OHIO SECURITIES BULLETIN

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Certified Specialists in Securities Law... An Idea Whose Time has Come?

by Howard M. Friedman, Professor of Law, University of Toledo

The Ohio Supreme Court has adopted a plan for the certification of specialists in Ohio. Effective January 1, 1993, amendments to the Code of Professional Responsibility and the Supreme Court Rules for the Government of the Bar of Ohio provide for approval of non-profit certifying agencies.[1] Lawyers certified by approved agencies may publicly hold themselves out as certified specialists.[2] For the practicing securities bar, this raises the question of whether certification of securities law specialists in Ohio would be a good idea. If it is, what requirements for certification should be imposed and what is the appropriate organization to certify securities lawyers?

Ohio's Specialization Rule.

New Supreme Court Rule XIV provides for the creation of a Supreme Court Commission on Certification of Attorneys as Specialists, consisting of an attorney from each appellate district, three law faculty members, and two judges. The Commission is to recommend to the Supreme Court the fields of law in which specialists should be certified and approve agencies as qualified to certify lawyers in particular specialties.[3]

The Commission is also to adopt standards that certifying agencies must apply in certifying specialists.[4] At a minimum, certifying agencies must require substantial involvement in the specialty field during the three years immediately preceding application for certification; recommendations from attorneys or judges who are familiar with the attorney's competence; and a written examination designed to evaluate objectively the attorney's knowledge of the substantive and procedural law in the specialty field.[5] Also, every certified specialist must complete twelve hours of continuing legal education in each of his or her fields of specialty every two years, in addition to the twenty-four hours of CLE already required[6] for all Ohio lawyers. Lawyers will be required to be recertified periodically.[7]

A great deal of discretion is delegated to the Commission in recommending the appropriate areas of specialization. It is to consider whether the public interest would be served; whether there is sufficient interest in the field; whether appropriate standards of proficiency can be established; whether a satisfactory program of continuing legal education exists or is likely to develop in the field; and whether the designation would fulfill the objectives and further the orderly growth of specialization.[8]

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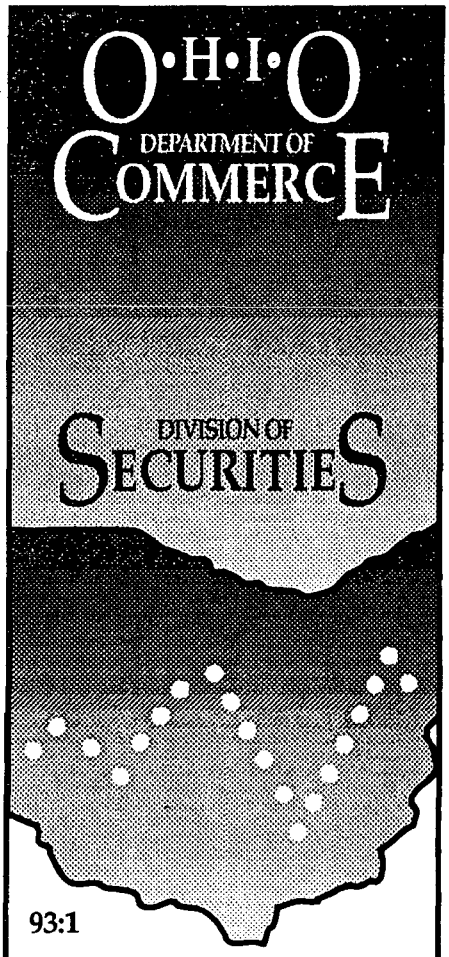

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The Issues for Securities Practitioners.

What sort of expertise should be required of a certified securities specialist? This question is not as simple as it appears at first blush. While knowledge of 1933 Act, 1934 Act and state blue sky law issues would probably be agreed upon as being essential, how much knowledge should be required as to the Investment Company Act, the Investment Advisers Act or the Trust Indenture Act? More critical, since specialization standards require both knowledge as demonstrated by an examination and substantial involvement in the area of expertise, how should adequate past involvement be measured? Many specialization plans measure this by whether the attorney has been involved in a certain number of matters of particular types during the relevant period.

