

Ohio Securities Bulletin



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Commissioner of Securities

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CLAIMING THE 3-Q EXEMPTION

By Mark Holderman*

To claim an exemption from registration pursuant to §1707.03(Q) O.R.C. a report of the sale of securities must be filed with the Division of Securities. This article gives a synopsis of the conditions to be met and procedures to be followed when making this filing.

II. Section 1707.03(Q)

A. The first condition for satisfying the claim of exemption is "the provisions of section 5 of the Securities Act of 1933 do not apply by reason of an exemption under either section 4(2) of that act or any rule of the Securities and Exchange Commission made to carry out section 4(2) of that act..." (§1707.03(Q)(1) O.R.C.) Section 5 of the 1933 Act mandates registration for any sale by any person of any security unless specifically exempted. Section 4(2) is an exemption for "transactions by an issuer not involving any public offering." Section 4(2) was designed for private placements by the issuer to a few knowledgeable purchasers. Though Section 4(2) has been shaped by judicial interpretation, Rule 146 promulgated by the S.E.C. formalizes criteria for meeting an exemption under Section 4(2). If the criteria of Rule 146 is met, Section 4(2) is satisfied and therefore provides a "safe harbor". Even if the issuer can not satisfy Rule 146, compliance is still possible under Section 4(2) generally.

B. Fees paid to persons or firms engaged to sell the securities offered must be limited to 10% of the aggregate offering price. Some questions have arisen concerning payments to offeree representatives or financial advisors and payments for managerial and organizational functions. To determine if this limitation has been satisfied the Division considers such factors as, (1) the capacity in which the recipient was acting, (2) from whom payment was made, and (3) whether payment comes from capital contributions or revenues from operations. If undeterminable compensation or remuneration is to be paid, the issuer has the burden of proving the 10% limitation has been exceeded.

C. Commissions, remuneration, or discounts are payable only to dealers or salesmen licensed by the Division of Securities. However, an issuer can sell its own securities without being licensed by the Division so long as no compensation is received for such effort. [§1707.14 (B)(1)]

D. The 3-Q form must be filed with the Division of Securities within sixty days after the sale of securities. For ordinary mail, private courier services (i.e. Federal Express), and personal delivery, the filing date will be the date on which the report is stamped as received at the Division offices. Certified mail is deemed filed as of the date of post mark. If the sixtieth day falls on a day when the office is closed such as a weekend or holiday, the filing will be accepted on the next succeeding day on which the office is open.

E. A \$25.00 check made payable to the Division of Securities must accompany each 3-Q filing. When the check does not accompany the form, the filing date will be the date payment is received, not the date on which the form is filed.

II. General Considerations for Filing Form 3-Q

A. There is no need to file prospectively since advance approval for exemption from registration is not given. There is no pre-sale notice requirement in Ohio. A filing need only be made after sales have been made in Ohio.

B. A letter cannot be used to report sales. Only Division approved forms will be accepted.

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OHIO SECURITIES BULLETIN

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C. The most current 3-Q form dated 9/15/78, must be used. An amendment must be filed to correct a filing made on an outdated or unappropriate form. New forms can be procured by writing or calling the Division of Securities.

D. Every question on the form requires a response. An unanswered line constitutes a defect and an amendment must then be submitted to correct the deficiency.

E. An amendment form must be completed in its entirety just as an original with the appropriate corrections made. An amendment must be filed within 30 days from the date on the letter of notification of a defective filing. No additional fee is required for submission of an amendment.

III. Completing the Form — Appropriate Responses

QUESTION NO.

1. The name of the issuer is the entity in which the investment is to be made. It is not the promoter, incorporator, broker-dealer or business entity creating the investment vehicle.

2. The issuer's address is its principal place of business.

3. Indicate the jurisdiction in which the articles of incorporation or partnership agreement has been filed.

4. Though appointment of an Ohio statutory agent is not a prerequisite to filing a 3-Q, the statutory agent, if any, must be listed.

