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State of Ohio
John J. Gilligan, Governor

Department of Commerce
Dennis Shaul, Director

Division of Securities
William L. Case III, Commissioner

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COMMENTS OF THE COMMISSIONER

1. *Change of Administration:* At noon on Monday, January 13, 1975, a new Administration will take charge of operations of the executive branch of government in Ohio. In anticipation of a new Commissioner of Securities taking office at that time, a Plan of Transition has been adopted by the Division for the purpose of facilitating a smooth transition between administrations by transferring to members of the staff who expect to remain with the Division beyond the thirteenth of January the functions of those who are planning to leave the Division on or before that date. A Transition Committee, composed of Robert J. DeLambo, Deputy Commissioner; Ann H. Casto, Chief Counsel; Larry J. Carlini, Assistant Attorney-Inspector; William C. Phillippi, Staff Attorney for Administration; and Nicholas J. Caraccilo, Office Manager, has been appointed to administer the Plan of Transition, to brief the new Commissioner fully with respect to the current status of all pending matters, and to assure that all significant functions of the Division will remain in full force and effect while persons who are departing complete various projects including the preparation of reports on Division activities for the benefit of their successors. Specifically, during the transition period, Bob DeLambo is in charge of general administration, Ann Casto is in charge of policy matters, and Larry Carlini is in charge of enforcement activities, with Bill Phillippi, Nick Caraccilo and other members of the Division staff assisting them in these areas. No additional personnel are being hired by the Division during this period and no new internal appointments are being made to supervisory and key staff positions being vacated, in order that such staffing decisions may be made by the new Commissioner when he takes office.

Although it is expected that new directions in Division policy may be established by the next administration in various respects, we anticipate that fundamental programs designed to improve regulatory operations by creating a definable substantive structure for the Division, such as the enactment of a new securities law, the development of definitive regulatory standards, communication with members of the Bar and representatives of industries subject to Division regulation (via the *Bulletin,* securities conferences, and other means), the maintenance of a qualified professional staff, and the pursuit of aggressive enforcement activities in all areas, will be continued. Hopefully, in the future the Division and its personnel will be free of harrassments in the form of personal lawsuits against public officials, investigations by other governmental agencies, and adverse publicity initiated without foundation, all of which have unnecessarily interfered with its operations in the past to the detriment primarily of the citizens of Ohio. I very much appreciate the assistance and support which many persons, both inside and outside of government, have given the Division, its programs, and its personnel during the past two years. Members of the Division staff who have on their own initiative worked long and hard (on evenings, weekends, and holidays, as well as during normal business hours) to complete various projects which have contributed to its regulatory objectives will never be adequately compensated for their efforts except in terms of the satisfaction that is derived from a job well done. I hope that those who remain will continue to receive from members of the Bar and industry the recognition which they so justly deserve.

2. *Securities Conferences Successful:* On Thursday and Friday, September 19 and 20, the Division held a second meeting in Columbus with representatives of the foreign real estate industry to discuss the Division's Proposed Foreign Real Estate Rules (a second and considerably more refined draft of which is contained in this issue of the *Bulletin*) and the current application of statutory fair-

ness and disclosure criteria contained in the Ohio Securities Act to applications for registration, price increases, and approvals of advertising. Industry comments expressed at that time have been very beneficial to the development of the Division's regulatory program in this area. As a result of the September meeting, representatives of the industry have agreed to supply the Division with formal written comments upon the proposed rules before the end of the year and a clarification for the industry of current Division interpretations of various statutory requirements has been achieved. This continuing dialogue with the Foreign Real Estate Industry has helped to establish a meaningful foundation for implementation by the Division of definite substantive regulatory policy in the future.

During the final months of 1974, a Securities Law Committee of the Columbus Bar Association has been established by Columbus attorneys practicing in the securities field. The projects which have been undertaken by this Committee to date include two cooperative efforts with the Division in connection with Blue Sky matters. A packet of materials containing basic information relating to the Ohio Securities Act and Division policies and procedures will be prepared for distribution during 1975 or 1976 to general legal practitioners, possibly in cooperation with the Ohio Legal Center Institute. In addition, the Committee will review and comment upon proposed rules and guidelines of the Division as a part of its monthly meeting program. The Division welcomes the opportunity to participate in the activities of this new Committee, as it has for several years in the activities of the Securities Law Group of the Bar Association of Greater Cleveland, which has scheduled its Sixth Annual Cleveland Securities Institute for Thursday and Friday, March 6 and 7, 1975.

On Friday and Saturday, December 6 and 7, the Division conducted its Second Annual Securities Regulation Conference in Cleveland in conjunction with the Securities Law Group of the Bar Association of Greater Cleveland. Again this year the conference was very successful, the attendance exceeding 200 persons. Particularly well received were the portions of the program devoted to panel discussions of registration matters including Bar participants and to administrative workshops involving several regulatory areas conducted concurrently by members of the Division staff. The Division is grateful to Jim Streicher and Bob Markey of the Securities Law Group for their assistance in conference arrangements and program planning, to Ken Royalty and Don Gardiner of Columbus and Gary Kreider of Cincinnati (as well as to Jim and Bob) for their participation in the panel presentations, and to the fourteen members of the Division staff who participated in the program in Cleveland as well as several others who assisted with preparations at the Division. We also appreciate the support of those persons who by attending contributed to the success of this event.

