



180 East Broad Street  
Columbus, Ohio 43215

# ohio securities bulletin

JAMES A. RHODES  
Governor

J. GORDON PELTIER  
Director of Commerce

JAMES F. HURD  
Commissioner of Securities

April 30, 1977

## COMMENTS

### House Bill 339

The proposed Ohio Investors Protection Act was introduced into the Ohio House of Representatives on March 1, 1977. This measure, House Bill 339, was sponsored by Representatives Dennis Eckart, William Batchelder, Arthur V. N. Brooks and Jim Betts. On March 9th it was referred to the House Insurance, Utilities, and Financial Institutions Committee.

### Tender Offer

On April 5, 1977, United Technologies Corporation ("UT") filed a Form 041 with the Division of Securities and announced its intention to make an offer to purchase any and all of the outstanding shares of common stock of Babcock & Wilcox Company ("B & W") for cash at \$42 per share. On Monday, April 11th, B & W requested a hearing as provided in Section 1707.041 of the Ohio Revised Code and filed a jurisdictional memorandum. On Wednesday, April 13th, the Division found jurisdiction and granted B & W's request for a hearing. Hearings commenced on Monday, April 25th and concluded on May 10, 1977. A decision by the Division will be rendered prior to June 3, 1977.

### Review of Division Files by Attorneys

The United Technologies - Babcock & Wilcox tender offer has generated a deluge of requests for information on this and prior tender offers. Attorneys are asking for copies of filings, an opportunity to review tender offer files, and an opportunity to discuss these files with Division personnel. Following is a general discussion of the policies of the Division on the review of its files.

The Division intends to continue its policy of making information available upon request. It will copy material at a rate of twenty-five (25) cents per page and bill the requesting party. There is a one dollar (\$1.00) minimum charge. Payment for copies must be made in advance.

Copies for out of town attorneys are generally made in response to a letter requesting them. The Division responds specifying the cost for copying the requested documents. When the Division receives a check in the appropriate amount, the copies are mailed.

Copies of tender offer information may be requested over the telephone. The Division will then call the requesting party back collect to indicate the copying cost. When the check is received the copies will be mailed.

To review a file, an attorney should provide to the Division a signed written request for the file or files he or she is interested in reviewing. The written request may be made in advance of or simultaneous with the intended review. Often it is to the attorney's advantage to make the request in advance. The requested file may be stored at the Record Center and take several days to retrieve.

The personnel of the Division are willing to discuss files with the attorneys reviewing them. However, in view of the number of requests, it would be helpful, but not mandatory, if appointments for these discussions could be made in advance.

### Directory

We have had a number of requests for the telephone numbers of the various sections within the Division together with the names of the individuals working in those sections. We hope the following will be helpful.

Securities Commissioner, James F. Hurd . . . . .	466-7602
Deputy Commissioner, G. A. Ward . . . . .	466-7602
Office Manager, Nicholas J. Caraccilo . . . . .	466-5887
Broker-Dealer Section	
Supervisor, Gordon A. Stott . . . . .	466-3466
Consumer Finance Section	
Supervisor, Robert P. Fickell . . . . .	466-2221
Credit Union Section	
Supervisor, Robert M. Cassady . . . . .	466-2384
Enforcement Section . . . . .	466-6140
Attorney Inspector, Nodine M. Miller	

Attorney Examiners  
 Philip Musser  
 Robert Lindwall  
 Examination Section  
 Supervisor, W. Scott Musheno . . . . . 466-6372  
 Registration Section  
 Supervisor, Robert Bibler . . . . . 466-3440  
 Examiners and Attorney Examiners  
 Robert Almond  
 Bernard Brush  
 Samuel Calig  
 Robert Collins  
 Sidney Silvian  
 James Warneka

**Time Sharing**

A time sharing program is one in which a purchaser, for a fee and under a special contractual arrangement, is given the exclusive right to use a particular condominium apartment or resort unit one or more weeks per year for a period of years. The rest of the year the same unit is occupied by other participants in the program. Some states have classified these time sharing arrangements as investment contracts and subjected them to securities regulation.

