L) will be added to O.A.C. 1301:6-3-01 effective February 1, 2001: “Filed with the division” as used in sections 1707.141 and 1707.15 of the Revised Code and “filing with the division” as used in section

1707.151 and 1707.161 of the Revised Code, shall include information submitted to the Central Registration Depository and the Investment Adviser Registration Database maintained by the National Association of Securities Dealers, Inc.

7 *Id.*

8 State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451 (1999). See also “Tort Reform Decision Invalidates Securities Litigation Standards,” Ohio Securities Bulletin 99:3.

9 See “Sub. H.B. 6 Authorizes Electronic Proxies and Makes Technical Changes to 1707,” Ohio Securities Bulletin 99:2.

*Mr. Geyer is an Assistant Director of the Ohio Department of Commerce. He served as Commissioner of Securities from 1996 to 2000.*

### PUBLIC NOTICE

At 10:00 a.m. on April 10, 2001, the Ohio Division of Securities will hold a public hearing regarding the Division’s intent to amend Ohio Administrative Rules 1301:6-3-01, 1301:6-3-02, 1301:6-3-03, and 1301:6-3-14. The hearing will be held in the offices of the Division located at 77 South High Street, 22nd Floor, Columbus, Ohio 43215.

Copies of the proposed amendments may be obtained by contacting the Ohio Division of Securities at the above address or by calling the Division at (614) 644-7381. Copies of the proposed amendments may also be obtained from the Division’s Internet homepage located at [www.securities.state.oh.us](http://www.securities.state.oh.us). Each of the proposed amendments and new rules is summarized in the following:

OAC 1301:6-3-01(L) The proposed amendment changes the word “database” to “depository”. The purpose of the proposed paragraph amendment is a technical correction of terminology.

OAC 1301:6-3-02 The proposed amendment changes references contained in paragraph (D)(1)(e) and (D)(1)(f). The purpose of the proposed amendment is to correct internal cross-references within paragraph (D).

OAC 1301:6-3-03 The proposed amendment amends references contained in paragraphs (E)(9)(b)(iv) and (E)(9)(b)(v). The purpose of the proposed amendment is to correct internal cross-references within paragraph (E).

OAC 1301:6-3-14 The proposed amendment changes a reference contained in paragraph (A)(1) to “paragraph (D) of rule 1301:6-3-02”. The purpose of the proposed amendment is to correct a cross-reference to rule 1301:6-3-02 of the Administrative Code.

### **Licensing and Technology Advisory Committee Minutes**

On November 9, 2000, Dale Jewell and Caryn Francis co-chaired the committee meeting which was attended by four industry representatives. Topics of discussion that were reviewed included: (i) the status of the ongoing licensure of investment advisers and investment adviser representatives, (ii) status and procedures associated with the Division examination of investment advisers, (iii) prevalent deficiencies uncovered during Division examinations of Investment Advisers, and (iv) the implementation and impact of IARD. The Chairpersons also fielded questions from the attending industry representatives concerning the interpretation of statutes and rules under the Ohio Securities Act that are related to investment advisers.

### **Enforcement Advisory Committee Meetings**

The meeting commenced with a discussion of recent securities litigation and possible legislative initiatives. The question was raised concerning the Division's ability to levy fines against violators of the Ohio Securities Act. Several years ago, information was prepared on this issue, however, the Division did not adopt any provisions at the time. The Division indicated that information regarding fines is currently being collected for review.

The Committee discussed review of licensing procedures and the differences between the states.

The Committee also discussed viatical settlements and whether a separate form or application was necessary. One member indicated it would be good to be able to register on a pooled basis so that no separate disclosures would be needed. It was noted that the Division is not currently working on such a form at this time. It was further noted that, in the past, a few viatical settlement offerings have used registration by coordination.

Lastly, the Committee briefly discussed investor awareness relating to promissory notes and the Division's Prosecutors' Conference held in September 2000.

### **Minutes of the Registration and Exemption Advisory Committee**

The registration and exemption advisory committee held its open meeting on November 9, 2000 after the 2000 Ohio Securities Conference. Attendees discussed two proposed exemptions. The first exemption corresponds to Securities Act Rules 801 and 802. The background for these exemptions is explained in SEC Release No. 33-7759. The exemption is available to foreign private issuers who have 10% of their existing security holders in the United States. The Committee discussed that the exemption is available for securities offered in business combinations or rights offerings. A limited filing (Forms CB and FX) is required with the Securities and Exchange Commission. A legend is required on the offering materials that caution the investor as to disclosure requirements, financial statements and the ability to enforce their rights under U.S. securities laws. The securities are restricted from resale under Rule 144. Rule 801 contains a provision that states the issuer does not need to offer the securities to residents in states that require registration or qualification. Similarly, Rule 802 states that the foreign private issuer must register or offer the same cash alternative if a state requires registration. The SEC Release 33-7759 disclosed that foreign issuers would preclude U.S. security holders from these offerings due to compliance concerns. A substantial probability exists that other exemptions may be available particularly for Rule 802. The Division also notes that the percentage or number of security holders in Ohio may be de minimis. The Division advised attendees that the North American Securities Administrators Association ap-

proved a companion exemption to the Uniform Securities Act.

The second proposed exemption discussed by the Committee would assist Canadian broker/dealers executing transactions with Canadian residents who are temporarily in Ohio. The background for the provision corresponds to initiatives by the North American Securities Administrators Association dating back to 1995, the Canadian provinces and the recent SEC Release No. 33-7860. At the time of the meeting a dealer licensing exception and securities exemption had been proposed to allow Canadian broker/dealers who are in good standing to execute transactions with Canadian "residents" who are customers of the Canadian dealer and are "temporarily" in Ohio. Committee members requested assurances that the purchaser of the securities will continue to have the protection of the securities laws of their home jurisdiction. (Since the committee meeting, the proposed rule became effective February 1, 2001.) The Ohio draft is similar to the Pennsylvania version. All Canadian provinces have a form of a reciprocal arrangement for Ohio customers and their broker/dealers.

The Division discussed the reply to the SEC on the revisions to NASD Corporate Financing Rule 2710. The Division noted its objections to the removal of the 10% numerical limitation. This current provision is reasonable to the Division and serves as an adequate ceiling to the number of securities received as underwriting compensation. Other revisions of concern to the Division included NASD changes that permit an underwriter to receive an option or warrant that can be exercised on terms more favorable than the terms offered to the public. The Division believes that if the NASD revisions are applicable only to "covered securities" under the Securities Act of 1933, its concerns for the review of registration applications will be alleviated.

The Division advised members that work is in progress by NASAA for coordinated review of certain direct partici-

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## Division Committee Reports

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pation placement offerings. Coordinated review is a compilation of multiple state comment letters by one or two lead states. Applicants would receive fewer comment letters as "lead states" compile comments and submit the comment letter representing multiple states. An applicant's contact will be the lead state. A withdrawal represents a withdrawal in multiple states. Attendees expressed concern about not having direct contact with the examiner who issued the particular comment. Attendees also expressed concern about the review and authority to permit an offering to proceed forward without the approval of the state of Ohio. The Division advised members that the Ohio Division of Securities, if participating, will continue to review replies and amendments by the applicant and advise the "lead state" if the applicant has resolved the comments of the Division. The Division's adoption of the NASAA Statements of Policy for direct participation placements make this coordinated review possible. A coordinated review application is an election and not mandatory to any applicant. The Division will continue to apprise attendees upon further procedures of coordinated equity review and the development of coordinated review for direct participation placements.

Other issues included communications with the Division. Attendees have favorable comments with regards to the *Ohio Securities Bulletin* and the web site of the Division. Attendees continue to prefer the printed version of the *Ohio Securities Bulletin*. Attendees would appreciate notification of changes to the web site of the Division by electronic mail communication. Additional assistance would include Westlaw and/or Lexis citations to the enforcement case summaries. The Division requested comments if directory type information, including e-mail addresses, would assist practitioners. The Division is increasing e-mail communications with regards to

minor comments on applications such as confirmation of effectiveness or additional fee requests. Finally, the Division noted that the web site permits communications for exemptions, registration and other issues by clicking on the appropriate link.