3. *The Ohio Securities Bulletin and Administrative Due Process:* At the conference in Cleveland, a question was raised the answer to which deserves repeating because of the importance of the issue involved to the entire thrust of the Division's current administrative program. The question was, in essence, whether the expressions of regulatory policy of the Division contained in the *Ohio Securities Bulletin* in the form of statements of policy, written policy guidelines, interpretive opinions, section articles, and even these Comments were not in general violative of the notice requirements of the procedural due process concepts of administrative law and in particular null and void as a result of not having been promulgated as rules pursuant to the requirements of the Administrative Procedure Act. The obvious answer is that the Division has considered this question before and has concluded that publication of the *Bulletin* violates neither the spirit nor the letter of those legal standards for the following reasons.

First of all, the very purpose of the *Bulletin* is to increase the extent of notice which persons subject to Division regulation will obtain regarding requirements which may be imposed upon them through the application of Division interpretations of the broad statutory requirements of the Ohio Securities Act with respect to fairness and disclosure to specific fact situations in connection with individual adjudications involving applications for the registration of securities. Of two alternatives to the communication of such interpretations through some medium such as the *Bulletin,* one (refusing to communicate such interpretations entirely but at the same time continuing to apply them as they are related from one examiner to another) appears to be not only less consistent with notice concepts of procedural due process but also less likely to assure an acceptable degree of equal protection, whereas the other (refraining from regulation altogether by ceasing to apply regulatory standards in the interpretation of statutory requirements in connection with any type of security until comprehensive and refined rules have been completed and promulgated) seems wholly irresponsible.

Neither the Ohio Securities Act nor the Administrative Procedure Act requires regulation by rule. In fact the Ohio Securities Act clearly establishes what is basically an adjudicatory system of regulation which has been administered by the Division throughout the past 45 years without formal rules relating to registration matters. Registration provisions are repeatedly framed in terms such as "if the Division finds" (Section 1707.09), "if the Division is of the opinion" (Section 1707.33), or "if it appears to the Division" (Section 1707.39). The exercise of a considerable amount of discretion in the administration of the registration function is contemplated by this statute. The provision of rulemaking authority in connection with securities registration in Section 1707.20 is not clear, as in such authority with respect to broker/dealer licensing in Section 1707.19. All regulatory standards of any type are intended to be enforced only in the context of a specific adjudication. Section 1707.40 states that "there shall be no civil liabilities for non-compliance with orders, requirements, rules, or regulations made by the Division. . . ." The interplay of all

of these sections of the statute with general notice concepts of procedural due process would tend to prefer the application of flexible yet ascertainable standards of the type represented by guidelines and other policy expressions contained in the *Bulletin* rather than rigid rules in the administration of the registration process.

The Administrative Procedure Act contains a number of ambiguities which complicate the question of when promulgation (which is a rather mechanical procedure) is required as a matter of state law and when it is not. What is an "agency" within the meaning of Section 119.01(A)? What is a 'licensing function" of a division of State government? In fact, what is a "license" within the meaning of Section 119.01(B)? Furthermore, what is a "rule" within the meaning of Section 119.01(C)? Are all expressions of interpretations of statutory provisions "rules" for the purpose of that Section, no matter how generally worded and flexibly applied, especially in the context of a statute conferring a high degree of discretion to an administrator who is required to regulate by adjudication with no enforceable private rights being allowed to be created outside of and not influenced by the adjudicatory process? Finally, what constitutes "authority of the laws governing such agency" to adopt rules in the context of the disparity between the language of Sections 1707.19 and 1707.20? Where the authority to adopt rules more clearly exists, the Division has deliberately formulated and published for comment "proposed rules" and has refrained from implementing such regulatory standards prior to promulgation. Such has been the case with its Proposed Rules for Adjudication Proceedings, Proposed Foreign Real Estate Rules (which include broker/dealer licensing provisions), and Proposed Broker/Dealer Rules.

Even if the Administrative Procedure Act were deemed to apply to an expression of policy relating to securities registration contained in the *Bulletin* and the failure of the Division to promulgate such expression of policy in accordance with the procedures set forth in Section 119.03 should "invalidate" it as a rule by operation of Section 119.02, the Division would remain free to implement its interpretation of the broad statutory requirements of the Ohio Securities Act in the course of specific adjudications which it is required by law to make with respect to such matters. Such adjudications would not be invalidated by reason of the fact that the public had knowledge of the Division's approach to interpretation of statutory requirements in connection with matters of the particular type under consideration. It is the conclusion of the Division that expressions of policy contained in the *Bulletin* not only comply with all relevant constitutional and statutory legal requirements but serve in the best interests of both the regulator and the regulated as well.

With twelve issues of the *Bulletin* having been published during the past two years, the scope and volume of material currently in circulation are of sufficient size that conversion to a renewable looseleaf service would probably provide the most effective means of utilization of this publication in the future. Arrangements have already been made with Commerce Clearing House to publish periodically relevant portions of the *Bulletin* in its Blue Sky Reporter. For the benefit of *Bulletin* subscribers who do not receive the CCH service, the Division is considering the production of a looseleaf service of its own following a similar format and designed to supplement the CCH distribution.

William L. Case, III

POLICY DEVELOPMENTS

PROPOSED FOREIGN REAL ESTATE RULES

Introduction

The Division of Securities has completed a preliminary draft of Proposed Foreign Real Estate Rules which is being printed at this time for commentary only. It is the Division's intention to formally promulgate these Proposed Rules, following any necessary modifications pursuant to the requirements of the Administrative Procedure Act, Chapter 119 of the Ohio Revised Code.