Model Standards developed by the American Bar Association in 1990 for securities specialists emphasize experience in registered public offerings under the Securities Act of 1933 and in problems of publicly held companies under the Securities Exchange Act of 1934, i.e. matters relating to proxy statements, periodic reports, tender offers, short-swing insider trading, stock exchange listings and the like. The Model Standards do not include as relevant a lawyer's experience in representing investors in securities fraud claims, and relegate to a less important position the lawyer's advising on structuring of exempt offerings under, for example, Regulation D.[9]

Enhancing public access to appropriate legal services is articulated as the purpose of Ohio's specialization rules.[10] In light of this purpose, we should ask who will likely make use of advertising or publicity by securities law specialists in order to locate appropriate legal representation. Publicly-held companies will probably look to numerous criteria in addition to formal certification in selecting counsel. They tend to have various sources from which to obtain referrals.[11] On the other hand, small businesses, defrauded investors, and lawyers seeking to refer such businesses and investors to a specialist may well rely almost exclusively upon a securities specialist's advertising. Therefore, in creating certification standards, at least equal emphasis should be probably be placed upon knowledge of the issues and experience in the matters which typically face small businesses and individual investors.

> Will a national certifying body give sufficient weight to knowledge of the peculiarities of Ohio's blue sky law?

It should be noted that the ABA has also drawn up Model Standards for certifying Business and Corporate Law specialists. Securities knowledge and experience are a part of these standards.[12] Does it make sense for Ohio to certify both a broad Business and Corporate Law specialty and a narrower Securities Law specialty? Of course, an attorney could be certified as a specialist in both the broader and the narrower area. An attorney is not limited to a single specialty.[13]

Finally, who should be the certifying agency for any securities law specialty? In some

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fields of law, national groups are becoming multi-state certifiers.[14] Does it make sense for a national group to undertake securities law certification? Will a national certifying body give sufficient weight to knowledge of the peculiarities of Ohio's blue sky law? Or should, for example, the Corporation Law Committee of the Ohio State Bar Association become a certifier in Ohio? Will there be enough demand to justify the development of examinations on a single-state basis?

The Unknown Future of Specialization.

Ohio, like many states, was finally impelled to adopt specialization rules after the U.S. Supreme Court held in the *Peel* case[15] that the First Amendment protected lawyers' advertising of the fact that they were certified by a bona fide private organization. The experience in states that have had specialization plans is that comparatively small percentages of lawyers become certified.[16] Whether the future will bring more interest in certification is unknown.

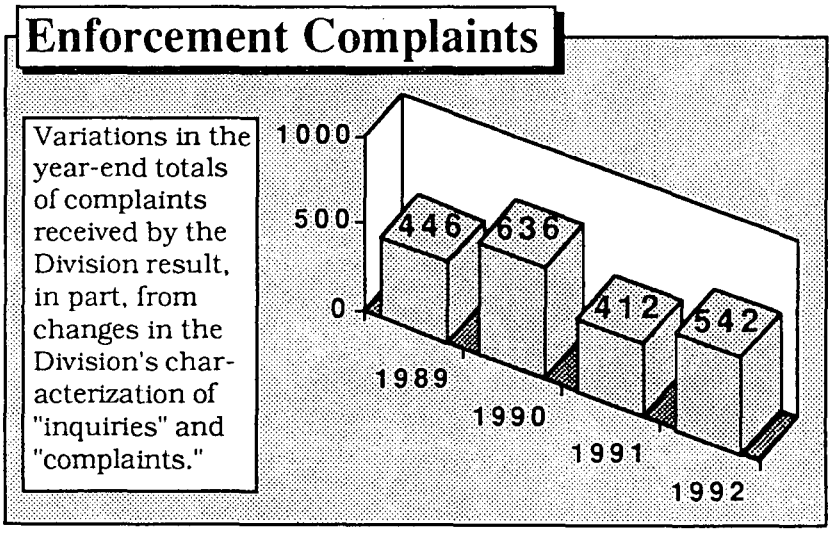
It is likely that in malpractice suits courts will hold certified specialists to the higher standards of competence which they represent themselves as possessing.[17] Despite this, as the structure and economics of law practice change, specialist certification may become appealing to greater numbers of attorneys seeking to attract new clients. Corporate and securities specialists are unlikely to be exempt from these trends so that careful thought should be given to the appropriate scope and structure of certified specialities in these areas of practice.