### Takeover Advisory Committee Minutes

The Takeover Advisory Committee of the Ohio Division of Securities held its annual meeting on November 9, 2000, following the 2000 Ohio Securities Conference. Edward Schrag, Jr., Chairperson David Zagore, Thomas Geyer and Michael Miglets attended the meeting.

Following the Securities and Exchange Commission's adoption of Regulation M-A and the Form TO on January 24, 2000, the Committee and the Division began an extensive review of Ohio's Control Bid Statute, R.C. 1707.041 to 1707.043, to determine if statutory or rule amendments were required. The Division's position on the commencement of a tender offer and an overview of Regulation M-A were included in Issue 99:4 of the *Ohio Securities Bulletin*.

After reviewing current statutory provisions and Division procedures, the Division suggested an amendment to R.C. 1707.041(A)(2)(g) that would permit the Division to promulgate an administrative rule to determine when financial statements are not material or to permit the filing of less than three years of financial statements. Currently, R.C. 1707.041(A)(2)(g) requires a bidder to include financial statements for the three most recent fiscal years with a control bid filing. Under Regulation M-A, financial statements are not material when:

- 1) only cash consideration is offered; and
- 2) the offer is not subject to any financing condition; and either

- 3) the bid is for all of the target company's securities; or,
- 4) the bidder is a public reporting company that files electronically on EDGAR.

In certain instances, the Securities and Exchange Commission may also allow public reporting companies to submit only two years of financial statements for tender offers. Without an amendment of R.C. 1707.041(A)(2)(g), the Division does not have the option to waive or reduce the filing requirement for the bidder's financial statements when the financial condition of the bidder is not material.

Currently the Division has been requesting financial statements from all bidders. If the financial statements are not material, the Division has allowed its five-day review to run without issuing a suspension order. A statutory amendment and adoption of a rule on the materiality of financial statements will provide guidance to bidders and counsel.

The Committee concurred that in an all cash bid for all of the target company's securities, where there is sufficient financing, financial statements of the bidder clearly are not material to the target company's shareholders. In a cash bid for all of the target company's securities, the Committee recommended the Division continue its focus on the credit facility of the bidder. It was noted that privately-held bidders making cash tender offers with credit facilities could be required to submit financial statements under R.C. 1707.041(A)(2)(g) that would otherwise not be required to be disclosed.

The Committee recommended that the Division include a proposed amendment to R.C. 1707.041(A)(2)(g) in any Ohio Securities Act amendments introduced in 2001. If the statutory amendment is enacted, the Committee agreed that the Division's administrative rule should be consistent with Regulation M-A.

## *Enforcement Section Reports*

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### **Brian S. Wade, Ambassador Group**

On November 6, 2000, the Division issued Division Order No. 00-403, a Cease and Desist Order, against Brian S. Wade, and the Ambassador Group. The Respondents are located in Ohio.

On September 28, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-337, to Brian S. Wade and Ambassador Group. The Division alleged that the Respondents had violated the provisions of Ohio Revised Code Sections 1707.44(C)(1) and 1707.44(B)(4) by selling unregistered securities and making false representations of material and relevant facts in the sale of securities. These allegations stem from the sale of unregistered evidences of indebtedness, which the Respondents falsely represented as Certificates of Deposits with a ten percent guaranteed annual interest. The Order notified the Respondents of

their right to an administrative hearing. The Respondents failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-403.

### **John Churman**

On December 7, 2000, the Division issued Division Order No. 00-470, a Cease and Desist Order, against John Churman. The Respondent is an Ohio resident.

On November 6, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-402, to John Churman. The Division alleged that the Respondent had violated Ohio Revised Code Section 1707.44(C)(1) and 1707.44(A)(1) by selling unregistered securities and by selling securities without a securities dealer license. The allegations stem from Respondent's sales of membership interests in Hotel Connect, a limited liability company. The

securities were not registered or exempted from registration with the Division. The Order notified the Respondent of his right to an administrative hearing. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-470.

### **Gary Friedman**

On December 26, 2000, the Division issued Division Order No. 00-484, a Cease and Desist Order, against Gary Friedman. The Respondent is an Ohio resident.

On November 21, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-433, to Gary Friedman. The Division alleged that the Respondent had violated provisions of Ohio Revised Code Section 1707.44(C)(1) and Ohio Administrative Code Rule 1303:6-3-19(A)(19), respectively, by selling unregistered securities

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## **NASAA Guideline Applications**

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The Division has adopted various statements of policy or guidelines issued by the North American Securities Administrators Association ("NASAA Guidelines") for use in the review of registration applications. The NASAA Guidelines provide standards for an issuer's compliance with sections 1707.09, 1707.091, and 1707.13 of the Ohio Revised Code, which contain certain requirements including the requirement that offerings not be sold on "grossly unfair terms" or in any manner tending to deceive or defraud.

It is advisable to review the applicable guidelines prior to filing an application with the Division. Adherence to the applicable guidelines and submission of appropriate cross-reference sheets (see Ohio Administrative Code rule 1301:6-3-09(A)(3)) will result in a timely review by the Division with fewer compliance concerns. Counsel or issuers are encouraged to contact the Division with any questions regarding the guidelines.

The following is a complete list of the NASAA Guidelines that are applied by the Division:

- Statement of Policy to the Registration of Asset-Backed Securities
- Guidelines to Offerings of Church Bonds
- Guidelines to the Registration of Commodity Pool Programs
- Guidelines to the Registration of Equipment Programs
- Guidelines for General Obligation Financing by a Religious Denomination or Church Extension Fund
- Guidelines to the Registration of Direct Participation Mortgage Programs
- Guidelines to the Registration of Oil and Gas Programs
- Omnibus Guidelines to the Registration of Programs for which statements of policy have not been adopted by the North American Securities Administrators Association
- Statement of Policy to the Registration of Real Estate Investment Trusts
- Guidelines to the Registration of Real Estate Programs

## Enforcement Section Reports

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totaling \$2,034,694.78 and by effecting securities transactions not recorded on the regular books and records of the dealer that the salesman represented at the time of sale. The Division further alleged that the Respondent's Ohio investor adviser representative license should be revoked pursuant to R.C. 1707.19(A)(1), 1707.19(A)(4), 1707.19(D) and 1707.23(D).

The Divisions allegations stem from Respondent's sales to Ohio investors of promissory notes in AmeriTech Petroleum, Inc. of Addison, Texas; South Mountain Resort and Spa, Inc. of Charlotte, North Carolina; Serengeti Diamonds U.S.A., Inc. of Boca Raton, Florida; Sebastian International Enterprises, Inc. of Longwood, Florida; Taormina of Roma, Italy; Lomas de la Barra Development, Inc. of Boca Raton, Florida, and Sun Broadcasting Systems, Inc. of Palm Springs, California. The promissory notes were not registered or exempted from registration with the Division.

The Division notified the Respondent of his right to an administrative hearing. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-484.

### John Guarnieri

On November 20, 2000, the Division issued Division Order No. 00-431, a Cease and Desist Order, against John Guarnieri. The Respondent is an Ohio resident.

On October 16, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-362, to John Guarnieri. The Division alleged that the Respondent had violated provisions of Ohio Revised Code Section 1707.44(C)(1) by selling unregistered securities. The Division's allegations stem from Respondent's sale of a promissory note in Sun Broadcasting Systems, Inc. of Palm Springs, California. The promissory note was not registered or exempted from registration with the Division. The Order notified the Respondent of his

right to an administrative hearing. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-362.

### Dennis Gagliardi

On November 1, 2000, the Division issued Division Order No. 00-391, a Cease and Desist Order, against Dennis Gagliardi. The Respondent is an Ohio resident.