Certain kinds of condominium sales must be registered under the Securities Act of 1933. For example, the sale of condominium units which are managed by the seller as a rental pool with any profits to be divided among the purchasers. The offering and sale of condominiums, with or without rental pool or other profit sharing arrangements, must comply with Sections 1707.33 and 1707.331 of the Ohio Revised Code as interests in foreign real estate, if situated more than twenty-five miles from Ohio's borders. As interests in foreign real estate they are securities and subject to the licensing and registration requirements of the aforementioned sections. These sections cover the sale whether or not the fee simple title, or a lesser interest, includes a rental pool, other profit sharing arrangements or any investment contract provisions.

Sale of Ohio condominiums are not subject to the Ohio Securities Act unless the sale involves an investment contract which induces the purchaser to invest in a common enterprise with the expectation of a profit through the efforts of the promoter or a third party. This would include the assumption by the promoter of an obligation to administer a rental pool or other profit generating venture in connection with commercial ventures at the same location.

Questions about time sharing programs should be directed to the Division.

---

**THE SECTIONS**

---

**BROKER-DEALER**

**Proof of Publications**

Applicants filing for a Broker-Dealer or Salesman license are required to place an advertisement in a local newspaper of general circulation. Applicants must confirm that the adver-

tisement has been published as required, by submitting a Proof of Publication (Form 15-B) to the Division. Since this notice states that an application is already on file with the Division, the form should not be submitted until the applicant is sure that the application has, in fact, been received and is on file with this Division. We suggest that salesman applicants wait for one week after filing before submitting the proof, and that broker-dealer applicants wait for written acknowledgment from this section.

**Advertising**

Recent broker advertisements, ostensibly recruiting salesmen, have referred to returns of 12 to 30%. They appear to refer more to securities than to employment and to be thinly disguised, unprofessional attempts to solicit inquiries about so-called high return securities.

Broker advertisements placed in the press to recruit salesmen should be submitted to the Division for approval before use. Two copies of all advertising copy and a cover letter should be submitted to the attention of the examiner who approved the registration, in the case of issuer, or to the supervisor of the Broker-Dealer Section in all other instances.

One copy will be returned marked either approved or disapproved and the other copy will be placed in the file. The Division is not responsible for rewriting advertisements it thinks may tend to mislead, but the Division holds fairly close to the traditional "tomb-stone" approach to securities notices.

**Restricted Licenses**

The term restricted license refers to a license with a restriction limiting the securities solicitation to one category of security. We place such a restriction on a license issued to an entity selling its own securities. In the case of someone selling oil interests, it is impractical to seek a license as a general broker-dealer in oil securities. This individual, without effective means of controlling the actions of the issuer and affiliated persons, could be jointly liable with the issuer or affiliated persons for a sale in noncompliance.

In addition, the potential applicant, when deciding whether to apply for a general or restricted license, should consider such matters as keeping the required books and records. Issuers with restricted licenses, including Foreign Real Estate Brokers, will comply with Rule 1301:6-3-09 instead of Rule 1301:6-3-15 required from unrestricted licensees when the Division sends its Semiannual Division Call Notice for a financial report. Rule 1301:6-3-09 requires the issuer to file a report that shall show the number and amount of securities sold during the preceding six months and shall include a balance sheet and profit and loss statement for a period ending not more than ninety days prior to the date of filing. Rule 1301:6-3-15 calls for a minimum of two financial reports each year. One of these reports must be audited, and both must be certified true and correct by an authorized corporate official.

**Financial Statements**

Division Orders for financial statements must not be ignored. If the statement cannot be submitted by the dead-

line, the Division must be notified in advance, so that each situation can be dealt with on an individual basis. Failure to comply with reporting requirements will generate a written reminder that a broker is operating in noncompliance and that he or she will be subject to an on-site examination of all selling activities from the deadline date. The examination will determine the extent of selling in noncompliance. Such an examination could lead to a license suspension action.

