

OHIO SECURITIES BULLETIN

John R. Kasich
Governor of Ohio

David Goodman
Director of Commerce

Andrea Seidt
Commissioner of Securities

Comments from Commissioner Andrea Seidt



Department of Commerce

Division of Securities

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Ohio Securities Bulletin

Issue 2011:1

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OHIO
DEPARTMENT OF
COMMERCE
DIVISION OF
SECURITIES

Summer is finally here and the Division finds itself very busy on all regulatory fronts. Regulatory reform is a priority this year as the Division seeks to ensure that all of its regulation at the state level makes good "common business sense" and that the Division keeps pace with the changes mandated or contemplated at the federal level by the Dodd-Frank Wall Street Reform and Consumer Protection Act. I have worked closely with other state administrators this past year through our membership organization NASAA (the North American Securities Administrators Association) to represent the state perspective on Dodd-Frank issues. Much of my focus has been on investment adviser regulation, which has included meetings with the U.S. Securities and Exchange Commission staff, including Chairman Mary Schapiro, as well as direct outreach to Ohio investment advisers in regional "switch" seminars.

Please be sure to contact one of the Division's section chiefs or me if you have a suggestion for improving Ohio's securities regulation or have questions about any legislative changes at the state or federal level that might impact your business within the state, including the federally mandated switch of mid-sized investment advisers from federal to state regulation early next year.

I am pleased to announce some key staffing assignments that will no doubt shape the Division's path in future policymaking. See page 3 for details.

We here in the Division wish you a safe and pleasant summer and hope to see you on Friday, October 21st, at the Annual Securities Conference this Fall.

MARK YOUR CALENDAR...

October 2011

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	10 Columbus Day	11	12	13	14	15
16	17	18	19	20	21 Ohio Securities Conference	22
23	24	25	26	27	28	29
30	31 Halloween					

Message from Commerce Director David Goodman:

Dear Securities Professional:

As you read this, the State of Ohio has taken big steps towards economic recovery.

The State's FY 2012-2013 biennial budget closes an \$8 billion deficit that Governor John Kasich faced when he took the helm, less than six months ago. Ohio has lost 400,000 jobs since 2006. Governor Kasich's clarity of vision for the future has brought us to a balanced budget, a common sense approach to government and a more business-friendly environment.

At the Department of Commerce and the Division of Securities, we are reviewing every rule to make sure we are efficient and effective in our regulation and maintaining public standards for safety and security. We want to assist you to operate a quality business. So, if you have a problem or a question, don't hesitate to reach out to us. We will help where we can. We are not here to play "gotcha". I have stressed across all divisions our goal of exemplary customer service.

If we are able to remove unnecessary roadblocks and red tape, quality companies of all sizes can get on with their primary business. We hope that will fuel the economy and lead to job creations.

As the people who help Ohioans build their personal wealth, your careful guidance in that regard is important to families and more valuable than ever to Ohioans who have faced tight family budgets in recent years.

Working together, we can make a stronger Ohio.



(Left to right): Mark Heuerman, Stephanie Talib, Amy Swank, and Anne Followell led a discussion panel at last year's Ohio Securities Conference. This year's conference is set for October 21, 2011. Mark your calendar and look for future updates!

The Ohio Securities Bulletin is a quarterly publication of the Ohio Department of Commerce, Division of Securities.

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 Karen Bowman at karen.bowman@com.state.oh.us for editorial guidelines and publication deadlines. The Division reserves the right to edit articles submitted for publication.

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The Division's Outreach Initiatives for "Switching" Investment Advisers

On July 21, 2010, President Obama signed into law the Wall Street Reform and Consumer Protection Act of 2010 (the "Reform Act"). Among other things, the Reform Act requires states to regulate nearly all of the investment advisers with up to \$100 million in assets under management that are not required to be registered in 15 or more states. Previously, states regulated only those advisers with up to \$30 million in assets under management, and those above that threshold were regulated by the U.S. Securities and Exchange Commission ("SEC"). As such, depending upon the size and scope of the investment adviser's business, firms registered with the SEC will be required to "switch" to state registration.