5. Someone familiar with the filing should be designated at question 5 in the event a problem arises in processing the form.

6. It must be carefully noted that question 6 addresses sales:

- a. only in Ohio, and
- b. within the sixty days.

All four columns must be completed. The type of security may be common or preferred stock, general or limited partnership interests, promissory notes, debentures, fractional oil and gas well interests, or any other type of security. The date of sale is defined pursuant to §1707.01(C)(1). Price per unit should reflect the amount of consideration given for the securities sold.

7. Question 7 is cumulative in nature and should reflect sales:

- a. only in Ohio and
- b. includes all sales made both past and present, as part of this offering.

8. Question 8 is not limited to Ohio investors and includes the total number of purchasers of the entire offering regardless of the state of purchase. It is also cumulative in nature and reflects the number of purchasers covered by this filing and all prior 3-Q's filed as part of any single offering.

9. All commissions or remuneration must be listed both in absolute dollar amounts and as a percentage of the aggregate offering price. The person or entity to whom the monies were paid must be listed. If there were no commissions, merely mark "none", but do not leave the line blank. If the total amount of commissions to be paid is indeterminable at the time of the filing, attach a statement explaining the arrangement.
10. Question 10 addresses compensation from the proceeds of the offering paid to someone such as a promoter or incorporator. An affirmative response requires the same description as contained in question 9 (payee, amount & percentage).
11. No response is necessary here but the signator at the bottom is representing that statements (a) and (b) are true.
12. Documentation authorizing the issuance of the securities must accompany the initial 3-Q filing for any offering. Subsequent filings for the same offering need not include these exhibits. The filing can not be processed until the documents are received.
13. Although the 3-Q exemption does not require use of an offering circular, indicate if one was used.
14. If the offering has been completed give the termination date along with the affirmative response. A negative response indicates the potential for additional sales of this offering.
15. Exhibits required by question 12, and any additional documentation included with the filing, should be listed here.
16. The signature must be followed by the date. The dealer's name and Ohio license number must be included, if one was used, as reported at question 9.

ANNOUNCEMENTS

TENDER OFFER

On December 15, 1980, Canadian Pacific Enterprises (U.S.) Inc. ("CPE") through its subsidiary, CPE Acquisition Co., filed a Form 041 with the Division of Securities pursuant to Section 1707.041 of the Revised Code. Concurrently, CPE Acquisition Co. announced its intention to purchase any and all of the outstanding shares of common stock of the Hobart Corporation ("Hobart") at \$32.50 per share. On the same day, CPE also filed an action in the U.S. District Court for the Southern District of Ohio, Eastern Division seeking a Declaratory Judgment relative to the conflict between the requirements of Section 1707.041(B)(1)

of the Revised Code and Rule 14d-2. Section 1707.041 (B)(1) requires that a takeover bid be publicly announced at least 20 days before it is made, while Rule 14d-2, promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, forbids the public announcement of a tender offer more than five days before it is made.

On December 17, 1980 following a hearing held earlier that day, the Honorable Joseph P. Kinneary dissolved a Temporary Restraining Order previously issued by that court. Pending a decision on the merits, the court ordered that the operation and enforcement of the 20-day provision contained within Section 1707.041(B)(1) of the Revised Code be suspended, that the offer remain open, with withdrawal rights remaining in force, and that CPE not be permitted to purchase tendered shares until the eighth day after the issuance of a final order by the court on the merits or the issuance of an order by the Division of Securities, whichever came later.

On December 29, 1980, the case was heard on the merits. In a narrowly drawn opinion and order dated January 16, 1981, Judge Kinneary concluded:

"Rule 14d-2(b), 17 C.R.F. Section 240. 14d-2(b), promulgated by the Securities and Exchange Commission, is a valid rule that pre-empts the provision of Ohio Revised Code Section 1707.041(B)(1) that requires public announcement of a proposed takeover bid at least 20 days before it is made."