Footnotes

[1] The new rules appear in Ohio State Bar Association Report, Vol. 65, No. 48 at xxxi - xxxviii (Nov. 30, 1992).
[2] Ohio Code of Professional Responsibility, Dr 2-105(A)(5) (as amended eff. Jan. 1, 1993) and Supreme Court Rules For the Government of the Bar of Ohio, Rule XIV, Sec. 5(A).
[3] Gov. Bar R. XIV, Sec 2.
[4] Gov. Bar R. XIV, Sec. 2(C)(3).
[5] Gov. Bar R. XIV, Sec. 3(B).
[6] Gov. Bar R, X, Sec. 3(A).
[7] Gov. Bar R. XIV, Sec. 6.
[8] Gov. Bar R. XIV, Sec. 2(C)(1).
[9] ABA Standing Committee on Specialization, Model Standards For Specialty Areas, Ch. 24 (August 1990).
[10] Gov. Bar R. XIV, Sec. 1.
[11] See Ayre, The In-House Lawyer/Client Perspective, R.M. Greene (ed), The Quality Pursuit: Assuring Standards in the Practice of Law 180, 180-82 (1989).
[12] ABA Standing Committee on Specialization, Model Standards For Specialty Areas, Ch. 7 (August 1990).
[13] Gov. Bar R. XIV, Sec. 5(D).
[14] The most prominent of these groups is the National Board of Trial Advocacy which certifies civil and criminal trial advocates.
[15] Peel v. Attorney Registration and Disciplinary Commn. of Ill., 496 U.S. 92 (1990).
[16] See figures for Arizona, Minnesota and South Carolina in ABA Standing Committee on Specialization, State Specialization Planbook (1990).
[17] See 1 R E Mallen & J. M. Smith, Legal Malpractice, Sec. 15.4 (3d ed., 1989).

Howard M. Friedman holds appointment as a Distinguished University Professor at the University of Toledo where he is a Professor of Law. He received his Bachelor of Arts Degree from the Ohio State University, his Juris Doctor from Harvard University, and his LL. M. from Georgetown University. Professor Friedman is the author of two books on Securities Law: Securities and Commodities Enforcement and Ohio Securities Law and Practice.

By the close of 1992, sixteen states had established rules to provide for the certification of legal specialists. Of those sixteen, only one, Connecticut, had specified Securities law as a specialty for which certification could be offered. The Connecticut Supreme Court had not established procedures for Securities law specialization, and no certifying agency had been designated or approved for Securities law. *Editor's note*



PUBLIC NOTICE

At 10:00 a.m. on May 24, 1993 the Ohio Division of Securities will hold a hearing in the Ohio Division of Securities Conference Room, 22nd Floor, 77 South High Street, Columbus, Ohio 43215 regarding proposed changes to O.A.C. Rules Rules 1301:6-3-01, 1301:6-3-03, 1301:6-3-15 and 1301:6-3-16. The Division of Securities has proposed the following amendments to its rules:

Rule 1301:6-3-01 will be amended to specify that "Qualified Institutional Buyers" will be included in the definition of Institutional Investor in R. C. 1707.01.

Rule 1301:6-3-03 will be amended to establish exemptions for qualified charitable remainder trusts, charitable lead trusts, and charitable gift annuities, and to define those terms and the terms internal revenue code, pooled income trust, and qualified charity.

Rule 1301:6-3-15 will be amended to specify the examinations that the Division of Securities will accept for applicants for licensing as an Ohio Dealer in Securities in accordance with Section 1707.15 of the Ohio Revised Code

Rule 1301:6-3-16 will be amended to specify the examinations that the Division of Securities will accept for applicants for licensing as an Ohio Securities Salesman in accordance with Section 1707.16 of the Ohio Revised Code

Copies of the proposed rules may be obtained by contacting the Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43266-0548

Guidelines

The Ohio Division of Securities has issued the folowing changes in its Guidelines for Options and Warrants, and Selling Security Holders. These policy statements replace the Division's Options and Warrants policy set forth in *Ohio Securities Bulletin*, Issue 87:1, April 1987 at page 5 and at ¶ 45,719 CCH Blue Sky Reporter, and Pro Rata Policy set forth in *Ohio Securities Bulletin*, Issue 1, May, 1986 at page 5 and at ¶ 45, 706 CCH Blue Sky Reporter.

Options and Warrants

Effective March 15, 1993, the Division will increase the 10% limitation on the number of outstanding or authorized options and warrants to 15% of the issuer's outstanding shares after the offering.

The issuance or proposed issuance of options and/or warrants to promoters, employees, or affiliates of the issuer in connection with a proposed public offering of equity securities will be presumed to be grossly unfair unless the issuer's Final Offering Circular indicates that the number of shares covered or called for by the options and/or warrants previously issued and proposed to be issued to the above-mentioned persons will not exceed fifteen per cent (15%) of the total of shares of outstanding at the the completion of the proposed offering for a one-year period commencing on the effective date of the offering. Excluded for this purpose are all options and/or warrants issued or proposed to be issued to underwriters, financial institutions, or in connection with acquisitions, or to all of the security holders of the issuer on a pro rata basis.