Brokers should understand that they are totally responsible for the actions of their salesmen. The broker-dealer files the salesman application, and the Division works through his office to license the salesman. Every salesman applicant will be tested on his knowledge of the Ohio Securities law. The broker-dealer should offer advice and support to the salesman as he studies the Ohio Securities Act and prepares to take the salesman examination.

Gordon A. Stott  
Broker-Dealer Section

---

## CONSUMER FINANCE

### LOAN BROKERS, ARRANGERS AND FINDERS

In the September, 1973, issue of the Ohio Securities Bulletin, I cautioned small loan and second mortgage licensees as to some possible problems they might encounter in becoming involved with unethical and unregulated money finders or financial brokers. Despite a number of very ethical brokers who are for the most part involved in commercial loans and real estate developments, the Section has received a steady flow of complaints involving small businessmen and individual consumers.

The "modus operandi" is quite simple. Most advertise in the classified sections of the newspapers under information or loans. The ad usually indicates an abundance of money available on liberal terms. Occasionally, the ads fail to clearly indicate that they arrange credit as opposed to being a lender. Some use direct mail to names and addresses obtained in court reporters on bankruptcies, trusteeships, foreclosures and the like. Obviously, they hope to attract a necessitous applicant who generally fails to qualify under normal credit standards. Complainants advise us that during the initial interview they are impressed with the sales pitch given them by the arranger. The arranger explains how easily he can solve their dilemma and obtain the desired credit through his contacts. However, as a matter of good faith, they must sign a contract and pay an advance deposit (anywhere from \$50. to \$1,000.) which will be deducted from the commission when the loan is obtained. The fine print of the contract forfeits the deposit for expenses. In many cases, the arranger obtains a credit report and checks with one or more of the lenders in this report. In some cases the arranger mails credit applications to one or more lenders. After the application is declined the applicant is told he is the "rare case" which the arranger was unable to place and "no refunds" on the deposit.

H. B. 614, effective 2-20-76, amended Sections 1321.02 and 1321.07 of the Small Loan Act to require a license of those referring a loan of \$3,000. or less "for a fee or any

manner of compensation". These provisions give the Division examination and subpoena power for "any person who advertises, solicits, or holds himself out as willing to make, find, or arrange for another person to make loan transactions in the amount or of the value of three thousand dollars or less."

Although most arrangers seem aware of this change in the Small Loan Act and direct their advertising to loans of over \$3,000., a few have not. The Division recently conducted an examination of a finder who advertised, "get \$2,000. — \$75,000.". Although limited to only those applications for \$3,000. or less, the Division found 40 transactions in this area wherein deposits were involved. Deposits varied from \$50. to \$85. and none were refunded. Two loans were made by a licensee (who has since refunded the \$300. commissions paid direct to the arranger). Fourteen licensees were contacted in 46 instances by phone, wherein the arranger requested loans for his clients. Thirty-eight clients to obtain a loan. No deposits were refunded by the arranger. The licensee involved in making the two loans had been given 23 applications by the arranger. While the Division findings did not show wilfulness on the part of the licensee and the licensee made prompt restitution to the two borrowers, appropriate cease and desist orders were issued by the Division. The evidence was turned over to the appropriate county prosecutor for possible prosecution under Section 1321.99 of the Revised Code of Ohio.

Applications must be submitted to lenders to avoid fraud charges by the clients. The Division believes all licensees should make this practice known to their branch personnel so that proper precautions can be effected. The Section encourages any questions the industry may have and will appreciate being apprised of any practices discovered in the field.

Robert P. Fickell  
Consumer Finance Section

---

## CREDIT UNION

A hearing was conducted on March 21, 1977, by the Division of Securities for the purpose of amending credit union rule OAC 1301:6-5-21, Reserves, formerly numbered COs-5-31(A) and (B).

