

# OHIO SECURITIES BULLETIN

A QUARTERLY PUBLICATION OF THE OHIO DIVISION OF SECURITIES

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## DIVISION ASSISTS IN BWC INVESTIGATION

Ohio Inspector General Tom Charles has established a multi-agency task force to investigate the investment practices of the Ohio Bureau of Workers' Compensation (BWC). The task force is comprised of several federal and state agencies, including the Division of Securities. The task force is using the investigatory resources and securities law expertise of the Division's Enforcement Section. Results from the task force's investigation have included criminal indictments against two Cleveland-area securities salesmen in June on federal corruption charges, as well as the criminal conviction of a top BWC official.

Michael W. Lewis and Daniel P. O'Neil, who are salesmen at Ferris, Baker Watts Inc., were indicted on June 19, 2006 by a federal grand jury in Cleveland on charges that include lying to federal authorities and conspiring to bribe former BWC Chief Financial Officer Terrence W. Gasper. The U.S. Justice Department filed a Bill of Information against Gasper on June 1, 2006 charging him with violating the Racketeer Influenced and Corrupt Organizations Act by using his position at BWC to obtain "things of value" from salesmen, dealers and marketers seeking investment business from the BWC. Gasper pleaded guilty to the charges within a few days of the filing of the Information.

In the case against Lewis and O'Neil, the Justice Department claims that they allowed Gasper use of a luxury ocean-front condominium in Florida in exchange for funneling business their way. The BWC investment activity took place while the salesmen were employed at Raymond James & Associates, Roney & Co. and Ferris, Baker Watts, Inc., which they joined in 2000.

The specific charges against Lewis and O'Neil include conspiring to bribe Gasper, committing mail and wire fraud in arranging the purchase of the condo for Gasper, and one count each of making false statements to federal investigators by denying Gasper's connection to the condo. Each salesman faces a maximum of 20 years in prison, a \$250,000 fine and three years of probation regarding the bribery charge. They also face up to five

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## OHIO DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

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**Ohio Securities Bulletin**

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## **BWC Investigation**

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years in prison, a \$250,000 fine and three years probation for each of the other three counts. Both Lewis and O'Neil have pleaded not guilty to the charges.

The Division has the authority to revoke the license of any individual convicted of felony offenses. Legislation was passed in 2005 giving the Division the licensure authority over BWC's chief investment officer. R.C. 1707.164 prohibits persons from acting as a bureau of workers' compensation chief investment officer unless the per-

son is licensed as such by the Division. The statute also prohibits the chief investment officer from acting as a dealer, salesperson, investment advisor or investment advisor representative.

R.C. 1707.165 outlines the licensing procedure for applicants. It gives the Division authority to require applicants to either "pass an examination designated by the Division or achieve a specified professional designation..." This provision is waived for the chief investment officer serving at the time

of the statute's effective date, and for those who have education or experience acceptable to the Division. The statute also gives the Division authority to investigate license applicants to determine their business repute and qualifications for the position.

## **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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## DIVISION PROMULGATES NEW RULE CHANGES

The Division has made changes to several rules dealing with Division licensees. A public hearing was held on May 17, 2006, after which the changes were approved. The changes became effective July 3, 2006.

*OAC 1301:6-3-01.* The purpose of the amendment is to add the uniform definition of “branch office,” which is incorporated in the new, uniform Form BR as part of the Division’s required regulatory filings. The branch office definition and Form BR are nationwide initiatives spearheaded by the North American Securities Administrators Association (“NASAA”), the National Association of Securities Dealers (“NASD”), and the U.S. Securities and Exchange Commission (“SEC”), to create uniformity as to what constitutes a branch office and to create a uniform mechanism for filing. The addition of the term “promptly” will require licensees to amend or update filings within 30 calendar days of knowing of facts and circumstances giving rise to an amendment or update. The addition of this term mirrors the NASD requirements imposed upon dealers and their registered representatives.

*OAC 1301:6-3-15.* The purpose of the amendment to 1301:6-3-15 is to clarify that the provisions within the rule that relate to a request to cancel a securities salesperson’s license also relate to a request to cancel a securities salesperson’s license application. Additionally, the rule was amended to add language specifying that if an applicant’s application has been pending for more than a year without correcting outstanding deficiencies, the Division may notify the Central Registration Depository (“CRD”) and/or the Investment Adviser Registration Depository (“IARD”) systems maintained by the NASD, to terminate the pending application. Finally, the rule requires dealers to notify the Division of branch offices by incorporating the new, uniform Form BR within the Division’s required regulatory filings.