If the issuer cannot comply with the above standard, the Division may accept language in the Final Offering Circular indicating that such issuer will not issue further options and/or warrants during the pendency of the registration in Ohio.

In addition, the Division will also require disclosure in the final prospectus that the issuer will not grant options or warrants to officers, directors, employees, promoters, 5% shareholders or affiliates with an exercise price of less than 85% of the fair market value of the stock.

Selling Security Holders

The Division's policy of requiring selling security holders to pay a pro rata share of offering expenses has been amended effective March 15, 1993. The Division will continue to require that all selling security holders pay a pro rata share of the underwriting commissions and discounts. However, the Division will require the selling security holders pay a portion of the offering expenses based on the percentage of the public offering sold by the selling security holders.

1. If the selling security holders are selling less than 10% of the securities to be sold in the public offering, the Division will not require the selling security holders to pay offering expenses.
2. If the selling security holders are selling more than 10% but less than 50% of the securities to be sold in the public offering, the Division will require that the selling security holders pay a pro rata share of all additional expenses that are the result of the inclusion of their securities in the public offering.
3. If the selling security holders are selling more than 50% of the securities to be sold in the public offering, the Division will require the selling security holders to pay a pro rata share of all offering expenses.

The Division will not require the selling security holder to pay a share of offering expenses, excluding commissions or discounts given to an underwriter or dealer, if the selling security has a written agreement arrived at through arm's-length negotiations whereby the issuer has agreed to pay offering expenses. If the selling security holder is an officer, director or 5% shareholder or if the written agreement to pay offering expenses was not the result of arm's-length negotiations, then the issuer must demonstrate to the Division that the written agreement to pay offering expenses was part of a transaction that was not less favorable to the issuer than could be obtained from an unaffiliated third party and was approved or ratified by a majority of the disinterested members of the Board of Directors.

For further information regarding these Guidelines changes, contact the Ohio Division of Securities Registration Section.

1992 Advisory Committee Meetings

Division of Securities Advisory Committees

The 1992 Ohio Securities Conference and Advisory Committee Meetings were held on November 16 and 17 at the Columbus Marriott North. Members of the bar and representatives of the securities industry attended the Conference seminar on Monday, November 16, and approximately 60 committee members attended the Advisory Committee Meetings on Tuesday, November 17. The 1992 Ohio Securities Conference represented the fifth consecutive year that the Division and the Ohio Securities Conference, Inc. have sponsored a continuing legal education program featuring topics of interest to the securities community in Ohio.

The Conference topics on the morning program included "Difficult Disclosure Issues in the Registration Process" and "Small business Issues - SEC Proposals," and the afternoon session dealt with "Securities Law Enforcement Practices" and a Division panel discussing "Recent Developments and Activities at the Ohio Division of Securities."

On November 17, the five Advisory Committees met to discuss securities regulation issues and legislative and rule proposals relating to the interests of each committee.

Exemptions

Co-Chairs Paul Tague and Susan Brown opened the meeting by presiding over the selection of Professor Howard Friedman to succeed Susan Brown as Committee Co-Chair for the next two years.

The Committee then discussed a proposal by a sub-committee composed of Ann Gerwin, William Keck, and David Detec to eliminate the need for filing a Form 3-0 for offerings with no commissions and no advertising for which there are fifteen or fewer purchasers within a 12-month period. There was strong support in the Committee for the principle behind the proposal, on the rationale that it would bring Ohio more in line with the majority of other states and because it would eliminate automatic rescission rights in situations where there would be no other cause of action. After considering some alternatives, including a proposal based on Rule 508 of Regulation D, the sub-committee agreed to present a written proposal for the rule to be circulated by the Division to all Committee members.

The Committee then discussed a proposal by Martha Sjogreen to add the federal Rule 144A definition of "qualified institutional buyer" in Division rule 1301: 6-3-01 of the Division rules to include the federal term in the definition of "institutional investor" in section 1707.01(S) of the Ohio Securities Act. The Committee saw the proposed amendment as a safe harbor for out-of-state counsel and issuers, who understand the federal terminology and could therefore more comfortably rely on the Ohio institutional investor exemption. The Committee unanimously supported the change as consistent with the regulatory intent in the Ohio Securities Act because of the stringent requirements to be a qualified institutional buyer under Rule 144A. The Committee considered the application of State v. Gill to the rules proposal, and the potential problems associated with incorporating a federal standard by reference, including its characterization as a possible abdication of state legislative authority. It was believed that the rule would still be desirable. Martha Sjogreen agreed to submit a revised draft to the Committee.