The rule follows. The changes made in the previous rule are in capital letters.

1301:6-5-31 Reserves.

(A) Dividends and interest rebate

(1) The board of directors of a credit union or the members, upon recommendation of the board of directors, as provided in the regulations, may declare dividends on shares from "earned surplus" either annually, semiannually, or quarterly, or for any other period deemed reasonable and proper. Shares purchased during the dividend period may be entitled to a proportionate part of said dividend providing said shares are on record at the close of such period.

(2) "Earned surplus" shall mean the balance of the undivided profit accounts for all periods through which the books of the credit union have been balanced, less the amounts required to be charged against earned surplus. The amounts required to be charged against earned surplus include but are not limited to dividends previously declared, amounts required to be placed in statutory or special reserves, and other amounts transferred or required to be transferred, in the discretion of the supervisor, to any other reserve account.

(3) No dividend may be declared or paid unless the credit union has satisfied the reserve requirements of rule 1301:6-5-31(B) of the Administrative Code and discretion of the supervisor pursuant to section 1733.31(A) of the Revised Code. Where losses have been charged to such accounts, no dividends may be declared or paid until such reserve fund is restored to its required level. However, the supervisor may permit the payment of dividends subject to a plan of restoration in such amount and to such extent deemed necessary.

(4) The board of directors may authorize the payment of an interest rebate on loan accounts upon such reasonable terms as are consistent with the following provisions:

(a) The board of directors shall authorize the method of computation, payment and qualification for participation in such rebate; and

(b) Any rebate of interest shall be recorded as a reduction of loan interest for the accounting period to which it applies.

(B) Special reserve for delinquent loans

(1) If the reserve required by section 1733.31 of the Revised Code, is not in excess of the amount required by rule 1301:6-5-31(B) of the Administrative Code each credit union shall establish an account designated as a "special reserve for delinquent loans." In determining reserve requirements as required by section 1733.31 of the Revised Code or this rule, loans secured by a first mortgage on real estate, loans to other credit unions, or loans guaranteed by a government agency shall not be included.

(2) When reserves calculated pursuant to section 1733.31 of the Revised Code are inadequate to provide sufficient funds for delinquent accounts a special reserve fund shall be established and maintained. Said reserves shall be funded by undivided earnings before any dividends are declared or paid. Such reserve shall be at least equal to the amount by which the projected losses on loans exceeds the amount of reserve actually established and maintained under the provisions of section 1733.31 of the Revised Code.

(3) For the purpose of the special reserve for delinquent loans, a loan shall be deemed to be delinquent when a full installment payment has not been made within thirty-one days of the original contract installment date. Such special reserve shall be computed by totaling the following items in accordance with the following schedule:

(a) Fifteen per cent of the unpaid balances of all loans in a ~~sixty~~ TWO MONTH to ~~eighty-nine-day~~ SIX MONTH category.

(b) Thirty per cent of the unpaid balances of all loans in a ~~ninety~~ SIX MONTH to ~~one-hundred-seventy-nine-day~~ TWELVE MONTH category.

(c) Fifty per cent of the unpaid balances of all loans in a ~~one-hundred-eighty~~ TWELVE MONTH to ~~three-hundred-sixty-four-day~~ EIGHTEEN MONTH category.

(d) One hundred per cent of the unpaid balances of all loans over ~~one-year~~ EIGHTEEN MONTHS delinquent.

(4) ~~For good cause shown; exceptions to the special reserve requirements set forth herein may be granted by written approval of the supervisor.~~ WHEN A LOAN IS REFINANCED OR AN EXTENSION AGREEMENT HAS BEEN GRANTED AND THE PAYMENTS UNDER THE REFINANCE OR EXTENSION AGREEMENT ARE CURRENT AND A MINIMUM OF THREE PAYMENTS HAVE BEEN MADE IN ACCORDANCE WITH THE TERMS OF THE REFINANCE OR EXTENSION AGREEMENT, THE DELINQUENCY WILL BE COMPUTED ON THE TERMS OF THE REFINANCED OR EXTENSION AGREEMENT; OTHERWISE, DELINQUENCY WILL BE COMPUTED ON THE TERMS OF THE ORIGINAL CONTRACT. NOT MORE THAN ONE REFINANCE OR EXTENSION AGREEMENT WILL BE PERMITTED FOR THE PURPOSE OF COMPUTING DELINQUENCY ON THE TERM OF THE REFINANCED OR EXTENSION AGREEMENT.