On December 22, 1980, Hobart requested a hearing on CPE's proposed offer pursuant to Section 1707.041(B)(1)(b) of the Revised Code, and filed a memorandum establishing jurisdiction under Section 1707.041(A)(1) of the Revised Code. On the same day, the Division of Securities asked both parties to submit briefs relative to the necessity for convening a hearing for the purpose of determining whether CPE proposed to make a fair, full and effective disclosure to Hobart's shareholders of all information material to a decision to accept or reject the offer.

The aforementioned briefs were submitted to the Division by 10:00 a.m. on Wednesday, December 24, 1980. On the same day, and after careful review, the Division accepted CPE's offer to make whatever supplemental disclosures either the Division or Hobart might deem to be appropriate. At that time, the Division endorsed certain subject areas of concern outlined by Hobart in its Memorandum in Support of its Request for a hearing, and delineated additional subject areas on which the Division believed supplemental disclosures to be appropriate.

Before 10:00 a.m. on Friday, December 26, 1980, CPE filed additional information with the Division supplementing its original offering materials. At 2:00 p.m. that day, the Division held a meeting of counsel for both parties and announced that it was unable to find "that no cause for hearing exists" as required by Section 1707.041(B)(1)(b) of the Revised Code.

Accordingly, hearings relative to CPE's offer commenced on Tuesday, January 6, 1981, at 9:30 a.m. in Columbus, Ohio, continuing day-to-day and concluding on Thursday, January 15, 1981. Both CPE and Hobart were afforded 30 hours of case presentation, direct and cross-examination of witnesses and for opening and closing statements.

The hearing officer submitted to the Commissioner of Securities her Findings of Fact, Conclusions of Law, and Recommendations on February 2, 1981. On Wednesday, February 4, 1981, CPE submitted to the Division proposed responses to the Findings, Conclusions and Recommendations of the Hearing Officer.

On Friday, February 6, 1981, CPE submitted to the Division an Amended Form 041 with exhibits. Included was an Amended Offer to Purchase containing CPE's proposed responses. This was also filed with the Securities and Exchange Commission and mailed to the shareholders of the Hobart Corporation.

During the 10 day response period required by Chapter 119 of the Revised Code, both Hobart and CPE submitted objections to the Findings of the Hearing Officer and written responses to each others filings. On Friday, February 13, 1981, the Division issued its final Order stating that CPE Acquisition Co.'s Offer dated February 6, 1981, would not violate Chapter 1707. of the Revised Code, if amended. The order also stated that, accordingly, effective provision would be made for fair and full disclosure to the shareholders of the Hobart Corporation of all information material to a decision to accept or reject the offer, in accordance with Section 1707.041(B)(4) of the Revised Code. Subsequent thereto, CPE amended its Offer to include the suggested changes contained within the February 13th Order.

On Tuesday, February 17, 1981, Dart & Craft, Inc. made a competing takeover bid to purchase any and all of the outstanding common shares of Hobart at \$40.00 per share. On Monday, February 23, 1981, CPE announced that its previous offer would remain open until the March 7, 1981 expiration date. CPE also announced that, based on information currently available, it would not match or exceed the Dart & Craft offer.

Important Changes Regarding Licensing

Senate Bill 363, which becomes effective on March 23, 1981, substantially changes Ohio licensing procedures. Applicants for a dealer or salesmans license under 1707.15 or 1707.15 will no longer be required to submit letters of reference, proof of publication or previous division license number.

However, the most important change effected by Senate Bill 363 is in the area of testing. Applicants will no longer be required to pass an examination "prescribed and conducted by" the Division. The new language of Senate Bill 363 states: "The Division shall by rule require an applicant to pass an examination which covers his knowledge of securities laws and practices."

In response to that directive the Division of Securities is proposing the following rules for dealer and salesman applicants.