*OAC 1301:6-3-15.1.* The purpose of the amendment to 1301:6-3-15.1 is to clarify that the provisions within the rule that relate to a request to cancel an investment adviser representative’s license also relate to a request to cancel an investment adviser representative’s license application. Additionally, the rule was amended to permit the Division to terminate license applications that have been pending with deficiencies for over a year. Also, the rule requires investment advisers to notify the Division of branch offices by incorporating the new, uniform Form BR within Division’s required regulatory filings.

*OAC 1301:6-3-16.1.* The purpose of the amendment to 1301:6-3-16.1 is to correct a cross reference to rule 1301:6-3-15.1.

*OAC 1301:6-3-16.3.* The purpose of the amendment to 1301:6-3-16.3 is to clarify that the provisions within the rule that relate to a request to cancel a license also relate to a request to cancel a license application.

*OAC 1301:6-3-19.* The purpose of the amendment to 1301:6-3-19 is to include within the prefatory language to Rule 19(D) the addition of BWC CIOs, which were recently added to the regulatory oversight of the Division. The addition of the term “bar” to the factors of good business repute, will reflect a type of sanction that has been imposed by both the NASD and SEC for many years, but was inadvertently omitted from the sanctions enumerated within the factors of good business repute. Finally, the amendment will include within the factors for consideration under the definition of

## NEW RULE CHANGES

*continued from page 3*

“good business repute” instances where the licensee or license applicant has been the subject of complaints, arbitrations or civil litigation, but will specifically exclude any complaints that have been denied or any arbitrations or civil actions that resulted in a judgment or an award against the party bringing the action. This will enhance

investor protection by providing the Division with the authority to review non-regulatory actions against applicants and Ohio licensees, as one factor for consideration when determining the applicant’s or licensee’s good business repute.

*OAC 1301:6-3-44.* The purpose of the amendment is to amend the rule to clarify that the term “advertisement” includes electronic media, such as the internet, DVDs, etc., not merely

“written” communications. Also, the rule under “general prohibitions” has been amended to prohibit Ohio licensed investment advisers from making false representations to the Division.

## Criminal Updates

Following a criminal referral by the Ohio Division of Securities, a Richland County grand jury handed down a 118-count indictment against **Martin R. Hershner** of Lexington, Ohio. Hershner, who was indicted in April by the Richland County grand jury, was arraigned in Richland County Common Pleas Court on April 10, 2006 on the following charges:

- 64 counts of forgery;
- 21 counts of securities fraud;
- 19 counts of false representations in the sale of securities;
- four counts of money laundering;
- three counts of identity fraud;
- three counts of telecommunications fraud;
- two counts of unauthorized use of property;
- a count of aggravated theft; and
- a count of engaging in a pattern of corrupt activity.

Of the 118 counts, one is a first-degree felony, 19 are second-degree felonies, 20 are third-degree felonies, 52 are fourth-degree felonies, and 26 are fifth-degree felonies.

Hershner was licensed by the Ohio Division of Securities as a securities salesperson with MML Investors Services, Inc. from July 5, 1999 until May 12, 2004, and as an investment adviser representative with MML from June 25, 2003 to May 12, 2004. Hershner has not been licensed by the Division since May 2004. He is charged with crimes involving the mishandling of approximately \$600,000 involving 17 clients, principally from Richland County. The indictment alleges that Hershner:

- forged numerous documents and signatures to obtain funds from client accounts without their permission;
- redeemed customer funds by telephone with-

out the clients’ permission;

- failed to invest funds as he had represented to the investors;
- changed names on checks to his own as the payee;
- forged clients’ names on their checks;
- applied for and obtained loans and credit cards using other people’s identities and personal information;
- utilized his post office box for the delivery of proceeds from funds he stole from client accounts;
- concealed the theft of client funds through transactions at the bank involving the purchase of cashier checks;
- credited client funds to other client accounts; and
- converted funds to his own personal use and transferred the funds into accounts he controlled.

## ***Criminal Updates cont.***

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Hershner was arrested on October 29, 2005 after two criminal complaints on felony securities counts were filed against him in Mansfield Municipal Court

on October 28, 2005. Hershner was placed on pretrial supervision, ordered to post a bond and to have no financial dealings except his own personal mat-

ters. Hershner's bond and the court-ordered condition of his financial dealings are still in effect. Hershner's trial is scheduled for October 12, 2006.