(5) When a special reserve account has been requested by the division, and as a result of such request has been established by the credit union, such special reserve account cannot thereafter be reduced by the credit union without prior written approval of the supervisor of credit unions, except as outlined in rule 1301:6-5-25(A) of the Administrative Code. This rule was filed with the Secretary of State on April 26, 1977 and became effective on May 6, 1977.

Ohio Commerce Director J. Gordon Peltier announced the appointment of Robert M. Cassady as Supervisor of Credit Unions. Cassady has been serving as Acting Supervisor since September 29, 1976. He has been associated with the Credit Union Section since he joined the Commerce Department as an examiner 2½ years ago.

Cassady is a graduate of Franklin University with a degree in accounting. He resides with his wife, Sharon, and two children at 276 North Eureka Avenue, Columbus.

On March 2, 1977, Representative Vern Cook introduced House Bill 356 into the Ohio House of Representatives.

The measure calls for the creation of a Division of Credit Unions within the Department of Commerce and upgrades the supervision of state chartered credit unions. It further provides for the funding of such a division through the establishment of a rotary fund. House Bill 356 was referred to the House Governmental Affairs Committee. The first hearing on the proposed legislation was held on March 30, 1977.

Robert M. Cassady  
Credit Union Section

## ADMINISTRATIVE ACTIONS

Statistics summarizing the Division's activities for January, February, and March 1977:

ENFORCEMENT SECTION	Jan.	Feb.	Mar.
Inquiries Received	112	70	94
Complaints Received	13	25	22
Complaints Closed	2	6	28
Broker/Dealer Suspensions	0	2	1
Salesman Suspensions	0	4	0
Salesman License Revocations	0	0	0
Salesman License Refusals	0	0	0
Registration Suspensions	0	0	0
Hearings Held	1	3	2
Court Actions	1	3	0
Prosecutions Recommended	6	1	1
In-Depth Investigative Interviews	45	55	35
Subpoenas Issued	4	9	5
Matters Referred to the Attorney General	1	0	0
Matters Referred to SEC	0	0	1

## CONSUMER FINANCE SECTION

Licenses Issued	Jan.	Feb.	Mar.
Small Loan	18	15	8
2nd Mortgage	14	12	11
Premium Finance	1	1	1
Pawnbroker	0	0	0
<u>Licenses Cancelled</u>			
Small Loan	3	1	2
2nd Mortgage	1	0	0
Premium Finance	0	0	0
Pawnbroker	0	0	0
<u>Licenses Suspended</u>			
Small Loan	0	0	0
2nd Mortgage	0	0	0
Premium Finance	0	0	0
Pawnbroker	0	0	0

## CREDIT UNION SECTION

	Jan.	Feb.	Mar.
Suspensions	1	0	0
Hearings	0	0	0
Mergers	0	0	0
New Charters	0	0	0
Examination Fees	\$306.13	4,303.25	4,340.46

	Jan.	Feb.	Mar.
Xerox Fees	22.50	218.00	212.25
Supervisory Fees	\$52,599.07	355,209.44	32,122.94
CU-2 Fees	2,120.00	4,160.00	80.00
Penalty Fees	0	0	305.00