The Division is committed to providing "switching" investment advisers with current information and assistance as quickly as possible. To that end, the Division mailed out two notices to Ohio-based "switching" firms informing them of the Reform Act's requirements and the Division's licensing rules. In addition, the Division hosted three outreach presentations for Ohio-based "switching" advisers this Spring. Representatives of the Division hosted these free presentations in Columbus (March), Cleveland (April), and Cincinnati (May) to discuss: (1) how the Reform Act impacts "switching" advisers; (2) the Division's on-site examination process; (3) an overview of the Division's books and records requirements; and (4) the process, deadlines, and requirements for

filing registration applications with the Division. Each presentation included an opportunity to ask questions of the Licensing Chief and examiners. The Division invited over 150 "switching" firms to the session in their area, and over 100 individuals attended one of the three presentations.

As Division staff awaits the SEC's final implementation rules and deadlines relating to the "switch," we continue to respond to phone calls and e-mail inquiries from investment advisers, compliance consultants, and attorneys. If you have questions about how the Reform Act's "switch" impacts you, please contact Anne Followell, Licensing Chief, at anne.followell@com.state.oh.us. We welcome the opportunity to cut down the confusion during this transition.

Division of Securities Staffing Changes

The Division was very fortunate to recruit former Delaware County Assistant Prosecutor Janice Hitzeman into its ranks last year. In quickly recognizing her legal talent and natural leadership ability, Janice was promoted to the Deputy Attorney Inspector position over the Enforcement Section. Janice is filling a critical void left by former Division veteran, Steve Ballard, who retired last year.

Also in Enforcement, the Division has promoted Shannon Himes to a Senior Enforcement Attorney position with responsibility for the Division's education and outreach efforts. Shannon has been with the

Division for four years following a legal career split between the private and public sectors. Shannon will be working with Department staff to resume publication of Division bulletins and newsletters and engage in targeted outreach to local law enforcement and prosecutors throughout the State of Ohio.

In Registration, Seth Hertlein has joined the Division as Compliance Counsel to support the legal work of both the Registration and Licensing Sections. Seth started his legal career at the Roetzel & Andress, LLC law firm in Columbus, Ohio and recently completed the MBA

program at Wright State University. He is a welcome addition to our compliance team.

The Division is still looking for candidates to fill four remaining attorney positions - two Enforcement Attorney positions, a Compliance Counsel position, and finally its statutory Control Bid Attorney position.

Please reach out to your network and direct any leads to any of the section chiefs or Commissioner Andrea Seidt.

Commerce Warns Ohioans to Be Aware of Potential Con Artists

When you pick up a newspaper or turn on the television news virtually any day, there is a story about a con artist who exploited the public's trust for their personal financial gain. The Ohio Department of Commerce encourages Ohioans to be on guard for potential con artists in their lives.

"Con artists do not have a conscience. It doesn't matter who you are - a lifelong friend, a family member or a trusted associate - a con artist will do anything to separate you from your money," says Ohio Department of Commerce Director David Goodman. "Before you invest, make a confidential call to the Division of Securities to check on the promoter and the investment product."

While there are thousands of legitimate, licensed securities professionals operating in Ohio who help their clients make wise investment decisions, most securities fraud cases prosecuted by the Division do not involve those firms or individuals. Rather,

most scams involve unregistered investment products sold by unlicensed individuals. To avoid being a victim of those types of scams, Ohioans can simply call the Division of Securities' Investor Protection Hotline at 1-877-N-VEST-411 (1-877-683-7841) to confirm that the promoter is properly licensed and that the investment product is registered or exempt from registration. Ohioans can also visit www.conartist.ohio.gov for additional information.

"While investor research should start with a call to the Division, it should not end there," Securities Commissioner Andrea Seidt said. "Investors should ask for and actually check with a promoter's references and trust their instincts when an investment opportunity sounds too good to be true. With every investment, investors need to take the time to understand the risks and benefits by reading the prospectus or offering circular in full before they invest. 'High return' investments often carry high risk, including the risk that the

investment may yield no return, or worse, a substantial loss to the investor."

The Department's "Con Artist" public awareness campaign is a multi-media initiative that warns Ohioans to be aware of potential con artists who might be lurking at work, places of worship, charities, schools, and in the neighborhood. If you don't recognize the con artist and their motives, they just might "take you for everything you've got." Investors can learn more about the licensing of investment professionals, search registration filings, file a complaint, or report suspicious investment activity by visiting the Division's website at www.com.ohio.gov/secu or by calling the Investor Protection Hotline at 1-877-N-VEST-411 or (1-877-683-7841).