Professor Friedman suggested that the Division might consider finding a case similar to State v. Gill and filing an amicus brief. He argued that the issue has ramifications beyond this particular rule or the rules of the Division of Securities.

Finally, the Committee discussed the proposed rule change regarding pooled income trusts with the Division staff. The Committee generally supported the proposed amendment to section 1301: 6-3-03 of the Division rules to add additional exemptions for charitable lead trusts, charitable remainder trusts, and chari-

table gift annuities. In particular, the Committee questioned the language regarding the prohibition against sales by licensed dealers or salesmen and the language limiting indirect compensation. Some Committee members questioned why a Division licensee associated with a charity should not be involved in the sale of the charity's securities without compensation. Additionally, it was pointed out that the compensation of the fundraising staff of universities and other charities whose jobs are to arrange for gifts and charitable trusts/gifts could arguably be included in the "indirectly" compensated language in the rules proposal.

The Committee suggested the following change to the proposed amendment to1301:6-3-03(D)(7)(a):
"(a) THE SALE is made by persons whose compensation, however characterized, is not based DIRECTLY on the amount of sales of SUCH SECURITY;"

Paul Tague
James F. Hunt, Jr.

Takeovers

After being called to order by Co-Chairs Sylvia Robbins-Penniman and James Tobin, the Takeover Advisory Committee considered issues raised at their previous meeting. Bolstered by research provided by Robert Schwartz, the committee discussed the impact of the relationship between the u.s. Bankruptcy Code and the provisions of the Securities Act regulating control bids, and considered whether a rule exempting bankruptcies from filing under section 1707.041 was necessary or possible. Jeffrey Manecke questioned whether a transaction could be exempted from regulation under section 1707.041 by a Division rule, and whether that would usurp the bankruptcy court's jurisdiction. The Committee also considered whether subordinated debt which traded was an "equity security" for purposes of section 1707.041 in bankruptcy situations. Further research and discussion was recommended for the next meeting.

The committee also discussed the three calendar-day limit in section 1707.041(A)(3), and its interplay with section 1.14. Ms. Robbins-Penniman explained that, because of the uncertainty, the Division's current practice is to request waiver of the time limit if the third day falls on a weekend or holiday. After considering the language of section 1.14, the committee offered the opinion that the Division should be able to interpret section 1707.041(A)(3) to mean three *business* days. Ms. Robbins-Penniman agreed to research the case law under section 1.14 and prepare a memorandum on the three calendar-day limit for the Committee.

The Committee reviewed the recently revised Form 041, and approved it with the suggestion that the latest revision date be printed at the bottom of the form to insure that the most recent version of the form was being used.

The Committee considered how the current language in R.C. 1707.01(V)(2)(b) appears to narrow the definition of "Control Bid" in comparison to the analogous section in the previous version of the statute, former section 1707.041 (A)(1)(b). The Committee consensus was that corrective legislation might be necessary to correct the problem. The former provision exempted "*such* equity security" and "*such* offer" referring back to section 1707.041(A)(1) which spoke in terms of acquisition of equity securities which would result in 10% ownership by the offeror. The current provision exempts any and all exchanges of "*any* equity security", and "*an* offer," whether or not they relate back to the limitations of a subject company, as a result of the deletion of the word, "such.". The Committee expressed the view that, read broadly, the new language exempts any and all offers for the sole account of the offeror, thereby injecting interpretive doubts into the statute. The Committee proposed that any potential interpretation problems should be corrected now, during a relative lull in takeover activity.

Advisory Committee Co-Chair, James Tobin, also the Chair of the Tender Offer Subcommittee of the Ohio State Bar Association Corporation Law Committee, reported that he would bring this matter to the attention of the OSBA subcommittee. The Advisory Committee also considered, without comment, the OSBA Tender Offer Subcommittee's recommended amendments to sections 1701.01(R) and (Z).

The Committee discussed the implications for "Going Private Transactions" in the potentially conflicting application of section 1707.01(W), which includes a subject company as a "offeror," and the exemption of

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1992 Advisory Committee Meetings

Takeover Advisory Committee Report continued from page 7

"self-tenders" in section 1707.01(V)(1)(b). The Committee considered proposing an Ohio rule comparable to section 13(e) of the '34 Act. Additional review will take place at a future meeting.