## BROKER/DEALER SECTION

	Jan.	Feb.	Mar.
Securities Broker/Dealer (Form 15)	9	8	11
Foreign Real Estate Broker/Dealer (Form 331A)	2	2	1
Securities Salesman (Form 16)	169	195	212
Foreign Real Estate Salesman (Form 331-B)	5	13	15
<u>Licenses Issued</u>			
Broker/Dealer	26	12	14
Salesman	539	195	193
<u>Licenses Cancelled</u>			
Broker/Dealer	1	2	4
Salesman	136	95	87

## EXAMINATION SECTION

	Jan.	Feb.	Mar.
Broker/Dealer Examinations	17	20	22
Registration Examinations			
Form 6	35	1	1
Form 9	1	5	2
Other	2	7	1
Credit Union Examinations	58	50	75
Small Loan Examinations	100	118	115
Second Mortgage Examinations	80	88	86
Premium Finance Examinations	1	0	0
Pawnbroker	1	3	0
Compliance Examinations	182	209	201

## STATISTICS

## REGISTRATION SECTION

	Applications Received		
	Jan.	Feb.	Mar.
2(B)	38	49	48
3-O	555	607	590
5(A)	1	0	0
6(A)(1) & 6(A)(2)	192	201	198
6(A)(3)	26	25	24
6(A)(4)	7	6	6

	<u>Applications Received</u>		
	Jan.	Feb.	Mar.
Interstate Corporate	19	10	22
Stock Option			
& Purchase Plan	6	3	4
Intrastate Corporate	6	2	7
Investment Companies	38	27	33
R.E.I.T.	0	0	0
Real Estate			
Limited Partnerships	9	8	15
Cattle Funds	0	0	0
Other Non-Corporate	0	1	0
Oil & Gas Offerings	12	8	20
Form 39	15	24	19
	<u>Certificates and Orders Issued</u>		
2(B)	11	35	52
3-O	509	651	662
5(A)	0	2	1
6(A)(1) & 6(A)(2)	177	165	183
6(A)(3)	29	41	29
6(A)(4)	10	6	6
Interstate Corporate	19	18	13
Stock Option			
& Purchase Plan	9	6	1
Intrastate Corporate	0	2	2
Investment Companies	32	78	32
R.E.I.T.	0	0	0
Real Estate			
Limited Partnerships	12	2	9
Cattle Funds	0	0	0
Other Non-Corporate	0	0	0
Oil & Gas Offerings	11	21	15
Form 39	8	19	23

Cattle Funds	12
Other Non-Corporate	2
Oil & Gas Offering	234
Form 39	150

<u>Consumer Finance</u>	<u>Licenses Issued</u>	<u>Examinations Conducted</u>
-------------------------	------------------------	-------------------------------

Small Loan	161	1,551
Second Mortgage	174	1,209
Premium Finance	8	2
Pawnbroker	80	74

<u>Credit Union</u>	
New Charters	5
Mergers	15
Hearings	1
Suspensions	13
Examniations	797

<u>Enforcement</u>	
Inquiries	1,400
Complaints Received	280
Complaints Closed	200
In-Depth Interviews	632
Salesman License Refusals	14
Registration Suspensions	4
Hearings Held	148
Court Actions	37
Prosecutions Recommended	26
Matters Referred to the Attorney General	34
Matters Referred to SEC	14

**The figures below reflect the 1976 activities of the Securities Division:**

Broker/Dealer

Securities Broker/Dealer Licenses Issued	113
Foreign Real Estate Broker/Dealer Licenses Issued	16
Securities and Foreign Real Estate	
Salesman Licenses Issued	2,220
Broker/Dealer Licenses Cancelled	50
Salesman Licenses Cancelled	959

Registration Certificates or Orders Issued

Form 2(B)	427
Form 3-O	6,257
Form 5-A	11
Form 6(A)(1) & 6(A)(2)	2,007
Form 6(A)(3)	370
Form 6(A)(4)	77
Form 9's	
Interstate Corporate	274
Stock Option & Purchase Plan	50
Intrastate Corporate	25
Investment Companies	506
Real Estate Investment Trust	2
Real Estate Limited Partnership	163