On September 26, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-315, to Dennis Gagliardi. The Division alleged that the Respondent had violated provisions of Ohio Revised Code Section 1707.44(C)(1) by selling unregistered securities. The Division's allegations stem from Respondent's sale of a promissory note in Sun Broadcasting Systems, Inc. of Palm Springs, California. The promissory note was not registered or exempted from registration with the Division. The Order notified the Respondent of his right to an administrative hearing. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-391.

### Joseph Walker

On November 1, 2000, the Division issued Division Order No. 00-393, a Cease and Desist Order, against Joseph Walker. The Respondent is an Ohio resident.

On September 27, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-325, to Joseph Walker. The Division alleged that the Respondent had violated provisions of Ohio Revised Code Section 1707.44(C)(1) by selling unregistered securities. The Division's allegations stem from Respondent's sale of a promissory note in Sun Broadcasting Systems, Inc. of Palm Springs, California. The promissory note was not registered or claimed from exemption with the Division. The Order notified the Respondent of his right to an administrative hearing. The Respondent failed to timely request an

administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-393.

### Jeff Riggins

On December 7, 2000, the Division issued Division Order No. 00-469, a Cease and Desist Order, against Jeff Riggins. The Respondent is an Ohio resident.

On October 16, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-361, to Jeff Riggins. The Division alleged that the Respondent had violated provisions of Ohio Revised Code Section 1707.44(C)(1) by selling unregistered securities. The Division's allegations stem from Respondent's sale of a promissory note in Sun Broadcasting Systems, Inc. of Palm Springs, California. The promissory note was not registered or exempted from registration with the Division. The Order notified the Respondent of his right to an administrative hearing. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-469.

### Papa Holdings, Inc.; Jonathan Papa

On September 1, 2000, the Division issued Division Order No. 00-262, a Cease and Desist Order, against Papa Holdings, Inc. and Jonathan Papa. The Respondents last known location was in California.

On May 16, 2000, the Division issued to the Respondents a Notice of Opportunity for Hearing, Division Order No. 00-115, in accordance with Revised Code Chapter 119. The Order alleged that the Respondents had violated Revised Code sections 1707.44(B)(4), 1707.44(C)(1) and 1707.44(G). These sections prohibit making false representations of material and relevant facts in the sale of securities, selling securities without proper registration or claim of exemption from registration and failing to disclose material and relevant facts in the sale of securities, respectively. These allegations stem from



the sale of unregistered securities to Ohio residents. The Order also notified the Respondents of their right to an administrative hearing. The Respondents failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-262.

### **Ronald Flynn**

On October 4, 2000, the Division issued Division Order No. 00-349, a Cease and Desist Order, against Ronald Flynn. The Respondent's last known location was in California.

On July 17, 2000, the Division issued to the Respondent a Notice of Opportunity for Hearing, Division Order No. 00-188, in accordance with Revised Code Chapter 119. The Order alleged that the Respondent had violated Revised Code section 1707.44(C)(1). This section prohibits selling securities without proper registration or claim of exemption from registration. The allegations stem from the solicitation of an Ohio resident by the Respondent to invest in his company, Phillynn Productions, which constitutes an investment contract and an unregistered security. The Order also notified Respondent of his right to an administrative hearing. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-243.

### **Gregory Oliver**

On October 16, 2000, the Division issued Division Order No. 00-363, a Cease and Desist Order, against Gregory Oliver. The Respondent is located in Ohio.

On September 15, 2000, the Division issued to the Respondent a Notice of Opportunity for Hearing, Division Order No. 00-286, in accordance with Revised Code Chapter 119. The Order alleged that the Respondent had violated Revised Code section 1707.44(C)(1) and Ohio Administrative Code section 1301:6-3-19(A)(19). These sections prohibit selling securities without proper registration or claim of exemption from registration and prohibit the selling of securities that are not recorded on the

regular books or records of the dealer which the salesperson represents, respectively. The allegations stem from the sale of promissory notes issued by Canko Environmental Technologies, Inc. and Ameritech Petroleum, Inc. to Ohio residents by the Respondent. The Order also notified the Respondent of his right to an administrative hearing. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-363.

### **Ronald Wackler**

On October 30, 2000, the Division issued Division Order No. 00-386, a Cease and Desist Order, against Ronald Wackler. The Respondent is located in Ohio.

On September 29, 2000, the Division issued to the Respondent a Notice of Opportunity for Hearing, Division Order No. 00-335, in accordance with Revised Code Chapter 119. The Order alleged that the Respondent had violated Revised Code sections 1707.44(C)(1) and 1707.44(G). These sections prohibit selling securities without proper registration or claim of exemption from registration and prohibit failing to disclose material and relevant facts in the sale of securities, respectively. The allegations stem from the sale of promissory notes issued by Canko Environmental Technologies, Inc. to Ohio residents by the Respondent. The Order also notified the Respondent of his right to an administrative hearing. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-386.

### **James Arndts**

On October 23, 2000, the Division issued Division Order No. 00-383, a Cease and Desist Order, against James Arndts. The Respondent is located in Ohio.

On September 22, 2000, the Division issued to the Respondent a Notice of Opportunity for Hearing, Division Order No. 00-306, in accordance with Revised Code Chapter 119. The Order alleged that the Respondent had violated

Revised Code section 1707.44(C)(1). This section prohibits selling securities without proper registration or claim of exemption from registration. The allegations stem from the sale of promissory notes issued by Canko Environmental Technologies, Inc. to Ohio residents by the Respondent. The Order also notified the Respondent of his right to an administrative hearing. The Respondent failed to timely request an administrative hearing. Therefore, the Division issued Cease and Desist Order No. 00-383.

### **David Paul Ramseyer**

On October 16, 2000, the Ohio Division of Securities issued Division Order No. 00-365, a Cease and Desist Order, against David Paul Ramseyer of Smithville, Ohio.

The Division's investigation found that Ramseyer sold unregistered mutual fund shares in The Cyprus Funds, Inc. (Cyprus Funds) mutual fund, a foreign mutual fund company whose address was in Belmopan, Belize, and was purportedly incorporated in Belize, to Ohio residents. The Cyprus Funds processing center was located in Canton, Ohio. The Division also found that Ramseyer misrepresented to investors the risks and suitability of investing in shares in the Cyprus Funds as investments suitable for retirement funds, and stated that it was a safe investment, however, it involved a high degree of risk and was not suitable for investing retirement funds.

Finally, the Division found that Ramseyer, did not disclose to investors an injunction issued against him in 1996 in an action brought by the State of Virginia Corporation Commission, Division of Securities and Retail Franchising, in which he was permanently enjoined from future securities violations under the Virginia Securities Act.

The Order finds that the securities were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1). There were also omissions of material fact by Ramseyer, in violation of R.C. 1707.44(G), and false representations in

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the sale of the mutual fund shares, in violation of R.C. 1707.44(B)(4).

### Terrence A. Bentivegna

On October 23, 2000, the Ohio Division of Securities issued Division Order No. 00-381, a Cease and Desist Order, against Terrence A. Bentivegna of Canton, Ohio.

The Division's investigation found that Bentivegna sold unregistered mutual fund shares in The Cyprus Funds, Inc. (Cyprus Funds) mutual fund, a foreign mutual fund company whose address was in Belmopan, Belize, and was purportedly incorporated in Belize, to Ohio residents. The Cyprus Funds processing center was located in Canton, Ohio. The Division found that Bentivegna sold these securities while licensed with First Securities Group, Inc.

The Order finds that the securities were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1).

### Cyprus Funds, Inc.

On November 2, 2000, the Ohio Division of Securities issued Division Order No. 00-396, a Cease and Desist Order with a Consent Agreement, against The Cyprus Funds, Inc. (Cyprus Funds) which was founded by Eric V. Bartoli, whose last known address in Ohio was in Marshallville.