The terms, "Fraud" and "Manipulation," used in sections 1707.041(E) and 1707.042, were discussed as potentially important enforcement tools. The Committee noted that the Division should learn from the enforcement difficulties the SEC has had based on the federal definitions of the terms, which have limited the scope of the SEC's enforcement efforts. It was decided that the issue would be further considered to determine if a Division rule is needed, and, if so, how to draft it in a manner that would avoid the problem of confining definitions.

Sylvia B. Robbins-Penniman
Susan K. Nagel

Registration

The Registration Advisory Committee met and considered the agenda prepared by Committee Co-Chairs Warren Udisky and Michael Miglets. Mark Heuerman of the Division recorded the minutes of the meeting.

The Committee expressed support for two revisions to the Division's guidelines for public offerings which were distributed at the meeting. The Committee concurred in the view that both amendments to the Division guidelines afforded companies additional flexibility in structuring public offerings. The Division proposed guideline amendments to increase the limit on outstanding options and to revise the share of offering expenses to be paid by selling shareholders. The Committee also heard suggestions regarding the Division's recognition of registration rights granted by the issuer. The final text of the two amendments to the Division's guidelines on Options and Warrants and Selling Security Holders are presented on page 5 of this issue of the *Ohio Securities Bulletin*.

The Committee also considered the recent SEC "Small Business Initiatives," with particular attention to the recent amendments to the SEC rules which permit an issuer to "test the waters" before registering an offering pursuant to Regulation A. The Committee felt the Division should consider allowing "testing the waters" for Regulation A offerings which could be registered by coordination to keep Ohio regulations consistent with SEC rules. The Committee did not believe that "testing the waters" weakened investor protection because Regulation A requires both a "cooling off" period and prospectus delivery prior to the consummation of any sale.

It was also suggested that the Division consider expanding the concept of "testing the waters" to other types of registrations under the Ohio Securities Act. No formal proposal was drafted, but the Committee felt the Division should continue to consider "testing the waters" and to follow the progress of any North American Securities Administrators Association ("NASAA") proposals. The Committee recommended that any NASAA standard should be strongly considered by the Division because a uniform "testing the waters" standard for all states was seen as a greater benefit to practitioners.

During the general discussion period, various Committee members raised a number of issues relating to registration by description. Committee concerns included expense limitations, number of purchasers, and the offering circular requirement for offerings over $250,000. It was noted that the $250,000 offering circular requirement was adopted in 1983, and the Committee recommended an increase in that amount to reflect inflation and other economic considerations. The Committee pointed out that the SEC had increased the limits on Rule 504 of Regulation D and Regulation A.

Finally, the Committee did not suggest any changes to the proposed rule amendment to expand the exemption for tax-qualified pooled income funds to include gift annuities, lead trusts and remainder trusts

Michael P. Miglets
Mark R. Heuerman.

Enforcement

The meeting of the Enforcement Advisory Committee was convened by Co-Chairs Donald E. Meyer and Joseph Carney. The Committee found consensus on a motion to alternate the Co-Chairs of the Committee each year. Phillip Lehmkuhl was selected as the new Co-Chair of the Committee.

The Committee reviewed a research report prepared by Mr. Lehmkuhl on the scope of civil and criminal financial sanctions authorized under state Blue Sky statutes. The Committee discussed various perceived advantages and disadvantages of granting the Division the authority to impose fines, with positions ranging from the proponent's view that current Division enforcement alternatives are too harsh, to the opponent's argument that the option of financial penalties would lead to situations where the subject of an investigation could "buy away" any compliance problems. A subcommittee was formed to further review proposals for granting the Division the power to impose civil and criminal financial sanctions.

The Committee also considered, at length, the subject of unwarranted delay in the delivery of cash, certificates or securities held by a dealer on behalf of an investor. The Committee heard the problems being encountered by the Enforcement Section, where the Division has investigated situations where dealers have continued to hold cash, certificates or securities of customers over sixty days after the customer has demanded payment or delivery. Discussion in the Committee indicated that, while the NASD has imposed penalties on NASD members who have unreasonably delayed payment or delivery to customers, there is no single Division or NASD rule which states a specific time period after which enforcement action may be taken against a dealer who fails to pay or deliver. Various Committee members accepted assignments to research individual aspects of the issue in order to assist the Division in drafting a proposed amendment to Division rule 1301:6-3-19.

Donald E. Meyer
Lynne Greenler

Broker-Dealer

Co-Chairs Dale Jewell and James Francis convened the meeting of the Broker-Dealer Advisory Committee.