Dealers 15(C)

Prior to licensure, the Division of Securities shall require an applicant to furnish evidence that the applicant has passed an approved examination establishing knowledge of securities laws and practices. The Division of Securities shall consider the applicant to have met this requirement if the applicant has:

- (1) Achieved an eighty per cent score on the "Uniform Securities Agents State Law Exam," or
- (2) Achieved an eighty per cent score on the division of securities broker-dealer exam, or
- (3) Been licensed as a broker-dealer of securities by the division of securities or another state pursuant to examination, or
- (4) Has passed a securities broker-dealer or principal exam administered by the "National Association of Securities Dealers," the "New York Stock Exchange," the "American Stock Exchange," or the securities and exchange commission.

Salesmen 16

- (A) Prior to licensure, the division of securities shall require an applicant to furnish evidence that the applicant has passed an approved examination establishing knowledge of securities laws and practices.
- (B) The division of securities shall consider the applicant to have met the requirements of paragraph (A) of this rule, if the applicant has:
 - (1) Achieved a seventy per cent score on the "Uniform Securities Agents State Law Exam," or
 - (2) Achieved a seventy per cent score on the division of securities salesman exam, or
 - (3) Been licensed as a salesman of securities by the division of securities or another state pursuant to examination, or
 - (4) Has passed a securities salesman or registered representative exam administered by the "National Association of Securities Dealers," the "New York Stock Exchange," the "American Stock Exchange," or the securities and exchange commission.

The Division knows that most applicants have previously been tested by the N.A.S.D., the S.E.C., the N.Y.S.E., A.M.E.X., or another state. Ohio will not require these applicants to pass an additional examination.

Those applicants who have not been tested can choose between the division's test or the Uniform Securities

Agents State Law Exam. The Division's test will only be administered in Columbus, Ohio. Therefore, most applicants will choose to take the U.S.A.S.L.E.

Applicants who desire to take the U.S.A.S.L.E. should contact their N.A.S.D. branch office for the location of the nearest testing center and further information. The test is administered by Control Data Corporation at more than 40 locations around the country.

Since twenty other states currently accept the U.S.A.S.L.E., applicants who successfully pass the examination may be able to achieve simultaneous multi-state licensure.

A list of N.A.S.D. offices appears below:

NATIONAL HEADQUARTERS
1735 K Street, N.W.
Washington, D.C. 2006
(202) 833-7200

DISTRICT NO. 1
111 IBM Building
Seattle, Washington 98101
(206) 624-0790

DISTRICT NO. 2N
425 California Street, Rm. 1400
San Francisco, California 94104
(415) 781-3434

DISTRICT NO. 2S
606 South Olive Street
Los Angeles, California 90014
(213) 627-2122

DISTRICT NO. 3
909 17th Street, Rm. 608
Denver, Colorado 80202
(303) 825-7234

DISTRICT NO. 4
911 Main Street, Suite 2230
Kansas City, Missouri 64105
(816) 421-3930

DISTRICT NO. 5
1004 Richards Building
New Orleans, Louisiana 70112
(504) 522-6527

DISTRICT NO. 6
1407 Main Street
Dallas Texas 75202
(214) 742-4103

DISTRICT NO. 7
250 Piedmont Avenue, N.E.
Atlanta, Georgia 30308
(404) 658-9191

DISTRICT NO. 8
10 S. LaSalle Street, Rm. 600
Chicago, Illinois 60603
(312) 236-7222

DISTRICT NO. 9
100 Erieview Plaza
Cleveland, Ohio 44114
(216) 694-4545

DISTRICT NO. 10
1735 K Street, N.W., 6th Fl.
Washington, D.C. 2006
(202) 331-7737

DISTRICT NO. 11
1818 Market Street, 12th Fl.
Philadelphia, PA 19103
(215) 665-1180

DISTRICT NO. 12
Two World Trade Center
South Tower, 98th Fl.
New York, N.Y. 10048
(212) 938-1177

DISTRICT NO. 13
75 Federal Street
Boston, MA 02110
(617) 482-0466

Under Senate Bill 363, applicants who take the U.S.A.S.L.E. will not be required to pay the \$50 examination fee to the Division of Securities. When combined with the savings which result from the repeal of the proof of publication requirement, applicants will achieve an estimated \$80 savings.