The Division's investigation found that unregistered mutual fund shares and fixed interest rate investments were sold to Ohio residents in The Cyprus Funds, Inc. mutual fund, a foreign mutual fund company whose address was in Belmopan, Belize, and was purportedly incorporated in Belize. The Cyprus Funds processing center was located in Canton, Ohio. The Division also found that the Cyprus Funds failed to properly disclose to investors in the offering documents that the shares and fixed interest rate investments were not registered with the Division or exempt from such registration.

The Securities and Exchange Commission obtained a Temporary Restraining Order in U.S. District Court for the Southern District of Florida from U.S. District Judge Edward B. Davis, against the Cyprus Funds and the officers and directors of the fund on September 3, 1999, for federal securities law violations that included massive fraud, involving the sale of securities to Ohio and other investors. U.S. District Judge Davis appointed a receiver, and also issued a freeze of the Cyprus Funds' assets and those of the other defendants. On September 3, 1999, a Preliminary Injunction was issued by U.S. District Judge Davis, that also indefinitely continued the freeze of assets.

The Division obtained a signed Consent Agreement with the Court Appointed Receiver for the Cyprus Funds. The Cease and Desist Order finds that the securities were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1). There were also omissions of material fact by the Cyprus Funds, in violation of R.C. 1707.44(G).

### Jeffrey D. Saxton

On November 3, 2000, the Ohio Division of Securities issued Division Order No. 00-398, a Cease and Desist Order, against Jeffrey D. Saxton of Elyria, Ohio.

The Division's investigation found that Saxton sold unregistered mutual fund shares in The Cyprus Funds, Inc. (Cyprus Funds) mutual fund, a foreign mutual fund company whose address was in Belmopan, Belize, and was purportedly incorporated in Belize, to Ohio residents. The Cyprus Funds processing center was located in Canton, Ohio. The Division found that Saxton sold these securities while licensed with First Securities Group, Inc.

The Order finds that the securities were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1).

### Mary A. Kirschling

On November 14, 2000, the Ohio Division of Securities issued Division

Order No. 00-420, a Cease and Desist Order, against Mary A. Kirschling of Berea, Ohio.

The Division's investigation found that Kirschling sold unregistered fixed interest rate investments in The Cyprus Funds, Inc. (Cyprus Funds) mutual fund, a foreign mutual fund company whose address was in Belmopan, Belize, and was purportedly incorporated in Belize, to Ohio residents. The Cyprus Funds processing center was located in Canton, Ohio. The Division also found that Kirschling misrepresented to investors the risks and suitability of investing in fixed interest rate investments in the Cyprus Funds as investments suitable for retirement funds, and stated that it was a safe investment. However, it involved a high degree of risk and was not suitable for investing retirement funds.

Finally, the Division found that Kirschling failed to properly disclose to investors that the fixed interest rate investments were not registered with the Division or exempt from such registration.

The Order finds that the securities were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1). There were also omissions of material fact by Kirschling, in violation of R.C. 1707.44(G), and false representations in the sale of the mutual fund fixed interest rate investments, in violation of R.C. 1707.44(B)(4).

### Peter J. Esposito

On November 17, 2000, the Ohio Division of Securities issued Division Order No. 00-428, a Cease and Desist Order, against Peter J. Esposito of North Ridgeville, Ohio.

The Division's investigation found that Esposito sold unregistered mutual fund shares and fixed interest rate investments in The Cyprus Funds, Inc. (Cyprus Funds) mutual fund, a foreign mutual fund company whose address was in Belmopan, Belize, and was purportedly incorporated in Belize, to Ohio residents. The Cyprus Funds processing center was located in Canton, Ohio. Esposito was also a Director of the Cyprus Funds.

The Division also found that Esposito misrepresented to investors the risks and suitability of investing in shares and fixed interest rate investments in the Cyprus Funds as investments suitable for retirement funds, and stated that it was a safe investment. However, it involved a high degree of risk and was not suitable for investing retirement funds.

Finally, the Division found that Esposito and the offering documents failed to properly disclose to investors that the shares and fixed interest rate investments were not registered with the Division or exempt from such registration.

The Order finds that the securities were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1). There were also omissions of material fact by Esposito, in violation of R.C. 1707.44(G), and false representations in the sale of the mutual fund shares and fixed interest rate investments, in violation of R.C. 1707.44(B)(4).

### **Douglas R. Shisler**

On November 27, 2000, the Ohio Division of Securities issued Division Order No. 00-445, a Cease and Desist Order, against Douglas R. Shisler of Doylestown, Ohio.

The Division's investigation found that Shisler sold unregistered mutual fund shares and fixed interest rate investments in The Cyprus Funds, Inc. (Cyprus Funds) mutual fund, a foreign mutual fund company whose address was in Belmopan, Belize, and was purportedly incorporated in Belize, to Ohio residents. The Cyprus Funds processing center was located in Canton, Ohio. Shisler was also a Director of the Cyprus Funds.

The Division also found that Shisler misrepresented to investors the risks and suitability of investing in shares and fixed interest rate investments in the Cyprus Funds as investments suitable for retirement funds, and stated that it was a safe investment. However, it involved a high degree of risk and was not suitable for investing retirement funds.

Finally, the Division found that Shisler and the offering documents failed

to properly disclose to investors that the shares and fixed interest rate investments were not registered with the Division or exempt from such registration.

The Order finds that the securities were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1). There were also omissions of material fact by Shisler, in violation of R.C. 1707.44(G), and false representations in the sale of the mutual fund shares and fixed interest rate investments, in violation of R.C. 1707.44(B)(4).

### **Paragon Capital Group, Inc.**

On November 30, 2000, the Ohio Division of Securities issued Division Order No. 00-453, a Cease and Desist Order with Consent Agreement, against Paragon Capital Group, Inc. (Paragon), which is located in Boca Raton, Florida.

The Division's investigation found that Paragon sold unregistered viatical settlement contracts in The Reliance Program, Inc., totaling approximately \$290,740 to fifteen Ohio investors, through an Ohio sales representative with which the company had a written sales agreement. The Division found that Paragon acted as an unlicensed securities dealer.

The Division also found that the sales information stated that the investment was "always safe" and the premiums on the viators' policies would be paid by The Reliance Program, Inc. The Division found during its investigation that the premium payment was not made on one viatical policy, in which Ohio investors had invested and litigation is ongoing. The Division found that false statements were made in the offering documents regarding the safety of the investment and the payments of premiums.

The president of Paragon, Donald I. Goldstein, entered into a Consent Agreement, on behalf of Paragon, with the Division. The Cease and Desist Order finds that the viatical settlement contracts were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1). There were also omis-

sions of material fact by Paragon, in violation of R.C. 1707.44(G), and Paragon acted as an unlicensed securities dealer, in violation of R.C. 1707.44(A).

### **The Reliance Program, Inc.; Donald I. Goldstein**

On November 30, 2000, the Ohio Division of Securities issued Division Order No. 00-454, a Cease and Desist Order with Consent Agreement, against The Reliance Program, Inc. (Reliance) and its president, Donald I. Goldstein, both of Atlanta, Georgia.

The Division's investigation found that Reliance and Goldstein sold unregistered viatical settlement contracts totaling approximately \$290,740 to fifteen Ohio investors, through an Ohio sales representative with which an affiliated company, Paragon Capital Group, Inc., had a written sales agreement. The Division found that Ohio investors were promised a total return of 30% at the end of 36 months.

Goldstein entered into a Consent Agreement, both for himself and on behalf of Reliance, with the Division. The Cease and Desist Order finds that the viatical settlement contracts were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1).

### **James L. Binge**

On December 5, 2000, the Ohio Division of Securities issued Division Order No. 00-458, a Cease and Desist Order, against James L. Binge of Canal Fulton, Ohio.