Looking for a past issue of the Bulletin?

If you are in need of a past Bulletin issue, you can find past issues on our website at www.com.ohio.gov/secu/bulletins.aspx.

From this page, you can use the search function to search by title, author, issue or abstract.

We currently have links on the website for issues dating 1994 to 2011. For issues prior to 1994, please contact Karen Bowman at 614-995-5791 or via e-mail karen.bowman@com.state.oh.us for a hard copy of that issue.

ENFORCEMENT SECTION REPORTS

Mark G. Kirchoff

On November 22, 2010, following a criminal referral by the Division of Securities, Mark G. Kirchoff, of Williamsburg, Ohio, was sentenced to 15 years in prison. He was also ordered to pay \$219,876 in restitution to his victims. Kirchoff was remanded into custody to begin his sentence. Clermont County Judge W. Kenneth Zuk issued the sentence.

On November 4, 2010, Kirchoff pleaded guilty to six counts of theft from an elderly person (third-degree felonies), three counts of theft from an elderly person (second-degree felonies), one count of grand theft (a fourth-degree felony), and one count of securities fraud (a third-degree felony). He had been indicted on 21 felony counts on September 22, 2010.

Kirchoff was President of G.K. Insurance & Financial in Cincinnati. The charges against Kirchoff were in conjunction with his solicitation of checks from 10 investors and not using the funds as promised to purchase securities. Instead, Kirchoff deposited investors' checks worth a total of more than \$250,000 into his personal bank account.

The 10 investors in this case included senior citizens up to 90 years-old, with one of the investors living with a disability. Most of the investors were residents of southwest Ohio with one investor each residing in Kentucky and Indiana.

The case was prosecuted by the Clermont County Prosecutor's Office. The Ohio Department of Insurance referred this case to the Division of Securities for investigation.

Melvin Wilder

Following a criminal referral by the Ohio Department of Commerce's Division of Securities, Melvin Wilder, of Columbus, was sentenced on May 18, 2011 to five years of community control and ordered to pay \$73,000 in restitution. He was sentenced in Franklin County Common Pleas Court by Judge John Bender.

Wilder was the CEO of Wilder & Associates, a tax preparation business in Worthington.

If he violates the term of his community control, the judge can impose a prison term for four years on each of the five felony counts of creating false reports of transactions in securities. The charges were in connection with the sale of securities to a former Ohio resident currently living in Michigan.

Wilder, who is not and has not been licensed by the Ohio Department of Commerce's Division of Securities, was indicted on 12 felony counts by a Franklin County grand jury in July 2010.

Franklin County Prosecutor Attorney Ron O'Brien prosecuted the case. The Assistant Prosecuting Attorney was Jeff Blake.

Perrin F. Burse

Following a criminal referral from the Ohio Department of Commerce Division of Securities, Perrin F. Burse, of Cincinnati, was sentenced to eight years in prison and ordered to pay \$161,000 in reimbursement to his victims. He was sentenced on April 28, 2011 by visiting Judge Richard Niehaus in Hamilton County Common Pleas Court.

Burse had been convicted on April 11, 2011 on 10 counts of theft, which included two counts of theft from an elderly or disabled adult. He was indicted on these charges on March 12, 2010.

Burse solicited individuals to invest in various investment funds related to the Burse Investment Management Group, including the Burse Investment Fund I and Fund II. The investors were generally individuals who had prior business relationships with him.

Assistant Hamilton County Prosecuting Attorney Andrew Berghausen prosecuted the case.

Burse had two prior theft convictions in Hamilton County in 2008 relating to similar investment schemes.

Burse had not been licensed to sell securities since August 2004. The Division of Securities denied an application submitted by Burse for Burse Investment Advisory Group, LLC to become a licensed investment adviser in 2006.

Get Monthly Enforcement Reports via e-mail

Would you like to receive our releases distributed on a monthly basis on the Division of Securities' criminal cases and Division orders?

You can do so by sending your e-mail address to:

karen.bowman@com.state.oh.us

While we will still be reporting the quarterly updates in our Bulletin, this is an opportunity to receive the information in a more timely fashion.

The Division staff is available to help you. Please note our updated **REFERENCE GUIDE** to the staff at the Ohio Division of Securities:

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