## ***Enforcement Section Reports***

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### **MB Partners LLC; Michael D. Sellers**

On April 11, 2006 the Division issued Order No. 06-086, a Cease and Desist Order, against MB Partners LLC and Michael D. Sellers of North Hollywood and Burbank, California.

MB Partners and Sellers prepared a Private Placement Memorandum in July 2004 that detailed the offering of \$5 million of limited liability interests in MB Partners, an entity involved in the production, marketing and sales of films. From on or about January 2003 to July 2005, MB Partners and Sellers, through the use of brokers, websites and other means, sold \$124,500 in limited liability interests to five Ohio investors. The limited liability interests offered by MB Partners and Sellers are securities as defined under Ohio Revised Code section 1707.01(B) of the Ohio Securities Act. The Division found that MB Partners and Sellers violated the provisions of Ohio Revised Code section 1707.44(C)(1), which prohibits the sale of unregistered securities. The limited liability interests were not properly reg-

istered or exempt from registration as required by the Division.

The Division had previously on March 7, 2006 issued Order No. 06-076, a Notice of Opportunity for Hearing, against MB Partners and Sellers for violating Ohio Revised Code section 1707.44(C)(1). MB Partners and Sellers did not timely request an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code, allowing the Division to issue Cease and Desist Order No. 06-086.

### **American Business Financial Services, Inc.**

On April 12, 2006 the Division issued Order No. 06-085, a Cease and Desist Order, against American Business Financial Services, Inc., a Delaware corporation with its principal office located in Philadelphia, Pennsylvania. Throughout 2003 and 2004 American Business Financial Services, Inc. sold promissory notes to Ohio residents. These notes were securities under the Ohio Securities Act but were not registered with the Division. After an inves-

tigation, the Division on March 8, 2006 issued Order No. 06-077, a Notice of Opportunity for Hearing, against American Business Financial Services, Inc., for allegedly violating Revised Code Section 1707.44(C)(1), the unregistered sale of securities. The Respondent did not request a hearing pursuant to Chapter 119 of the Ohio Revised Code, thereby allowing the Division to issue its Cease and Desist Order No. 06-085, which incorporated the allegations set forth in the Notice of Opportunity for Hearing.

### **Morningstar Exploration, Inc.**

On April 28, 2006 the Division issued a Cease and Desist Order and Consent Agreement against Morningstar Exploration, Inc., a California corporation.

The Division found that the company had sold unregistered securities in the form of an interest in an oil and gas project to an Ohio resident in violation of R.C. 1707.44(C)(1). The Division had earlier issued a Notice of Opportunity for Hearing notifying the Respondent of the alle-

## **Enforcement Section Reports cont.**

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gation against it, as well as its right to an adjudicative hearing. The Respondent agreed to the issuance of a Cease and Desist Order, Division Order No. 06-111, incorporating the allegation noted above as a finding, and also waived its right to any further appeals.

### **Richard C. Clarke II**

On April 28, 2006 the Division issued a Cease and Desist Order, Division Order No. 06-110, to Richard C. Clarke II of Polk City, Iowa.

Clarke was licensed in Ohio as a securities salesperson and an investment advisor with American Express Financial Advisors, Inc., and he induced Ohio investors to invest in what he called the "Marine Inventory Investment." The Marine Inventory Investment was evidenced by a promissory note, with the principal and percent interest payable within a specific period of time. Clarke told investors that the principal and interest were guaranteed, yet two of the investors were never repaid by Clarke. They were later compensated by American Express Financial Advisors. Clarke's actions constituted violations of Revised Code Sections 1707.44(B)(4) and 1707.44(G), as well as Ohio Administrative Code Rule 1301:6-3-19(A)(19).

The Division attempted to notify Clarke of his right to an administrative hearing by issuing a Notice of Opportunity for Hearing on January 25, 2006, which included the allegations listed above, pursuant to Chapter 119 of the Ohio Revised Code. The Division was unable to attain service. In accordance with Chapter 119 of the Ohio Revised Code, notice of the order was published in the *Polk County Press Citizen*. Clarke did not request a hearing in a timely manner, resulting in the issuance of the final Cease and Desist Order.

### **Robert Lewis West**

On May 17, 2006 the Division issued a Revocation of Ohio Investment Adviser Representative License, Division Order No. 06-126, to Robert Lewis West, of Castle Rock, Colorado.

The Division found that West violated Ohio Administrative Code Rules 1301:6-3-19(A)(19) and 1301:6-3-16.1(C), determined that West's conduct falls under Ohio Revised Code Sections 1707.19(A)(1), 1707.19(A)(4), and 1707.19(A)(9) for purposes of license suspension and revocation and he was found not to be of "good business repute" as that term is used in Ohio Administrative Code Rules 1301:6-3-19(D)(8) and 1301:6-3-19(D)(9) and Ohio Revised Code Section

1707.19(A)(1).