The Division's investigation found that Binge sold unregistered mutual fund shares and fixed interest rate investments in The Cyprus Funds, Inc. (Cyprus Funds) mutual fund, a foreign mutual fund company whose address was in Belmopan, Belize, and was purportedly incorporated in Belize, to Ohio residents. The Cyprus Funds processing center was located in Canton, Ohio. The Division found that Binge sold these securities while licensed with First Securities

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Group, Inc. Binge was also a Director of the Cyprus Funds.

The Division also found that Binge misrepresented to investors the risks and suitability of investing in shares and fixed interest rate investments in the Cyprus Funds as investments suitable for retirement funds, and stated that it was a safe investment. However, it involved a high degree of risk and was not suitable for investing retirement funds. Finally, the Division found that Binge and the offering documents failed to properly disclose to investors that the shares and fixed interest rate investments were not registered with the Division or exempt from such registration.

The Order finds that the securities were not registered with the Division, or exempt from such registration, in violation of R.C. section 1707.44(C)(1). There were also omissions of material fact by Binge, in violation of R.C. 1707.44(G), and false representations in the sale of the mutual fund shares and fixed interest rate investments, in violation of R.C. 1707.44(B)(4). In addition, Binge sold the securities in which investors were not suitable based upon their investment objectives, and financial situation and needs, in violation of Ohio Administrative Code 1301:6-3-19(A)(5).

### Gibraltar Energy Company and Richard Mason

On September 12, 2000, the Division issued a Notice of Opportunity for Hearing to Gibraltar Energy Company and Richard Mason ("Respondents"), Order number 00-279. The order alleged that the Respondents omitted material information during the sale of unregistered securities to Ohio investors. The Respondents did not request an administrative hearing, and thereafter, the Division issued Cease and Desist Order 00-358 to the Respondents.

### Millionairemail.Com, Inc.

On November 20, 2000, the Division and Millionairemail.Com, Inc. entered into an agreed Cease and Desist

Order, Order Number 00-432. The order found that Millionairemail.Com, Inc. omitted material information during the sale of unregistered stock to Ohio investors.

### Matthew Lane Painter

On August 31, 2000, the Division issued Division Order 00-260, a Cease and Desist Order, against Matthew Lane Painter. Respondent is an Ohio resident.

On July 21, 2000, The Division issued a Notice of Opportunity for Hearing to Respondent pursuant to Ohio Revised Code Chapter 119. The Division alleged that Respondent had violated Revised Code Sections 1707.44(A)(1), 1707.44(C)(1), 1707.44(B)(4) and 1707.44(G), and Administrative Code Section 1301:6-3-19(A)(19), respectively, by selling without a securities license unregistered securities, making false representations in the sale of securities, failing to disclose material facts in conjunction with the sales of securities, thereby engaging in acts which are declared illegal, defined as fraudulent or prohibited, and by effecting a securities transaction not recorded on the regular books and records of the dealer that the salesman represented at the time of sale.

The Division's allegations stem from Respondent's sales of promissory notes in Tee to Green Golf Parks, Inc. of Buffalo, New York and partnership interests in Driving Force I, RLLP, an associated entity. Bonds issued by Tangent Insurance Company of Antigua, BWI, purportedly guaranteed the notes. Respondent did not have a license to sell securities at the time he sold the promissory notes. Neither the notes nor the partnership interests were registered or claimed from exemption with the Division of Securities. Moreover, Respondent failed to disclose risk of loss, commissions, the financial condition of the company, or its relationship to Legend Sports against which the state of Florida had issued a Cease and Desist Order and had filed a Complaint alleging multiple violations of Florida securities laws in the U.S. District Court, Middle District of Florida.

The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an administrative hearing. Therefore, the Division issued its Cease and Desist Order, Order No. 00-260.

### Michael Lane Painter

On October 23, 2000, the Division issued Division Order 00-382, a Cease and Desist Order, against Michael Lane Painter. Respondent is an Ohio resident.

On August 30, 2000, The Division issued a Notice of Opportunity for Hearing to Respondent pursuant to Ohio Revised Code Chapter 119. The Division alleged that Respondent had violated Revised Code sections 1707.44(A)(1), 1707.44(C)(1), 1707.44(B)(4) and 1707.44(G) respectively, by selling without a securities license unregistered securities, making false representations in the sale of securities, and by failing to disclose material facts in conjunction with the sales of securities, thereby engaging in acts which are declared illegal, defined as fraudulent or prohibited.

The Division's allegations stem from Respondent's sales of promissory notes in Tee to Green Golf Parks, Inc. of Buffalo, New York and partnership interests in Driving Force I, RLLP, an associated entity. Bonds issued by Tangent Insurance Company of Antigua, BWI, purportedly guaranteed the notes. Respondent did not have a license to sell securities at the time he sold the promissory notes. Neither the notes nor the partnership interests were registered or claimed from exemption with the Division of Securities. Moreover, Respondent failed to disclose risk of loss, commissions, the financial condition of the company, or its relationship to Legend Sports against which the state of Florida had issued a Cease and Desist Order and had filed a Complaint alleging multiple violations of Florida securities laws in the U.S. District Court, Middle District of Florida.

The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an administrative hearing. Therefore, the Division issued its Cease and Desist Order, Order No. 00-382.

### **Joseph White, III**

On October 2, 2000, the Division issued Division Order 00-338, a consented Cease and Desist Order and Suspension of Ohio Securities License, against Joseph White, III. Respondent is an Ohio resident.

On June 9, 2000, The Division issued a Notice of Opportunity for Hearing Suspension of Ohio Securities Salesman License No. 2779627 and Notice of Intent to Revoke Ohio Securities Salesman License 2779627 to Respondent pursuant to Ohio Revised Code Chapter 119. The Division alleged that Respondent had violated Revised Code sections 1707.44(C)(1) and Administrative Code section 1301:6-3-19(A)(19), respectively, by selling unregistered securities and by effecting a securities transaction not recorded on the regular books and records of the dealer that the salesman represented at the time of sale.

The Division's allegations stem from Respondent's sales of promissory notes in Tee to Green Golf Parks, Inc. of Buffalo, New York to Ohio investors. The notes were not registered or claimed from exemption with the Division of Securities.

The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent requested an administrative hearing, but he later withdrew his request. The Respondent and the Division entered into a Consent agreement whereby Respondent agreed to a ten day suspension of his securities salesman license, and the Division issued its Cease and Desist Order and Suspension of Ohio Securities Salesman License No. 2779627, Order No. 00-338.

### **John F. Peters, II**

On November 30, 2000, the Division issued Division Order 00-455, a consented Cease and Desist Order and Suspension of Ohio Securities License, against John F. Peters, II. Respondent is an Ohio resident.

On July 19, 2000, The Division issued a Notice of Opportunity for Hearing Suspension of Ohio Securities Salesman License No. 1311252 and Notice of Intent to Suspend Ohio Securities Salesman License 1311252 to Respondent pursuant to Ohio Revised Code Chapter 119. The Division alleged that Respondent had violated Revised Code sections 1707.44(C)(1) and Administrative Code section 1301:6-3-19(A)(19), respectively, by selling unregistered securities and by effecting a securities transaction not recorded on the regular books and records of the dealer that the salesman represented at the time of sale.

The Division's allegations stem from Respondent's sales of promissory notes in Tee to Green Golf Parks, Inc. of Buffalo, New York to Ohio investors. The notes were not registered or claimed from exemption with the Division of Securities.

The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent requested an administrative hearing, but he later withdrew his request. The Respondent and the Division entered into a Consent agreement whereby Respondent agreed to a thirty day suspension of his securities salesman license, and the Division issued its Cease and Desist Order and Suspension of Ohio Securities Salesman License No. 1311252, Order No. 00-455.

### **Robert Lee Scott**

On October 20, 2000, the Division issued Division Order 00-376, a Cease and Desist Order, against Robert Lee Scott. Respondent is an Ohio resident.