This draft of Proposed Foreign Real Estate Rules is substantially equivalent in content to an earlier summary of rule-making considerations which appeared in five installments in previous issues of the *Bulletin.* It incorporates, along with some substantive changes, a great many technical and drafting revisions. Some of the Proposed Rules set forth below are based upon rules of regulatory agencies of other states relating to both securities and real estate; others were formulated by the Division in response to particular problems and abuses found to exist in connection with foreign real estate sales in Ohio. Provisions which have been viewed as particularly innovative or controversial include those relating to the requirement of an offering circular (Rule 5), minimum investment and suitability (Rule 12), pricing (Rule 13), resales (Rule 14), and financial responsibility (Rule 19).

These Proposed Rules are not currently being applied by the Division and will not be applied until formally adopted. Comments, criticisms, and suggestions for modification of these Proposed Rules are welcomed by the Division and should be directed to Ann H. Casto, Chief Counsel.

OHIO DIVISION OF SECURITIES
PROPOSED FOREIGN REAL ESTATE RULES

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RULE 1. DEFINITIONS

The following definitions are applicable to Rules 1 through 24, inclusive. These terms shall be defined and construed in accordance with Chapter 1707 of the Ohio Revised Code to the extent that they are defined therein; provided, however, that where a term is herein defined in a specific manner at variance with the definition of the term contained in Chapter 1707, the specific definition provided in this Rule shall govern to the extent of such variance.

(A) *Advertising.* The term "advertising" means any form of written or printed communication, recording, television, motion picture, radio or slide presentation, telephonic or other communication broadcast, published, disseminated, or employed for the purpose of or in connection with, the offer or sale of property. But such term shall not include stockholder reports, proxy materials, registration statements and prospectuses, applications for listing securities on stock exchanges, the offering circular or any other disclosure document required to be delivered to prospective purchasers of property by any governmental agency under federal law or the law of any other state and communications addressed to purchasers regarding property previously purchased which are not used for the purpose of or in connection with soliciting the sale of additional property.

(B) *Affiliate.* The term "affiliate" of a specified person means a person directly or indirectly controlling, controlled by or under direct or indirect common control with, such specified person.

(D) *Basic Improvements.* The term "basic improvements" refers to improvements commonly regarded as necessary to habitability, including but not limited to the following: grading or paved streets, electrical service, central water supply and/or wells, sanitary sewer and/or septic tanks, drainage and storm sewers, curbs and gutters, street lights, central gas supply and/or bottled gas, telephone service and parking facilities.

(E) *Common Areas, Common Area Improvements.* The term "common areas" refers to those portions of the development in which purchasers are offered an undivided interest or which are or will be owned by a person or persons other than purchasers such as a property owner's association and made available for the use of or maintained for the benefit of purchasers of the property. The term "common area improvements" refers to improvements to common areas.

(F) *Developer.* The term "developer" includes, but is not limited to any person who, acting alone or in conjunction with one or more other persons, directly or indirectly undertakes to assemble, develop, improve or subdivide property, or who arranges for the offering of property. Such term shall not include independent dealers, independent contractors, accountants, architects, engineers, or other persons rendering professional services to, and who are not affiliates of, a person who undertakes to develop, improve or subdivide property or arranges for the offering of property.

(G) *Development.* The term "development" means a particular aggregate tract of real estate which has been developed, improved or subdivided, or is proposed to be developed, improved or subdivided, into separate lots, parcels or units for the purpose of offering such lots, parcels or units for sale as part of a common promotional plan, whether or not the whole of such development or only a part thereof will be offered for sale in Ohio. Where such real estate is contiguous or is known, designated or advertised as a common unit or by a common name, such real property shall be rebuttably presumed to be offered for sale as part of a common promotional plan.

(H) *Division.* The term "Division" means the Division of Securities of the Department of Commerce, State of Ohio, which is authorized and responsible for the administration of Chapter 1707 of the Ohio Revised Code. The Commissioner of Securities or any representative of the Division designated by the Commissioner of Securities shall exercise the authority of the Division as set forth in these Rules.

(I) *Improvements.* The term "improvements" means any construction or addition on or to real estate which is part of the development including alteration of the condition of real estate for the purpose of increasing its utility, value or beauty, and the adaptation of real estate to new or added purposes, but shall not include repairs.

(J) *Mature Development.* The term "mature development" means a development or a portion thereof which

has the following characteristics:

(1) Except as to property offered as campsites, cabinsites or recreational vehicle parks, all lots, parcels or units contained in the portion of the development being offered for sale in this state have the following minimum characteristics of habitability:

(a) Basic improvements as such term is defined in division (D) of this Rule;

(b) Adequate community services in reasonable proximity to the property, including police and fire protection and sanitary, health, recreational and educational services;

(c) Adequate commercial facilities in reasonable proximity to the property which offer such basic goods as food, drugs and household requirements; and

(d) In the case of property other than condominiums, apartments and cooperative apartments:

(i) At least sixty percent (60%) of all lots, parcels or acreage in the portion of the development offered for sale in this state have been sold; and

(ii) At least thirty-five percent (35%) of all lots, parcels or acreage in the portion of the development offered for sale in this state are actually occupied or used; or

(e) In the case of property consisting of condominiums, apartments and cooperative apartments, all buildings and improvements in the portion of the development being offered for sale in this state are substantially completed. For purposes of this subdivision, the term "substantially completed" shall mean that the only construction or additions to the property remaining to be completed prior to the occupancy of the property by the purchaser are painting, wallpapering, carpeting and other similar interior decoration; or

(2) In the case of property offered as campsites, cabinsites or recreational vehicle parks, all lots, parcels or units of the development offered for sale in this state have an adequate supply of potable water and roads furnishing access to the property by means of conventional forms of transportation during the seasons of the year in which a purchaser would reasonably be expected to use such property.