The Division found that West was indicted on April 7, 2005, in U.S. District Court for the Southern District of Ohio, in Cincinnati, on six felony counts that included one count of conspiracy to commit offenses against or to defraud the United States, and five counts of aiding in filing a false tax return. The Division found that West failed to disclose his indictment until December 21, 2005, when he filed a Form U4 through the CRD on December 21, 2005 and that he only disclosed four federal counts of the indictment. The Division also found that West assisted in setting up trusts for Ohio investors to protect assets which were determined by the Internal Revenue Service to be illegal.

The Division found that Ohio residents who invested in Normandy International through West were told their funds would go toward airplane flight insurance. West told the investors they would receive regular returns, and their principal would also be returned. The investors never received any returns on their investment or their principal funds back. The Division also found that West had been involved in civil lawsuits, a bankruptcy and additional investor complaints while he was licensed to sell securities.

Finally, the Division found that West failed to disclose to his

## **Enforcement Section Reports cont.**

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brokerage firm when he was licensed to sell securities that he was involved in selling securities in Normandy International, or that he was promoting, selling and advising clients on how to maintain and manage domestic and foreign trust schemes to clients.

On February 14, 2006 the Division issued Division Order 06-045, a Suspension of Ohio Investment Adviser Representative License and Notice of Opportunity for Hearing to West. West failed to timely request an administrative hearing pursuant to Chapter 119 of the Ohio Revised Code, and Division Order No. 06-126 was issued on May 17, 2006.

### **Marc J. Cook; Pro Cougars, Inc.**

On May 25, 2006 the Division issued a Consent Agreement and Cease and Desist Order, Order No. 06-142, against Marc J. Cook and Pro Cougars, Inc. of Cuyahoga Falls, Ohio.

On January 30, 2006 Cook placed an advertisement in the Akron Beacon Journal offering ownership interests for sale to the general public in Pro Cougars, Inc., a limited liability company. Mr. Cook sought to

obtain investors in a professional basketball franchise, the Cuyahoga Falls Cougars. The ownership interests, which consisted of shares of stock in Pro Cougars, Inc., are securities as defined in Ohio Revised Code section 1707.01(B) of the Ohio Securities Act. The Division found that Cook and Pro Cougars, Inc. violated the provisions of Ohio Revised Code section 1707.44(C)(1), which prohibits the sale of unregistered securities. The ownership interests were not registered with the Division, nor was there a proper claim of exemption filed.

Mr. Cook and Pro Cougars, Inc. entered into a Consent Agreement with the Division, whereupon they waived the issuance and right to an adjudicatory hearing pursuant to Chapter 119 of the Ohio Revised Code, and consented, stipulated and agreed to the findings, conclusions and orders set forth in the accompanying Cease and Desist Order.

### **Evergreen Investment Corporation**

On June 19, 2006 the Division issued Order No. 06-158, an order suspending the registration of securities (subordi-

nated investment certificates) of Evergreen Investment Corporation which were initially registered under file number 485284. The Division further suspended the right of any issuer or dealer to buy, sell, or deal in these particular securities. The Division obtained information which indicated that these securities were being sold by an unlicensed employee who was being paid on commission. It was also determined that Evergreen Investment Corporation continued to sell these securities after it became insolvent, but failed to disclose that information to investors. The Division found that these two circumstances constituted violations of Ohio Revised Code Sections 1707.44(A)(1),(D),(F),&(G), and 1707.06(B), 1707.13, 1707.14(A)(1) and Ohio Administrative Code Sections 1301-6-3-06(H)(1) and 1301-6-3-06(H)(4). Evergreen Investment Corporation waived its right to an administrative hearing and consented to the Division issuing Order No. 06-161 on June 23, 2006 confirming the suspension of the right to sell the securities covered under file number 485284.