On September 19, 2000, The Division issued a Notice of Opportunity for Hearing to Respondent pursuant to

Ohio Revised Code Chapter 119. The Division alleged that Respondent had violated Revised Code sections 1707.44(A)(1) and 1707.44(C)(1), respectively, by selling without a securities license unregistered securities.

The Division's allegations stem from Respondent's sales of promissory notes in Ameritech Petroleum, Inc. of Abilene, Texas. Respondent did not have a license to sell securities, and the notes were not registered or claimed from exemption with the Division of Securities.

The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an administrative hearing. Therefore, the Division issued its Cease and Desist Order, Order No. 00-376.

### **William H. Keller; Bill Keller Ministries; B.K. Media; Liveprayer.com**

On November 8, 2000, the Division issued a final Cease and Desist Order to William H. Keller, Bill Keller Ministries, B.K. Media, and Liveprayer.com, all located in St. Petersburg, Florida.

The Division issued a Notice of Opportunity for Hearing, Division Order No. 00-264, to Respondents pursuant to Revised Code Chapter 119 on August 28, 2000. The Division alleged that Respondents violated Revised Code section 1707.44(C)(1) by soliciting an Ohio resident to purchase securities that were not registered by description, coordination or qualification, nor exempt from registration, and for failing to disclose material facts in connection with the solicitation or sale of securities. The Division also notified Respondent of its right to an adjudicative hearing pursuant to Chapter 119 of the Revised Code. A hearing was not requested and a final Order to Cease and Desist was issued on November 8, 2000.

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### Grant Bettingen, Inc.

On December 26, 2000, the Division issued a Cease and Desist Order and Final Order to Deny Application for Securities Dealer License, Division Order No. 00-487, to Grant Bettingen, Inc., of Irvine, California.

On November 22, 2000, the Division issued a Notice of Opportunity for Hearing and Notice of Intent to Deny Application for Securities Dealer License, Division Order No. 00-436, to Respondent pursuant to Revised Code Chapter 119. The Division alleged that Respondent violated Revised Code section 1707.44(A)(1) by selling securities to Ohio residents as an unlicensed dealer. The Division also notified Respondent of its right to an adjudicative hearing pursuant to Chapter 119 of the Revised Code. A hearing was not requested and a final Cease and Desist Order Denying Respondent's application for securities dealer license was issued on December 26, 2000.

### David L. Sherman

On December 26, 2000, the Division issued a Cease and Desist Order, Division Order No. 00486, to David L. Sherman of Ansonia, Ohio.

On November 24, 2000, the Division issued a Notice of Opportunity for Hearing to Sherman pursuant to Revised Code Chapter 119. The Division alleged that Sherman violated Revised Code sections 1707.44(B)(4), 1707.44(C)(1), and Ohio Administrative Code rule 1301:6-3-19(A)(1) by selling unregistered promissory notes of Caffe Diva Group Ltd., Sebastian International Enterprises Inc., South Mountain Resort and Spa Inc., and World Vision Entertainment Inc., making misrepresentations in connection with the sale of promissory notes, and selling promissory notes without the knowledge or permission of his employing broker-dealers. The Division also notified Sherman of his right to an adjudicative hearing pursuant to Chapter 119 of the Revised Code.

Sherman did not request a hearing and a final Order to Cease and Desist was issued on December 26, 2000.

### Kevin Robert Ostrowski

On December 19, 2000, the Division issued Division Order No. 00-479, a Cease and Desist Order, against Kevin Robert Ostrowski. Respondent is an Ohio resident.

On July 17, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-429, to Kevin Robert Ostrowski. The Division alleged that the Respondent had violated the provisions of Revised Code sections 1707.44(C)(1) and 1707.44(A)(1), respectively, by selling unregistered securities and by selling securities without being licensed as a dealer. The Division's allegations stem from the Respondent's sale of promissory notes of Lomas de la Barra Development, Inc. and Pacific Air Transport, Inc. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicative hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued Cease and Desist Order No. 00-479.

### Daniel David Hoar

On December 4, 2000, the Division issued Division Order No. 00-456, a Cease and Desist Order and Revocation of Ohio Securities Salesperson License, against Daniel David Hoar. Respondent is an Ohio resident.

On November 1, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-394, to Daniel David Hoar. The Division alleged that the Respondent had violated the provisions of Revised Code sections 1707.44(C)(1), 1707.44(B)(3) and Ohio Administrative Code Rule 1301:6-3-19(A)(19), by selling unregistered securities, "selling away" and making a false statement on a U-4. The Division's allegations stem from the Respondent's sale of promissory notes of Serengeti Diamonds USA, Inc. and Lomas de la

Barra Development, Inc. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicative hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued Cease and Desist and Revocation of Ohio Securities Salesperson License, Division Order No. 00-456.

### American Currency Exchange LLC; Mickey B. Walker

On December 5, 2000, the Division issued Division Order No. 00-457, a Cease and Desist Order, against American Currency Exchange LLC and Mickey B. Walker. Respondents' business address is in Atlanta, Georgia.

On April 4, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-088, to American Currency Exchange LLC and Mickey B. Walker. The Division alleged that the Respondents had violated the provisions of Revised Code sections 1707.44(A)(1) and 1707.44(C)(1), by selling unregistered securities, and by selling securities without a securities salesperson or dealer license. The Division's allegations stem from the Respondents' sale of foreign currency options. The Division notified the Respondents of their right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondents failed to timely request an adjudicative hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued Cease and Desist Order No. 00-457.

### Gary Nelson Burg

On December 19, 2000, the Division issued Division Order No. 00-430, a Cease and Desist Order, against Gary Nelson Burg. Respondent is an Ohio resident.

On October 17, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-367, to Gary Nelson Burg. The Division alleged that the Respondent had violated the provisions of Revised Code sections

1707.44(C)(1) and Ohio Administrative Code 1301:6-3-19(A)(19), by selling unregistered securities and by “selling away”. The Division’s allegations stem from the Respondent’s sale of promissory notes of Serengeti Diamonds USA, Inc., Lomas de la Barra Development, Inc., Rawhide Select, Inc. and Interational Real Estate Investment group, Ltd. The Division notified the Respondent of his rights to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued Cease and Desist Order No. 00-430.

### **Tony Lee Fessler**

On November 16, 2000, the Division issued Division Order No. 00-405, an Agreed Suspension of Ohio Securities Salesperson License, against Tony Lee Fessler. Respondent is licensed with AXA Advisors, LLC. The Division found that the Respondent had violated the provisions of Revised Code sections 1707.44(C)(1) and Ohio Administrative Code Rule 1301:6-3-19(A)(19), respectively, by selling unregistered securities and by “selling away.” The Division’s findings stem from the Respondent’s sale of promissory notes of Serengeti Diamonds USA, Inc. Respondent was suspended for 30 days, beginning November 1, 2000.

### **Gary Wayne Ogle**

On October 23, 2000, the Division issued Division Order No. 00-379, a Cease and Desist Order against Gary Wayne Ogle. Respondent is an Ohio resident.

On September 20, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-303, to Gary Wayne Ogle. The Division alleged that the Respondent had violated the provisions of Revised Code Section 1707.44(C)(1) and Ohio Administrative Code section 1301:6-3-19(A)(19), by selling unregistered securities and by “selling away.” The Division’s allegations stem from the Respondent’s sale of prom-

issory notes of Serengeti Diamonds USA, Inc. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued its Cease and Desist Order No. 00-379.

### **Charles William Hessey**

On October 23, 2000, the Division issued Division Order No. 00-380, a Cease and Desist Order, against Charles William Hessey. Respondent is an Ohio resident.

On September 20, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-301, to Charles William Hessey. The Division alleged that the Respondent had violated the provisions of Revised Code Section 1707.44(C)(1) by selling unregistered securities. The Division’s allegations stem from the Respondent’s sale of a promissory note of Serengeti Diamonds USA, Inc. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued its Cease and Desist Order No. 00-380.