The draft of a proposed amendment to the Division's rules to require timely delivery of the proceeds of a sale of securities and stock certificates was considered by the Committee which suggested that any amendment be consistent with NASD rules and SEC regulations. The Committee also commented that a specific time limit would be unreasonable because the stock transfer agent, not the brokerage firm, usually controls the delivery of certificates . Additional questions were raised about delivery of securities held in street name. It was suggested that the rule be presented as a presumption, rather than as a strict time frame, and that the "triggering" event for any amendment to the rule should be the time that an investor presents a stock certificate in deliverable form or tenders payment for the purchase of the securities.

The Committee also reviewed a proposal to change rule 1301:6-3-15(F), Records of Dealer, to require that dealers maintain books and records in an office in Ohio. Although the Committee agreed that the present rule needs to be changed, the Committee questioned the specific change proposed by the Division.

The Committee reviewed the examinations which the Division would accept for applicants for Dealer and Salesman licensing. The NASD Series 54 exam was viewed as being inadequate for Dealer license applicants, and the NASD Series 27 and 28 exams were reported as inadequate for Salesman license applicants. The Committee also considered the recently developed NASD Series 65 exam, which enables NASD licensees to sell corporation common and preferred stocks and bonds, as a possible addition to the acceptable Salesman license tests.

The Committee also considered whether rule 1301:6-3-15(D)(4)(b) should be amended to require a financial statement made on behalf of a parent corporation which is guaranteeing a subsidiary's finances; whether "primary market maker" should be defined in rule 1301:6-3-15(E)(2)(b)(i); the two year securities experience requirement for a person acting as a branch office supervisor; and a proposal that an audio tape of each recorded .23 hearing be made available to the subject of that hearing.

Dale Jewell
Gregory Betchkal

Enforcement Section Reports

Criminal Case Reports

KENNETH A. JACKSON

On October 8, 1992, Wayne County Common Pleas Judge Mark K. Wiest held a hearing on the request of Kenneth A. Jackson of Wooster, Ohio for court-appointed appellate counsel and to receive a copy of the transcript of his month-long criminal trial at county expense. Jackson received a 37-47 year prison term on August 27, 1992, after a Wayne County jury found him guilty on 117 felony counts, including 76 charges of violation of the Ohio Securities Act. Jackson's September 22, 1992 appeal of his final Judgement of Sentence is still pending.

Jackson claimed he was indigent, but evidence was presented at the hearing that he was able to pay trial counsel for the preparation and trial of his complicated securities case, that Jackson paid the expenses of his counsel and others in cash during his trial, including large bar bills, and that he had purchased interests in Ohio oil and gas wells with investors' funds.

The state presented evidence showing that Jackson had concealed and continued to conceal his ownership in the oil and gas wells, both while under oath to a court-appointed bankruptcy trustee, and while testifying at his criminal trial. Documents produced at the hearing showed that monthly distribution checks from the oil and gas investments continued to be sent to Jackson's wife, even following his imprisonment.

Judge Wiest questioned Jackson regarding "an expensive, gold Rolex watch" that he wore daily during his trial and a late model luxury automobile which he traveled in during his trial. Jackson claimed that he had sold the Rolex after the trial for $1,600 to pay some expenses, and that the automobile had been leased, but had since been taken from him.

On October 21, 1992, Judge Wiest issued a ruling denying both requests. In his decision, Judge Wiest stated that "the defendant has no credibility with the Court and the Court cannot believe his claims of indigency."

Wayne County Prosecuting Attorney Keith A. Shearer and Assistant Prosecuting Attorney John Williams were assisted at the hearing and throughout the prosecution of Jackson by Karen Terhune, Enforcement Section Assistant Manager.

KENNETH D. MOORE

On November 25, 1992, felony charges were filed against Kenneth D. Moore of Columbus, Ohio, after a Franklin County Grand Jury returned a 5 count indictment against him. Moore was charged with 4 counts of forgery and 1 count of theft by deception.

Moore allegedly forged the signature of customers on checks and deposited them in his own personal bank account without the knowledge or consent of customers, while a securities salesman licensed with Omni Capital Markets, Inc. and Parsons Securities, Inc., two former Columbus brokerage firms.

Sidney Silvian, Enforcement Section Staff Attorney, assisted the Office of Franklin County Prosecutor Michael Miller in the preparation of the case.