Other rule changes of importance include:

1. Elimination of the photo requirement from dealer and salesman applications.
2. Acceptance of form B-D of the N.A.S.D. in lieu of Division form 15.
3. Acceptance of form U-4 of the N.A.S.D. in lieu of Division form 16.
4. Acceptance of form U-5 of the N.A.S.D. in lieu of Division form 16-B.

The Division recommends that interested persons obtain a copy of the proposed rules and/or Senate Bill 363. The Division will provide copies upon request.

BULLETIN EXCERPTS NOW AVAILABLE

In 1973, the Division of Securities published a series of articles in the Ohio Securities Bulletin setting forth "general standards in determining whether a proposed offering of securities is being made on grossly unfair terms." The standards set forth, referred to as "guidelines", were not promulgated as rules under the Administrative Procedures Act, and are therefore unofficial statements of the Division.

The Division has received many requests to make the 1973 "guidelines" available for purchase. In response, the Divi-

sion has recently printed "Excerpts from the 1973 Ohio Securities Bulletins." These are now available for \$2.00 per copy by writing:

Ohio Division of Securities
Fiscal Office
180 East Broad Street
13th Floor
Columbus, Ohio 43215

Notice of Public Hearing

The Division of Securities, Department of Commerce, State of Ohio will hold a public hearing at 10:00 a.m. on April 14, 1981 in the State Office Tower, 30 East Broad Street, Columbus, Ohio to consider the adoption of rules relating to the Ohio Securities Act, Chapter 1707. O.R.C.

The proposed rules would rescind rules 1301:6-3-14 and 1301:6-3-16, amend rule 1301:6-3-15 and adopt a new rule 1301:6-3-16 of the Administrative Code.

As a result of these changes, applicants for licensure as salesmen and dealers of securities will be able to be tested by the N.A.S.D. in lieu of being tested by the Division of Securities. Publication requirements will be deleted from the licensing process, and dealer net worth and reporting requirements will be simplified. The Division will recognize tests administered to applicants by the New York Stock Exchange, American Stock Exchange, the Securities and Exchange Commission and other states. Acts, practices and omissions violative of Chapter 1708 of the Revised Code will be defined as fraudulent under Chapter 1707 of the Revised Code and prohibited. Certain forms will be designated for use and some sections of the rules which merely repeat the statute, will be deleted.

Information on the hearing and copies of the proposed rules may be obtained from the office of the Commissioner of Securities, 13th Floor, Borden Building, 180 East Broad Street, Columbus, Ohio 43215 at any time prior to the hearing. Copies will be mailed upon request as provided in Section 119.03 of the Revised Code.

DIVISION SPONSORS CONFERENCE

On Friday, November 14, 1980, the Ohio Division of Securities sponsored its first Securities Conference at the Neil House in Columbus. Most of the over 300 people in attendance found the conference practical and informative and many suggested holding the conference on an annual basis.

The Division's six advisory committees met in closed sessions in the morning, and the actual program commenced with a luncheon at noon. Attendees at the luncheon were enlightened by presentations by Thomas Krebs, President of the North American Securities Administrators

Association and John J. Huber, Deputy Associate Director, Office of Policy Disclosure and Proceedings at the Securities & Exchange Commission.

The afternoon program featured speakers in the areas of both federal and state regulation. For those who did not have an opportunity to attend the conference, we have included the following summaries of their presentations.

DENNIS B. O'BOYLE

Dennis B. O'Boyle, Special Counsel to the Registration Section of the Securities and Exchange Commission in Chicago, began the afternoon program with a discussion of the intrastate exemption, the private offering exemption and Regulation A.

Mr. O'Boyle began his presentation with a review of SEC Release 4434 and Rule 147, and compared the standards for intrastate offerings set forth by each.

Turning to the private offering exemption, Mr. O'Boyle reviewed section 4(2) of the 1933 Act and emphasized the importance of Release 285 (1935) when relying on this section. Mr. O'Boyle also reviewed the Ralston Purina case and its "fend for yourself" concept.