(K) *Offer; Offeree.* The term "offer" includes every solicitation, inducement or attempt to sell or encourage a person to purchase property. The term "offeree" means any person to whom an offer is directed or made.

(L) *Offering Circular.* The term "offering circular" means the document required to be delivered to offerees pursuant to Rule 5 and containing the information required by Rule 6.

(M) *Property.* The term "property" means real estate and any interest therein situated more than twenty-five (25) miles from the boundary between Ohio and any other state which is to be sold, leased or otherwise dealt in, in the State of Ohio. Such term includes shares of stock in any cooperative apartment offered for sale in Ohio, where such cooperative apartment is situated more than twenty-five (25) miles from the boundary between Ohio and any other state.

(N) *Purchaser.* The term "purchaser" means any person who acquires or attempts to acquire property or any interest therein by any means including, without limitation, the execution of an agreement to purchase or lease, the execution of an option to purchase, or the acceptance of a deed.

(O) *Recreational Improvements.* The term "recreational improvements" refers to improvements to be used for recreational purposes, including but not limited to golf courses, swimming pools, tennis courts, baseball fields, marinas, canals and waterways, bike trails, bridle trails, fishing areas, ski areas, open and wooded areas, cable television, community buildings or club or party houses, pro shops, locker rooms and exercise facilities.

(P) *Residential Property.* The term "residential property" means property on which a residence has been constructed, on which the construction of a residence will be commenced by or on behalf of the developer within one (1) year of the date of registration of the offering, or on which the construction of a residence will be commenced by or on behalf of the purchaser within one (1) year of the date of his purchase of the property. The Division may require the developer to provide assurances that such construction will be commenced within such one (1) year period including by way of illustration and not limitation, the following:

(1) Where the developer will construct such residence, a commitment is set forth in the purchase agreement to complete said residence on or before a date which, under a reasonable rate of construction, would require that construction of such residence be commenced within one (1) year of the date of sale; or

(2) Where the purchaser will construct such residence, the developer agrees as a condition of registration of such property to use due diligence in making inquiries to determine whether, in fact, the purchaser intends to commence such construction within such one (1) year period, including obtaining an affidavit from each such purchaser at the time that the property is conveyed, that the purchaser intends to commence such construction within such one (1) year period.

(Q) *Sale.* The term "sale" has the full meaning of "sale" as applied by or accepted in courts of law or equity, and includes every disposition, or attempt to dispose of property. "Sale" also includes a contract to sell, an exchange, an attempt to sell, an option to sell, the solicitation of a sale, the solicitation of an offer to buy, a subscription, and an offer to sell, directly or indirectly, by

agent, circular, pamphlet, advertisement, or otherwise. Such term is further defined in Section 1707.01(C) of the Ohio Revised Code.

(R) *Seasoned Developer.* The term "seasoned developer" means a developer:

(1) Who has been engaged in business as a developer for a period of at least ten (10) years;

(2) Who has completed the construction of a development of the same type as that of which the property being offered for sale is a part; and

(3) Either:

(a) Who is able to demonstrate, on the basis of financial statements filed with the Division in accordance with the qualification requirements of Rules 3 or 4 or the reporting requirements of Rule 20:

(i) An excess of assets over liabilities which is not less than twenty percent (20%) of the total offering price of all lots, parcels or units in the development; and

(ii) An average annualized net cash flow which, along with assets readily convertible into cash, will be sufficient to meet all current obligations of the developer as they become due, including the cost of constructing improvements, all sums required to be expended in connection with the financing of such improvements, estimated advertising, selling, and promotional expenses and all other expenses relating to the development and all other developments being constructed or operated by the developer for a period of at least five (5) years. If the developer demonstrates to the satisfaction of the Division that it has an effective marketing organization producing a substantial volume of sales and that such sales volume is likely to continue in the future, projected proceeds from future sales of real estate may be included in determining the average annualized net cash flow of the developer. Projected net cash flow from operations of the developer other than future sales of real estate may also be included if the Division is satisfied as to the reliability of such projections. For purposes of this subdivision (R)(3)(a)(ii), the "average annualized net cash flow" of the developer refers to the net income or cash flow from operations, after the deduction of an adequate allowance for taxes and exclusive of extraordinary, non-recurring income and expense items, for the most recently completed accounting period adjusted to reflect such cash flow on a twelve (12) month basis; provided, however, that if cash flow from operations during such accounting period is not reasonably indicative of the developer's prior earnings history, then the average annualized net cash flow of the developer may be computed on the basis of the net cash flow from operations during the three (3) fiscal years preceding the date on which the application to qualify the offering is filed. If the developer has made any material acquisitions or dispositions during the most recently completed accounting period, the computation of net cash flow shall, for purposes of this subdivision (R)(3)(a)(ii), be made on a *pro forma* basis so as to account for such acquisitions or dispositions; or

(b) If another person is jointly and severally liable with the developer to purchasers residing in this state for the return of the purchase price upon exercise of the rescission rights set forth in Rule 21, or has guaranteed the repayment by the developer of such purchase price upon the exercise of such rescission rights, the financial statements of such person filed with the Division in accordance with the registration requirements of Rules 3 and 4 or the reporting requirements of Rule 20 indicate the excess of assets over liabilities and the average annualized net cash flow set forth in subdivision (R)(3)(a)(i) and (ii) of this Rule.