# Ohio Securities Conference 2006

**October 13, 2006**

**Executive Conference and Training Center  
Vern Riffe Center  
77 South High Street  
31st Floor  
Columbus, Ohio 43215-6131**

## **OHIO AND FEDERAL SECURITIES LITIGATION UPDATE**

**Thomas E. Geyer**  
Bailey Cavalieri

**Matthew L. Fornshell**  
Schottenstein, Zox and Dunn

## **ETHICAL ISSUES FOR SECURITIES LAWYERS**

**Jason C. Blackford**  
Weston Hurd

## **CORPORATE AND SECURITIES LAW AMENDMENTS: H.B. 301**

**Howard M. Friedman**  
University of Toledo, College of Law

**David P. Porter**  
Jones Day

## **RECENT DEVELOPMENTS AT THE OHIO DIVISION OF SECURITIES**

**James N. Turner**, Acting Commissioner

**Robert K. Lang**, Attorney Inspector

**Caryn A. Francis**, Licensing Counsel

**Michael P. Miglets**, Control Bid Attorney

## Licensing Section Reports

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### PGP Financial, Inc.

On November 8, 2005 PGP Financial applied for a securities dealer license with the Division. The Division received notification that the applicant effected five transactions in Ohio between November 6, 2005 and November 22, 2005 without a license. Following the issuance of a Cease and Desist Order and successful completion of a rescission offer, PGP Financial was issued a dealer's license on May 1, 2006.

### Abel Noser Corporation

On March 2, 2005 Abel Noser Corporation filed for a securities dealer license. It was determined that the company had effected 59 securities transactions without a license from March 30,

2002 to February 28, 2005. Following issuance of a Cease and Desist Order and the successful completion of a rescission offer, Abel Noser was granted a dealer license on June 13, 2006.

### Susan Swinehart

Following an examination of investment advisor Robert Strazer, it was determined that investment advisor representative Susan Swinehart was using a promotional CD which the Division determined came under the purview of Revised Code §1707.44(M)(3), which prohibits the use of misleading or untrue statements in such materials. On May 26, 2006 a Cease and Desist Order was issued along with a consent agreement to discontinue distribution of the CD.

### Compass Brokerage, Inc.

On January 6, 2006 Compass Brokerage applied for a securities license. It was determined that from September 6, 2002 through June 27, 2005 approximately 20 securities transactions had been made in Ohio without a license. Following the issuance of a Cease and Desist Order and the successful completion of a rescission offer, Compass Brokerage was issued a license May 18, 2006 of this year.

### Thomas Dooley III

On May 19, 2006 the Division issued a Cease and Desist Order against Thomas Dooley III pursuant to a consent agreement. The Cease and Desist Order was predicated upon three separate NASD actions between 1991 and 2000.

## Positive Response to Investment Advisor Questionnaire

In late March, the licensing section mailed out a survey to the 560 Investment Advisors it regulates. It received over 300 responses back for a 55% return rate. As a result, over 200 new subscribers were added to the Bulletin's e-mail list.

The Division welcomes the numerous thoughts and suggestions which are still being reviewed. The Licensing Section plans to compile responses to the most frequently asked questions. It is hoped that these will help licensees with compliance required by the Division. This information will likely be featured in the next Bulletin.

## Licensing Statistics

License Type	YTD 2006
Dealers	2,408
Salespersons	133,193
Investment Adviser/Notice Filers	1,966
Investment Adviser Representatives	12,526

## 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. Consequently, for purposes of calculating an aggregate capital formation amount, each indefinite filing has been assigned a value of \$1,000,000.*

Filing Type	2nd Qtr 2006	YTD 2006
<b>Exemptions</b>		
Form 3(Q)	\$34,043,384.00	\$80,348,708.00
Form 3(W)	8,060,000	12,060,000
Form 3(X)	140,426,575,846	245,217,878,828
Form 3(Y)	6,650,000	19,125,000
<b>Registrations</b>		
Form .06	219,042,058	1,322,933,670
Form .09/.091	7,244,386,735	9,189,904,136
<b>Investment Companies</b>		
Definite	110,116,000	240,746,391
Indefinite**	560,000,000	1,113,000,000
<b>TOTAL</b>	<b>\$148,608,874,023</b>	<b>\$257,195,996,733</b>

## Registration Statistics

The following table sets forth the number of registration, exemption, and notice filings received by the Division during the second quarter of 2006, compared to the number of filings received during the second quarter of 2005. Likewise, the table compares the year-to-date filings for 2005 and 2006.

Filing Type	2nd Qtr '06	YTD '06	2nd Qtr '05	YTD '05
1707.03(Q)	16	53	38	68
1707.03(W)	3	3	7	5
1707.03(X)	477	944	410	798
1707.03(Y)	3	6	2	7
1707.04/.041	0	1	0	0
1707.06	17	44	25	42
1707.09/.091	28	64	32	62
Form NF	1212	2541	1180	2460
<b>Total</b>	<b>1756</b>	<b>3660</b>	<b>1687</b>	<b>3442</b>