JOHN GUS BERNS; THOMAS REESE

On November 27, 1992, Thomas Reese of Indianapolis, Indiana pled no contest in Putnam County Comon Pleas Court to 4 counts each of selling unregistered securities, the unlicensed sale of securities and misrepresentations in the sale of securities. He was sentenced to 18 months imprisonment after being found guilty on all counts. Reece was ordered to pay restitution of $108,000 by January 2, 1993. The sentence was suspended, subject to spending ten days in the Putnam County Jail, and 2 years probation was imposed.

Reese and John Gus Berns of Boca Raton, Florida had been charged with illegally selling securities in Cervantes Mining Group and Alliance Fuel Corporation to three Putnam County residents in 1989. After serving 50 days in a Florida jail, Berns waived extradition from Florida and pled not guilty on September 2, 1992.

William E. Leber, Counsel to the Commissioner, assisted Putnam County Prosecuting Attorney Daniel R. Gerschutz in the preparation of this case.

Civil Litigation

Worthington Investment Corp, v, State of Ohio, et al.

On August 11, 1992, in Federal District Court in Columbus, Judge James L. Graham granted the motion of the State of Ohio and a group of named individuals associated with the Ohio Department of Commerce and Division of Securities to dismiss the state and federal law claims of Worthington Investment Corp. and former principals of Worthington Investments, Inc., formerly an Ohio Securities Dealer. In his Opinion and Order, Judge Graham rejected the plaintiffs' attempt to overcome the U. S. Supreme Court's protection for state governments from lawsuits under the Sherman Anti-Trust Act. " Plaintiffs cannot circumvent the ruling in Columbia by naming individual government agents instead of the state as defendants." City of Columbia v. Omni Outdoor Advertising, Inc., 111 S. Ct. 1344 (1991).

Liberty First Securities, Inc.

On December 3, 1992, Franklin County Common Pleas Court Judge Paul W. Martin ordered a Final Judgement of Permanent Injunction against Liberty First Securities, Inc. ("Liberty First") of Columbus, Ohio. Liberty First was permanently enjoined from selling, offering, or transferring the securities of Fibercorp International. Inc (formerly known as National Service Contractors, Inc or NSC Group, Inc.) and U. S. Wood Products of Ohio, Inc.. Liberty First was also enjoined from continuing or engaging in any deceptive or fraudulent act or practice in connection with the sale of the securities of those two companies, and from destroying, altering, or disposing of books and records relating to the sales of those securities.

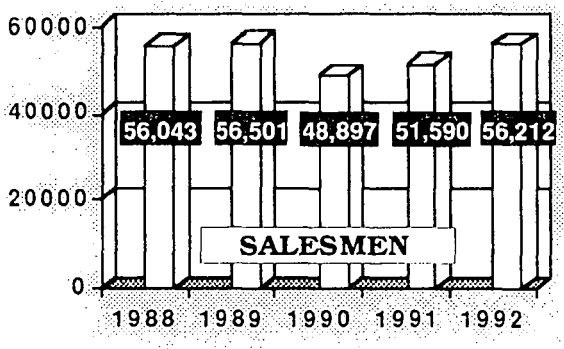
Registration and Exemption Statistics

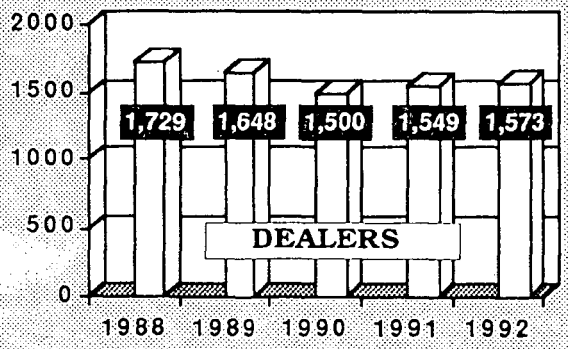
FORM	1992 TOTAL
02B	1519
3-O	11190
3Q	1224
03W	128
O4	2
O41	1
06A1	182
06A2	61

FORM	1992 TOTAL
06A3	31
06A4	61
06A3OG	0
O9	559
O91	2676
39	122
391/O9	6
391/O91	10

FORM	1992 TOTAL
391/3-O	796
391/3Q	136
391/3W	5
391/06A1	2
391/06A2	1
391/06A3	1
391/06A4	0
391/06A3OG	0

Broker-Dealer Statistics





1992 year-end totals for both dealer and salesman licenses increased over the previous year. The number of active salesmen rose to 56,212 in December 1992 from 51,590 in December 1991, and 1573 dealers were licensed at 1992 year-end compared to 1549 at year-end 1991.

OHIO SECURITIES BULLETIN

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