RULE 2. APPLICABILITY

(A) *Application to all Dealing in Property.* These Rules shall apply to all sales, leasing, or dealing in this state with respect to property required to be qualified with the Division pursuant to Section 1707.33 of the Ohio Revised Code, including transactions involving lots, parcels, acreage, campsites, cabinsites, recreational vehicle parks, mobile home sites, apartments, cooperative apartments, and condominiums; provided, however, that any rule or any provision thereof which pursuant to its terms does not apply to specific classes or categories of property or which is applicable only to offerings of a specific class or category of property shall not be applied to, and shall have no force and effect upon, offerings of property other than such specific classes or categories.

(B) *Waiver and Modification of Provisions.* In order to achieve the purpose intended by these Rules, the Division may modify, increase or decrease, further condition, or impose requirements in addition to the requirements set forth in these Rules to the circumstances of a particular offering. The Division may waive the application of all or any of such Rules or any portion thereof in the case of a specific offering or to classes, categories, or types of offerings including, without limitation, the following:

(1) Offerings of any of the following property, where such application is, in the opinion of the Division, unnecessary for the protection of purchasers in this state and where such offering is made in good faith and is not part of a scheme or device to avoid compliance with these Rules:

(a) Cemetery lots;

(b) Property sold for storage, offices, stores, and other commercial, industrial, or agricultural purposes;

(c) Property sold pursuant to a valid judgment, order, or decree of any court of competent jurisdiction;

(d) Property leased for a period not in excess of one (1) year where the lease of such property contains no option to renew;

(e) Property sold to a person who is engaged, as a substantial part of his business, in purchasing, selling or dealing in real estate or any interest therein; and

(f) Residential property sold in an isolated transaction by or on behalf of a bona fide owner who is not the developer or any affiliate of the developer; and

(2) Offerings of any other property to which all or any portion of these Rules are by themselves applicable but which application would be unreasonable or inappropriate due to the nature of the offering, the property, or the offerees of such property.

(C) *Dates of Application.* After the effective date hereof set forth in Rule 24, these Rules shall be applied by the Division as follows:

(1) All of these Rules shall be applied to all applications for qualification and requalification of offerings of property and submissions for the approval of advertising pending or filed with the Division after the effective date hereof;

(2) In the case of offerings which are qualified under orders of the Division which expire within one hundred-eighty (180) days after the effective date of these Rules, all of these Rules shall be applied to sales of the property after the expiration date of such order and to any application filed with the Division for the requalification of such offering;

(3) In the case of offerings qualified under orders of the Division which are outstanding and in effect on the effective date of these Rules, and which do not expire within the period noted in subdivision (C)(2) of this Rule, such offerings shall be required to comply with all of these Rules within one hundred-eighty (180) days after the effective date hereof. Applications to requalify such offerings on the basis of compliance shall be filed with the Division within such one hundred-eighty (180) day period. Such offerings may be sold under the existing Division Order qualifying the offering until an order has been issued by the Division denying or approving the requalification of the offering on the basis of compliance with these Rules. After the effective date of such Division Order requalifying the offering, the property shall be sold in accordance with the requirements of these Rules. After the effective date of such Division Order denying requalification of the offering, the previously existing Division Order shall be considered terminated.

RULE 3. QUALIFICATION: APPLICATIONS, APPROVAL BY DIVISION AND DURATION

(A) *Scope of Applications.* Applications filed with the Division may be for the qualification of an entire development or any part of a development which is to be offered or sold in this state;

(B) *Applications, Accompanying Documents and Deposit.* All applications filed with the Division pursuant to Section 1707.33 of the Ohio Revised Code shall be made on the form prescribed by the Division and shall be accompanied by:

(1) The following documents describing the property:

(a) A legal description of the property and, where the property to be registered with the Division consists of only a part of a development, a legal description of the development;

(b) A survey or plat, if a plat of the development is recorded, a copy of such recorded plat prepared by a competent surveyor, indicating the boundaries and dimensions of the property and of the development, all lots, parcels or units of the property, and all easements and rights of way in the development; and

(c) A topographical map of the property;

(2) The following documents regarding title to the property:

(a) A policy or a commitment for a policy of title insurance regarding the property or an opinion of counsel regarding examination of an abstract of title of the property dated as of a date not more than ninety (90) days prior to the date that the application is filed together with an affidavit stating any changes in the title to the property subsequent to the date of such title policy, commitment, or opinion of counsel;

(b) Certified copies bearing recording references of the deed or other instrument by which the developer acquired title to or an interest in the property;

(c) Certified copies of all easements, liens, encumbrances, restrictions, covenants and conditions to which all or any part of the property is subject;

(d) Certified copies of all restrictions, including building and use restrictions to which all or any part of the property is subject; and

(e) Copies of all documents executed in connection with the financing of the acquisition of the property by the developer;

(3) The following documents and information regarding the sale and promotion of the property:

(a) A list or schedule of all lots, parcels or units of the property to be sold in this state together with the purchase price for such lots, parcels or units;

(b) Evidence substantiating the purchase price of the property in accordance with the requirements of division (A) of Rule 13;

(c) A description of the promotional plan for the sale of the property in this state;

(d) A list or schedule or all commissions, allowances or compensation in any form which have been arranged or agreed to be paid by the developer to any dealer or salesman acting on its behalf in connection with the sale of property in this state;

(e) A copy of the offering circular, including the purchase contract; and

(f) Copies of all printed advertising, scripts for all recordings, television, radio, slide and other similar media presentations and telephone solicitation, and copies of any material offering or evidencing a prospective purchaser's right to a trip to inspect the property;