After reminding the group that Rule 146 is not exclusive in nature, Mr. O'Boyle summarized the requirements set forth by the rule.

Mr. O'Boyle concluded his presentation by reviewing the availability of Regulation A for offerings up to \$1.5 million every 12 months. Although not available to issuers under specified circumstances, some disabilities are waivable for good cause shown [Rule 252(t) of the 1933 Act].

RONALD KANE

Ronald Kane, Assistant Regional Administrator in the Enforcement Section of the SEC, made an enlightening presentation on the enforcement of federal securities laws.

Mr. Kane reviewed the procedural differences between preliminary investigations and formal investigations conducted by the SEC, and examined the subject's right to counsel during formal investigations. Of particular interest, Mr. Kane cited several cases pertaining to the lack of an accountant-client privilege, and the ramifications thereof.

Mr. Kane spoke extensively on the Privacy Act of 1974, the Freedom of Information Act of 1974 and the effects of these laws on documents received by the SEC. He also discussed the Securities Act of 1933 Release No. 5310 (September 27, 1972) pertaining to the opportunity for prospective respondents to present their position to the Commissioner, prior to the authorization of an enforcement proceedings.

JAMES TOBIN

Completing the section on federal securities laws, James Tobin spoke on the topic of "Current Developments in Tender Offer Law." Mr. Tobin is from the law firm of Squire, Sanders & Dempsey in Cleveland.

Because it is an issue of immediate importance, Mr. Tobin discussed SEC Rule 14d-2(b). He outlined the response of several states to the rule, which many view as an attempt by the SEC to pre-empt state takeover statutes. Included in the comments was a discussion of Ohio's unsuccessful challenge to the rule. He also noted that the SEC had published No. 34-16623 (March 5, 1980), which attempted to minimize the impact of the rule on state statutes.

Additionally, Mr. Tobin's comments included discussion of tender offer defenses, such as the acquisition or disposition of assets or stock by the target company or the requirement of supermajority approval of merger offers. He also discussed creeping tender offers, treatment of tender offers under the proposed Federal Securities Code, and Rule 14d-3, which deals with the use of tender offer information which is non-public.

Mr. Tobin also provided the conferees with a review of current case law, cases likely to be decided in the near future, and a projection as to future developments in the law of tender offers.

MORGAN SHIPMAN

Morgan Shipman, Professor of Law at Ohio State University, presented the conference with a thorough review of exempt securities and exempt transactions under Ohio law. Analogizing section 1707.09 of the Ohio Securities Act to section 5 of the federal Securities Act of 1933, Mr. Shipman noted that both sections require all sales of securities to be registered unless there is an exemption. In addition to this broad registration requirement Ohio's Securities Act requires any person acting as a broker for others or selling securities within Ohio or engaging in the business of buying or selling securities in Ohio to be licensed unless an exemption is available under section 1707.14 of the Ohio Revised Code.

Ohio's Securities Act also grants the Division of Securities the power to stop the purchase or sale of any security, if it finds that the security is being disposed of on grossly unfair terms. The Act, which gives the Division the power to move against fraud and deceit, has extensive criminal provisions and has a variety of civil remedies.

Mr. Shipman briefly discussed the exemptions, found in Ohio Revised Code section 1707.02 which include government securities, listed securities, public utility securities, commercial paper or promissory notes, securities issued by non-profit organizations and certain high-grade securities outstanding for a period of not less than five years, on which specified dividend or interest rates have been maintained.

Mr. Shipman also commented on the transactions exempted under Ohio Revised Code 1707.03 and particularly the exemption found in section 1707.03(O). This exemption applies only to "equity securities" sold during the first five years of a corporation's life. He also reviewed the section 1707.03(D) exemption, which applies to sales made to an "issuer, a dealer or institutional investor," the 1707.03(Q) exemption for a private placement, and the 1707.03(B)

exemption, which applies to sales made by a bona fide owner, who is neither an issuer nor a dealer.