### **Claude Edward Smith; Spectrum Financial Services**

On October 23, 2000, the Division issued Division Order No. 00-390, a Cease and Desist Order, against Claude Edward Smith and Spectrum Financial Services. Respondents’ business address is in Ohio.

On September 28, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-328, to Claude Edward Smith and Spectrum Financial Services. The Division alleged that the Respondents had violated the provisions of Revised Code Section 1707.44(C)(1) and 1707.44(A)(1) by selling unregistered securities, and by

selling securities without being licensed as a dealer or salesperson. The Division’s allegations stem from the Respondents’ sale of promissory notes of Serengeti Diamonds USA, Inc. and Sun Broadcasting Systems, Inc. The Division notified the Respondents of their right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondents failed to timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued its Cease and Desist Order No. 00-390.

### **Jeffrey Lynn Roberts**

On October 20, 2000, the Division issued Division Order No. 00-371, a Cease and Desist Order, against Jeffrey Lynn Roberts. Respondent is an Ohio resident.

On September 12, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-278, to Jeffrey Lynn Roberts. The Division alleged that the Respondent had violated the provisions of Revised Code Section 1707.44(C)(1), 1707.44(A)(1) and Ohio Administrative Code Section 1301:6-3-19(A)(19) by selling unregistered securities, selling securities without being licensed as a dealer and by “selling away.” The Division’s allegations stem from the Respondent’s sale of promissory notes of Serengeti Diamonds USA, Inc. and World Vision Entertainment, Inc. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued its Cease and Desist Order No. 00-371.

### **George Elmer Keffer**

On October 20, 2000, the Division issued Division Order No. 00-372, a Cease and Desist Order, against George Elmer Keffer. Respondent is an Ohio resident.

On September 15, 2000, the Division issued a Notice of Opportunity for

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## Enforcement Section Reports

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Hearing, Division Order No. 00-288, to George Elmer Keffer. The Division alleged that the Respondent had violated the provisions of Revised Code Section 1707.44(C)(1) and 1707.44(A)(1), by selling unregistered securities and by selling securities without being licensed as a dealer. The Division's allegations stem from the Respondent's sale of promissory notes of Serengeti Diamonds USA, Inc. and Lomas de la Barra Development, Inc. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued its Cease and Desist Order No. 00-372.

### **Bruce Earl Gearhart**

On October 20, 2000, the Division issued Division Order No. 00-373, a Cease and Desist Order, against Bruce Earl Gearhart. Respondent is an Ohio resident.

On September 15, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-287, to Bruce Earl Gearhart. The Division alleged that the Respondent had violated the provisions of Revised Code Section 1707.44(C)(1) and 1707.44(A)(1), by selling unregistered securities and by selling securities without being licensed as a dealer. The Division's allegations stem from the Respondent's sale of promissory notes of Serengeti Diamonds USA, Inc. and Sun Broadcasting Systems, Inc. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued its Cease and Desist, Order No. 00-373.

### **Eugene Kelly Adams**

On October 20, 2000, the Division issued Division Order No. 00-375,

a Cease and Desist Order, against Eugene Kelly Adams. Respondent is an Ohio resident.

On September 13, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-280, to Eugene Kelly Adams. The Division alleged that the Respondent had violated the provisions of Revised Code Section 1707.44(C)(1) and 1707.44(A)(1), by selling unregistered securities and by selling securities without being licensed as a dealer. The Division's allegations stem from the Respondent's sale of promissory notes of Serengeti Diamonds USA, Inc. and Lomas de la Barra Development, Inc. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued its Cease and Desist Order No. 00-375.

### **Joseph Anthony Vargo**

On October 23, 2000, the Division issued Division Order No. 00-377, a Cease and Desist Order, against Joseph Anthony Vargo. Respondent is an Ohio resident.

On September 20, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-302, to Joseph Anthony Vargo. The Division alleged that the Respondent had violated the provisions of Revised Code Section 1707.44(C)(1) and 1707.44(A)(1), by selling unregistered securities and by selling securities without being licensed as a dealer. The Division's allegations stem from the Respondent's sale of promissory notes and debentures of Serengeti Diamonds USA, Inc., Lomas de la Barra Development, Inc., Rawhide Select, Inc. and International Real Estate Investment Group, Ltd. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued its Cease and Desist Order No. 00-377.

### **Steve Ira Root**

On October 20, 2000, the Division issued Division Order No. 00-378, a Cease and Desist Order, against Steve Ira Root. Respondent is an Ohio resident.

On September 13, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-297, to Steve Ira Root. The Division alleged that the Respondent had violated the provisions of Revised Code Section 1707.44(C)(1) and 1707.44(A)(1), by selling unregistered securities and by selling securities without being licensed as a dealer. The Division's allegations stem from the Respondent's sale of promissory notes of Serengeti Diamonds USA, Inc., Millenium 2100, Inc., Sebastian International Enterprises, Inc., Hollywood on Air, Inc. and Millenicom, Inc. The Division notified the Respondent of his right to an administrative hearing pursuant to Chapter 119 of the Revised Code. Respondent failed to timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code. Therefore, the Division issued its Cease and Desist Order No. 00-378.

### **Universal Electric Power Corporation**

On December 4, 2000, the Division issued Division Order No. 00-353, a Cease and Desist Order by Consent Agreement, against Universal Electric Power Corporation. Respondent's business address is in Akron, Ohio. The Division found that the Respondent had violated the provisions of Revised Code sections 1707.44(C)(1), 1707.44(G) and 1707.44(B)(4), by selling unregistered securities, making false representations in connection with the sale of securities and by failing to disclose material facts in connection with the sale of securities. The Division's findings stem from the Respondent's sale of stock. In connection with this Order, Respondent agreed to make a rescission offer no later than June 30, 2001.



## Stein Abbott & Co., Inc.

On July 5, 2000, the Division issued Division Order No. 00-170, a consented Cease and Desist Order, against Stein Abbott & Co., Inc. Respondent is located in Hasbrouck Heights, New Jersey.

On June 8, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-139, to Respondent pursuant to Revised Code Chapter 119. The Division alleged that Respondent violated Revised Code section 1707.44(A)(1) by selling securities to Ohio residents prior to approval of its Ohio broker-dealer application. The Division also notified Respondent of its right to an adjudicatory hearing pursuant to Chapter 119 of the Revised Code. Respondent entered into a Consent Agreement and submitted an Undertaking to the Division in which it agreed to offer rescission to affected investors. Thereafter, a Cease and Order was issued in conjunction with these agreements and Respondent was subsequently licensed as a broker-dealer in Ohio.

## Norman E. Facter

On September 28, 2000, the Division issued Division Order No. 00-330 against Norman E. Facter, a dentist located in Beachwood, Ohio.

On August 28, 2000, the Division issued a Notice of Opportunity for Hearing, Division Order No. 00-251, to Facter pursuant to Revised Code Chapter 119. The Division alleged that Facter violated Revised Code section 1707.44(C)(1) by selling securities that were not registered by description, coordination or qualification, nor exempt from registration. The Division also notified Respondent of his right to an adjudicatory hearing pursuant to chapter 119 of the Revised Code. Respondent did not request a hearing and a final Cease and Desist Order was issued on September 28, 2000.