(4) The following documents and information regarding the construction and operation of improvements and common areas:

(a) A full description and construction schedule of all improvements on or servicing the property made or to be made by or on behalf of the developer;

(b) A copy of an architect's or engineer's statement describing the improvements which are completed and under construction and certifying that such improvements have been constructed in accordance with applicable plans and specifications;

(c) A survey prepared by a registered surveyor indicating the location of all improvements by the developer completed or under construction in the development and a certificate of such surveyor stating that the improvements are located within the boundaries of the development and within all applicable easements and rights of way;

(d) A copy of an architect's or engineer's statement indicating the estimated construction cost and cost to complete any such improvements which are not completed as of the date of filing of the application;

(e) Copies of any contracts with a general contractor or a public utility for the construction or installation of any improvements;

~~(f)~~ Copies of any performance and/or completion bonds or escrow agreements regarding the completion of improvements;

(g) Copies of any permits obtained from federal, state, and local governmental agencies regarding the construction of improvements;

(h) Copies of documents evidencing compliance with building, fire, health and other similar statutes, codes or ordinances from the appropriate state or local authorities, with respect to any units which have reached a stage of completion for which such documents are required;

(i) Copies of documents or letters indicating that a governmental entity has agreed to accept dedication or maintenance of roads or drainage of the property;

(j) If an owner's association has been or is to be formed, copies of the Articles of Incorporation and Bylaws of such owner's association;

(k) Copies of any management agreements executed or to be executed for the management and control of common areas;

(l) Copies of all documents executed in connection with the financing of the construction by the developer of improvements to the development; and

(m) A financial plan including a cash flow projection of the development and an analysis thereof certified by a duly authorized officer of the developer;

(5) The following documents and information regarding the developer:

(a) If the developer is a corporation, certified copies of its Articles of Incorporation and all amendments thereto; if the developer is a partnership or limited partnership, copies of the partnership agreement and any certificate of partnership and, if the developer is a limited partnership and a general partner of such limited partnership is a corporation, copies of the Articles of Incorporation of such general partner and all amendments thereto;

(b) If the developer is a foreign corporation organized under the laws of a jurisdiction other than this state, a certificate issued by the Secretary of the State of Ohio that such corporation is qualified to do business in this state;

(c) With respect to the developer, an audited balance sheet, income statement, and statement of source and use of funds, as of the end of the most recent fiscal year of the developer, respectively, prepared by a certified public accountant in accordance with generally accepted accounting principles, accompanied by an unqualified opinion thereon. If the end of the fiscal year of the developer is in excess of ninety (90) days prior to the date of the filing of the application, a balance sheet, income statement and statement of source and use of funds prepared as of the end of the most recent quarter of the fiscal year of the developer and certified by a duly authorized officer of such developer; and

(d) In the event that any other person is jointly or severally liable with the developer to purchasers residing in this state for the return of the purchase price upon exercise of the rescission rights set forth in Rule 21 or has guaranteed the repayment by the developer of such purchase price upon the exercise of such rescission rights, an audited balance sheet, income statement and statement of source and use of funds, as of the end of the most recent fiscal year of such person, prepared by a certified public accountant in accordance with generally accepted accounting principles, accompanied by an unqualified opinion thereon. If the end of the fiscal year of such

person is in excess of ninety (90) days prior to the date of filing of the application, the application shall be accompanied by an audited balance sheet, income statement and statement of source and use of funds prepared as of the end of the most recent quarter of the fiscal year of such person, certified by a duly authorized officer of such person;

(6) In the case of condominiums:

(a) A copy of the condominium statute of the state in which the property is located;

(b) A certified copy of the condominium declaration of the property;

(c) An opinion by an expert stating that estimated maintenance charges and expenditures in connection with condominiums are adequate together with a statement indicating the qualifications of the person making the estimate;

(d) Copies of agreements or other documents of local taxing authorities stating that they will separately assess each of the condominium units for real estate tax purposes; and

(e) A copy of any lease, proposed lease or sublease regarding any material part of the condominium project;

(7) Such further documents as required by these Rules or as the Division, in its discretion, may require; and

(8) A deposit in the amount of $700 to be used for the purposes specified in Section 1707.33 of the Ohio Revised Code, and a qualification fee in the amount of $150;

(C) *Approval of Application by the Division.* The Division will not issue an order qualifying the offering of property unless it is of the opinion that Section 1707.01 to 1707.45, inclusive, of the Ohio Revised Code and the requirements of Rules 1-24 as applied by the Division in accordance with Rule 3 have been met, and that property will not be sold, leased or dealt in on grossly unfair terms or on terms that might defraud or deceive persons in this state;

(D) *Duration of Orders.* Unless, due to the nature of the property or the circumstances of the offering the Division permits a longer period, all orders issued by the Division for the qualification of an initial offering of property shall expire at the end of twelve (12) months from the effective date of such Division Order. The Division shall have the power to extend the period of effectiveness of the Division Order qualifying an offering of property upon application of the developer where circumstances warrant.

RULE 4. AMENDMENTS, REQUALIFICATION AND QUALIFICATION OF ADDITIONAL PROPERTY.

(A) *Amendments.* In the event of any non-material change in the terms of the offering or in the characteristics of the property or development occuring either before or after the Division has issued an order qualifying the offering, the applicant shall be required to amend the application for qualification or the qualification of the offering by written notice to the Division of such non-material change.