KARL E. MAY

Karl E. May from the firm of Kadish and Krantz Co., L.P.A. in Cleveland, made an informative presentation on real estate programs as they relate to the Ohio securities laws.

Mr. May began by describing several legal forms used to structure various real estate programs including the limited partnership, general partnership, joint venture, and real estate investment trust. Mr. May then discussed each as it relates to the term "security" as defined by the Ohio and Federal Securities Laws.

Mr. May offered some very practical guidelines for registering real estate programs, with specific suggestions on the use of the 3-Q exemption, forms 6(A)(3) and 9, and section 4(2) and Rule 146 of the Securities Act. He concluded his remarks by discussing the use of offering circulars in real estate limited partnership syndications and the use of "Guide 60" in preparation of registration statements for the SEC.

JERRY D. JORDAN

Jerry D. Jordan of Vorys, Sater, Seymour & Pease in Columbus, made a timely presentation on oil and gas development in Ohio. As Mr. Jordan reported, Ohio now ranks third in the nation in number of wells drilled.

Mr. Jordan's presentation offered extensive information on the tax benefits for oil and gas investors. Of particular interest were his comments on immediate deductions for all intangible drilling and development costs, as well as deductions for tangibles, such as equipment.

Mr. Jordan dealt extensively with the application of federal and state securities laws to oil and gas programs, and also reviewed the guidelines of the North American Securities Administrators Association. Interestingly, Mr. Jordan suggested a possible amendment of the Ohio exemption provided in Revised Code Section 1707.03(P), which now is limited to five individuals for a single well. He proposed an expansion to ten investors because of the greatly increased amount of money now required to drill an oil well.

HARRY E. TUTWEILER

Harry E. Tutweiler, Associate Director of Corporation Financing, National Association of Securities Dealers, addressed the group on the developments in Broker-Dealer self-regulation. Mr. Tutweiler explained that the National Association of Securities Dealers, Incorporated, is a self-regulatory organization of the over-the-counter securities market registered under the Securities and Exchange Act of 1934.

The NASD first began reviewing member offerings in the early 1960's to insure member compliance with just trade principles, but found that unethical practices and excessive

compensation caused the promulgation of more specific NASD requirements. NASD requirements, all approved by membership, apply generally to public offerings in which member broker-dealers participate. Some also evolved through recommendations of the Securities and Exchange Commission as a result of specific and reoccurring problems.

The filing requirements of the NASD are broader than those of the SEC. Review procedures include staff comment and, upon request, committee review.

The NASD initiatives to facilitate capital raising functions have included the cost/benefit aspects of filing requirements, forming a Real Estate Committee as a national standing committee to the NASD Board of Governors, and identifying roadblocks in capital formation.

GARY P. KREIDER

Gary P. Kreider concluded the conference program with a very timely presentation on mergers under the Ohio Securities Act. Mr. Kreider is with the firm of Keating, Muething and Klekamp in Cincinnati.

Unless otherwise exempt under Section 1707.04 O.R.C., Section 1707.03(U) or another available exemption, the

securities to be issued pursuant to a merger must be registered with the Division of Securities. Mr. Kreider's presentation familiarized conference participants with the merger process and the exemptions from registration available.

Section 1707.03(U) O.R.C. provides an exemption for mergers submitted to the vote of security holders, if the securities are registered under the Securities Act of 1933, or if information substantially similar to that which would be presented in proxy materials is sent to security holders. No filing is required to perfect an exemption under Section 1707.03(U).

The exemption provided in Section 1707.04 may be utilized when a merger is included in a reorganization, recapitalization or refinancing transaction. The processing of an exemption under section 1707.04 is discretionary with the Division, and involves a hearing on the fairness of the terms and conditions of the merger.

When a hearing is held and the Division approves the terms and conditions of the issuance and exchange, the securities are exempt from registration under the Ohio securities law.

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES
180 EAST BROAD STREET
COLUMBUS, OHIO 43215
Equal Opportunity Employer