## Criminal Updates

### Paul D. Morrison

On February 14, 2000 Paul D. Morrison was sentenced in Guernsey County after pleading guilty to one count of selling securities without a license. Morrison received a suspended 12-month prison term, 30 days in the county jail, community control for five years, and a \$2,500 fine. Morrison also agreed to repay \$260,000 lost by mostly elderly victims. Morrison worked for The Sterling Group based in Las Vegas. He sold shares of late-night television advertising time and promissory notes issued by Legend Sports Inc. to Ohio residents. *(For additional information on this case, see Bulletin No. 99-4).*

### Kevin Roser

On April 12, 2000 Kevin Roser was sentenced to two years incarceration and ordered to pay restitution in Franklin County Common Pleas Court. On February 1, 2000, Roser plead guilty to six counts of felony securities law violations. The violations resulted from Roser's activities in connection with Ohio Business Consultants and University Businesses Incorporated. Roser had been indicted on 15 counts in April 1996. He was arraigned shortly thereafter, but then fled. Last year he was arrested in Summit County on different charges, and currently is incarcerated at the Pickaway Correctional Institution. *(For additional information on this case, see Bulletin No. 00:2).*



## Jeffrey Saxton

On August 2, 2000 a supplemental indictment was filed against Jeffrey Saxton in Lorain County, Ohio for violations of the Ohio Securities Act, along with one count of violating the Ohio Corrupt Activities Act. The securities violations consisted of three counts of selling unregistered securities and three counts of making false representations. The charges relate to his participation in the sale of securities of The Cyprus Fund, Inc. mutual fund. *(See Enforcement Section Reports in this issue of the Bulletin for administrative action taken against Saxton and The Cyprus Fund, Inc.)*

## Stephen Arndts

Stephen Arndts plead guilty to a Bill of Information in Montgomery County on November 15, 2000 to five felony counts of selling unregistered securities and five felony counts of selling securities without a license. Arndts' plea resulted from his sales of promissory notes of World Vision Entertainment to Ohio residents. Arndts was sentenced to a 60-day work release program and five years probation. He must submit a plan for restitution in the amount of \$324,017.

## Delmar Gerald Lach

On August 30, 2000, Delmar Gerald Lach was indicted by a Clermont County grand jury on 55 felony counts, including 53 counts of violating the Ohio Securities Act, one count of violating the Pyramid Sales Act, and one count of violating the Ohio Corrupt Activities Act. The indictment also included a forfeiture specification. The Division had obtained a preliminary Injunction against Lach regarding securities sales back in June of 2000. *(See Bulletin Issue No. 00-2).* The court has stayed the civil proceedings pending the outcome of the criminal case.

## Final Order Summaries

*The following is a summary of recent final orders issued by the Division in response to salesperson and investment advisor representative license applications.*

| PARTY                            | DECISION | ORDER<br><u>SENT/NO.</u> | ALLEGATIONS<br><u>H.O. RECOMM.</u>                                    |
|----------------------------------|----------|--------------------------|---|
| CALHOON FINANCIAL PLANNING, INC. | DENIED   | 10/17/00<br>00-368       | R.C. 1707.19(A)<br>No Hearing Requested                               |
| MICHAEL ANTHONY POLLACCIA        | DENIED   | 11/2/00<br>00-399        | OAC 1301:6-3-19(D)(9), R.C. 1707.19(A)(1)<br>No Hearing Requested     |
| ANTHONY ANDREW BISCEGLIE         | DENIED   | 11/2/00<br>00-401        | OAC 1301:6-3-19(D)(9)<br>R.C. 1707.19(A)(1)<br>No Hearing Requested   |
| REED FREYERMUTH                  | DENIED   | 11/27/00<br>00-438       | OAC 1301:6-3-19(D), R.C. 1707.19,<br>R.C.1707.16<br>Findings Approved |
| DAVID CHARLES BARON, JR.         | DENIED   | 11/27/00<br>00-439       | OAC 1301:6-3-19(D), R.C. 1707.19,<br>R.C.1707.16<br>Findings Approved |
| ERIC PETER WESCHKE               | DENIED   | 11/27/00<br>00-440       | OAC 1301:6-3-19(D), R.C. 1707.19,<br>R.C.1707.16<br>Findings Approved |

## Licensing Statistics

| License Type                      | YTD 2000 |
|-----------------------------------|----------|
| Dealer                            | 2,541    |
| Salesmen                          | 122,353  |
| Investment Adviser                | 1,279    |
| Investment Adviser Representative | 6,891    |

## Registration Statistics

The following table sets forth the number of registration, exemption, and notice filings received by the Division during the fourth quarter of 2000, compared to the number of filings received during the fourth quarter of 1999. Likewise, the table compares the year-to-date filings for 2000 and 1999.

| Filing Type    | 4th Qtr '00 | YTD 2000    | 4th Qtr '99 | YTD 1999    |
|----------------|-------------|-------------|-------------|-------------|
| 1707.03(Q)*    | 46          | 199         | 60          | 525         |
| 1707.03(W)     | 10          | 29          | 13          | 41          |
| 1707.03(X)     | 385         | 1575        | 362         | 1037        |
| 1707.03(Y)     | 7           | 15          | 1           | 12          |
| 1707.04        | 0           | 1           | 0           | 0           |
| 1707.041       | 1           | 1           | 1           | 7           |
| 1707.06        | 22          | 102         | 15          | 115         |
| 1707.09        | 8           | 54          | 25          | 64          |
| 1707.091       | 30          | 116         | 36          | 157         |
| 1707.092(A)**  | 1128        | 4766        | 1166        | 4446        |
| 1707.092(C)*** | 0           | 1           | 1           | 2           |
| 1707.39        | 2           | 16          | 1           | 6           |
| 1707.391       | 17          | 109         | 26          | 127         |
| <b>Total</b>   | <b>1656</b> | <b>6984</b> | <b>1707</b> | <b>6539</b> |

\*Statistics for the number of 3(Q) filings submitted prior to March 18, 1999 contain those pursuant to both Rule 506 and Section 4(2) of the Securities Act of 1933, whereas filings after March 18, 1999 will be represented by two different sections: RC 1707.03(Q) for Section 4(2) filings, and RC 1707.03(X) for Rule 506 offerings.

\*\* Investment company notice filings.

\*\*\* Offerings of covered securities not otherwise covered by another statutory provision in the Ohio Securities Act.

## Capital Formation Statistics\*

Because the Division's mission includes enhancing capital formation, the Division tabulates the aggregate dollar amount of securities to be sold in Ohio pursuant to filings made with the Division. As indicated in the notes to the table, the aggregate dollar amount includes a value of \$1,000,000 for each "indefinite" investment company filing. However, the table does not reflect the value of securities sold pursuant to "self-executing exemptions" like the "exchange listed" exemption in R.C. 1707.02(E) and the "limited offering" exemption in R.C. 1707.03(O). Nonetheless, the Division believes that the statistics set out in the table are representative of the amount of capital formation taking place in Ohio.

\*Categories reflect amount of securities registered, offered, or eligible to be sold in Ohio by issuers.

\*\*Investment companies may seek to sell an indefinite amount of securities by submitting maximum fees. Based on the maximum filing fee of \$1100, an indefinite filing represents the sale of a minimum of \$1,000,000 worth of securities, with no maximum. For purposes of calculating an aggregate capital formation amount, each indefinite filing has been assigned a value of \$1,000,000.

| Filing Type                 | Fourth Qtr 2000         | YTD 2000                 |
|-----------------------------|-------------------------|--------------------------|
| <b>Exemptions</b>           |                         |                          |
| Form 3(Q)                   | 107,564,128             | 472,150,707              |
| Form 3(W)                   | 21,874,000              | 64,098,000               |
| Form 3(X)                   | 59,202,890,629          | 269,238,499,510          |
| Form 3(Y)                   | 7,960,900               | 22,861,900               |
| <b>Registrations</b>        |                         |                          |
| Form .06                    | 206,926,182             | 1,271,477,852            |
| Form .09                    | 252,950,000             | 886,407,274              |
| Form .091                   | 1,194,985,279           | 12,759,819,253           |
| Form .092(C)                | 0                       | 0                        |
| <b>Investment Companies</b> |                         |                          |
| Definite                    | 310,557,800             | 626,893,960              |
| Indefinite**                | 659,000,000             | 2,804,000,000            |
| <b>TOTAL</b>                | <b>\$61,964,708,918</b> | <b>\$288,146,208,456</b> |

# OHIO SECURITIES BULLETIN

Ohio Division of Securities  
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