(B) *Requalification.* Where the Division has entered an order qualifying an offering of property, and the period for which such order was effective or extended has expired or, in the event of any material change in the terms of the offering, an application to requalify the property must be filed with the Division. A "material change" in the terms of the offering, for purposes of this Rule shall include, by way of illustration and not of limitation, any significant change in the characteristics of the property or of the development other than changes represented by progress in the construction of improvements, substantial alteration or abandonment of the schedule of completion of material improvements to the property or development, and changes in the purchase price of the property. The Division may issue an order requalifying any such offering if:

(1) The applicant files with the Division an application for requalification of the offering on the form prescribed by the Division accompanied by a qualification fee in the amount of $150.00, an offering circular updated to reflect all material changes in the information contained in the original offering circular in accordance with the requirements of Rules 5 and 6; sales and resale information required by division (D) of this Rule; in the case of price increases, information justifying such price increase in accordance with division (C) of Rule 13; financial statements prepared in accordance with subdivisions (B)(5)(c) and (d) of Rule 3 as of a date within ninety (90) days of the date of the filing of the application for requalification; and all other applicable documents and information required by division (B) of Rule 3; provided, however, that the documents and information included in the application filed with the Division for the original registration of the offering may be incorporated by reference in the application for requalification where there has been no material change in such documents or the information contained therein;

(2) The Division determines that Sections 1707.01 through 1707.45 of the Ohio Revised Code and the requirements of Rules 1 through 24, inclusive, as applied by the Division in accordance with Rule 2, have been complied with, the offering is not otherwise on grossly unfair terms, and the property will not otherwise be sold, leased or dealt in, in a method or on terms that might defraud or deceive persons in this state. Circumstances under which an offering shall be deemed to be grossly unfair, fraudulent or deceptive in addition to a failure to meet the requirements of Rules 1 through 24, inclusive, shall include, without limitation, the following:

(a) Progress made in the construction of improvements upon or servicing the property has not proceeded in accordance with the schedule of completion provided in

the offering circular accompanying the original offering; provided, however, that if the Division is satisfied that delays or postponements in construction of improvements have been caused by factors beyond the control of the developer such as strikes, walkouts, labor disputes, weather, acts of God, and shortages of materials or other similar circumstances and that such delays or postponements will not unduly prejudice the interests of investors, it may, in its discretion, qualify the offering;

(b) The owner or developer has failed to satisfy other material terms, covenants or conditions of the original offering in accordance with provisions of the offering circular or purchase contract; provided, however, that if the Division is satisfied that such failure is not likely to recur and that any such failure has not unduly prejudiced the interests of purchasers, it may, in its discretion, qualify the offering; and

(c) In the case of lots, parcels or acreage offered as homesties, except cabinsites, campsites and recreational vehicle parks, the Division is not satisfied that significant progress is being made in the sale of property previously registered, and where applicable, in the construction and occupancy of dwelling units by or on behalf of purchasers.

(C) *Qualification of Additional Property.* Where an application is filed with the Division to qualify an offering of property consisting of additional lots or units in a development for which a prior offering of property by the same developer or an affiliate thereof has been previously qualified by the Division, the Division will not approve such application unless:

(1) A deposit in the amount of $700.00 for the purposes specified in Section 1707.33, Ohio Revised Code, a qualification fee in the amount of $150.00, sales and resale information required by division (D) of this Rule, and all applicable documents and information required by division (B) of Rule 3 are filed with such application; provided, however, that the documents and information included in the application filed with the Division for registration of the prior offering of property in the same development may be incorporated by reference in the application for qualification of additional property to the extent that such documents and information are relevant to such additional property and there has been no material change in such documents or the information contained therein;

(2 The Division is of the opinion that Sections 1707.01 through 1707.45 of the Ohio Revised Code and the requirements of Rules 1 through 24 as applied by the Division in accordance with Rule 2 have been complied with and the offering is not otherwise on grossly unfair terms and the property will not otherwise be sold, leased or dealt in, in a method or on terms which might defraud or deceive persons in this state. Circumstances under which the Division will deem an offering to be grossly unfair or to be sold, leased or dealt in, in a method or on terms that might defraud or deceive persons in this state shall include, without limitation, the following:

(a) Construction of improvements on other property in the development sold pursuant to other registrations is not proceeding or completed as represented in the offering circular; provided, however, that where such construction is not proceeding as represented, if the Division is satisfied that delays or postponements in such construction were caused by factors beyond the control of the developer including strikes, walkouts, labor disputes, weather, acts of God, and shortages of materials or other similar circumstances and that such delays or postponements will not unduly prejudice the interests of investors, it may, in its discretion, qualify the offering;

(b) The owner or developer has failed to satisfy other material terms, covenants or conditions of the original offering in accordance with the provisions of the offering circular or purchase contract; provided, however, that if the Division is satisfied that such failure is not likely to recur and that any such failure has not unduly prejudiced the interest of purchasers, it may, in its discretion, qualify the offering; and

(c) In the case of lots, parcels, or acreage offered as homesites, except cabinsites, campsites, and recreational vehicle parks, the Division is not satisfied that significant progress is being made in the sale of property previously registered, and where applicable, in the construction and occupancy of dwelling units by or on behalf of purchasers;

(D) *Significant Progress in Sales.* For purposes of subdivisions (B)(2)(c) and, except in the case of applications to requalify an offering due to a material change, (C)(2)(c) of this Rule 4, significant progress will be deemed not to have been made in the sale of the property previously registered and, where applicable, in the construction and occupancy of dwelling units by or on behalf of purchasers if:

(1) With respect to property which is immediately available for use and developmental property as such terms are defined in divisions (A) and (B) of Rule 12, construction of dwellings has not been commenced on a proportion of the total number of lots, parcels or acreage originally qualified equal to, in the case of property which is immediately available for use, ten percent (10%) per year following the effective date of the original qualification or, in the case of developmental property, ten percent (10%) per year following a period of three (3) years after the effective date of the orginal registration;

(2) With respect to property which is immediately available for use, developmental property, and speculative property, as such terms are defined in divisions (A), (B) and (C) of Rule 12, the number of lots or parcels originally qualified in the development which have been sold less the number of such lots or parcels currently listed with the developer for resale, pursuant to the requirements of Rule 14 or otherwise does not exceed sixty percent (60%) of the total number contained in the

original qualification; or

(3) With respect to developmental property and speculative property, as such terms are defined in divisions (B) and (C) of Rule 12, more than twenty-five percent (25%) of the lots, parcels or acreage previously sold in the development is currently listed with the developer for resale or has been repurchased pursuant to the requirements of Rule 14 or otherwise within three (3) years preceding the date of filing of the application for requalification or qualification of additional property;

(4) Notwithstanding anything to the contrary provided in subdivisions (D)(1), (2) and (3), the Division may, in its discretion, qualify the offering of additional property in the development although the requirements of subdivisions (D)(1), (2) and (3) are not met if such additional property has or will have material features, characteristics or improvements not present in the property originally qualified.

RULE 5. DISCLOSURE

(A) *Disclosure Requirement.* Any offer or sale of property in this state shall be deemed by the Division to be a sale in a method or on terms that might defraud or deceive purchasers in this state unless, in connection with such offer or sale, there is full and complete disclosure of all material and relevant information regarding the property and the terms of the offering;

(B) *Delivery of Offering Circular.* Any offer or any act which would constitute a sale of property in this state, except pursuant to advertising published and disseminated in accordance with Rule 8, telephone solicitation in accordance with Rule 10, the offering circular itself, or the items excepted from the definition of advertising contained in division (A) of Rule 1, shall be deemed by the Division to lack the full and complete disclosure required by division (A) of this Rule unless an offering circular is delivered to the offeree or purchaser not less than three (3) days prior to the date of such offer or act;

(C) *Limitation of Materials to be Utilized in Connection with Sales Activities.* The Division shall deem the full and complete disclosure required by division (A) of this Rule not to exist if any pamphlet, brochure, leaflet, circular or other printed material is utilized or disseminated in con nection with the offer or sale of property in this state, except the offering circular, advertising published and disseminated in accordance with the requirements of Rule 8, material relating to inspection trips utilized in accordance with the requirements of Rule 10, and the items excepted from the definition of advertising contained in division (A) of Rule 1;

(D) *Amendments to Offering Circular.* The use or dissemination in connection with the offer or sale of property in this state of an offering circular, which, due to any change of circumstances or otherwise, becomes misleading as to any material fact or facts, or omits to state a material fact necessary in order to make the statements made, in the light of current circumstances, not misleading, shall be deemed by the Division to lack the full and complete disclosure required by Division (A) of this Rule. Amendments may be made to the offering circular by the most expeditious means consistent with adequate disclosure, including but not limited to the use of addenda, insertions, stickers, replacement of pages, deletions, and new editions of the offering circular. All such amendments shall be submitted to the Division for its approval, and shall be accompanied by a description of the material change, an explanation of the purpose and significance of the amendment, and a reference to that part of the offering circular which is being amended, and shall be accompanied by such documentation in connection with such material change as would be required in connection with an initial application for qualification; provided, however, that documents and other information which remain unaffected by such material change will not be required to be refiled with the Division. The amended offering circular may be used in connection with the offer or sale of property as soon as such amendments are submitted and until the Division notifies the applicant of any objections thereto. Upon objections by the Division to its contents, the amended offering circular shall not be further utilized until brought into compliance with Division requirements. For purposes of this rule, by way of illustration and not limitation, an offering circular becomes misleading as to any material fact or facts, or omits to state a material fact necessary in order to make statements made, in the light of current circumstances, not misleading, where:

(1) Any material improvement is stated to be under construction or to be completed in the future, when such improvement has been completed;

(2) The developer has materially failed to complete an improvement as scheduled, has otherwise materially altered or abandoned the schedule for completion of a material improvement, has materially altered an improvement, or has abandoned plans to construct a material improvement; provided, however, that except where an improvement has been completed as provided in subdivision (D)(1) of this Rule, progress in construction of improvements which is proceeding in accordance with the schedule of completion or other representations made in the offering circular shall not be deemed a material change which requires an amendment to the offering circular;

(3) Any material changes have occurred in the identity or organization of the developer, or in management of the property;

(4) Material legal proceedings against the developer with respect to the property have been commenced;

(5) Material changes have occurred in financial condition or statements described or included in the offering circular;

(6) Material changes in the characteristics of the development, including destruction, damage, temporary

or permanent inaccessibility or other similar changes, have occurred;

(7) Any other material changes have occurred in the development or plan of development; or

(8) Factors which may materially affect the use of the property have arisen, such as zoning changes, additional covenants or restrictions on the property or loss of permits issued by a governmental agency authorizing the intended use of the property.

RULE 6. CONTENTS OF OFFERING CIRCULAR

The offering circular required by division (B) of Rule 5 shall be prepared in accordance with the requirements of this Rule. Except for the provisions of divisions (A) through (D) and (L) through (M) of this Rule, an offering circular prepared in accordance with such requirements need not follow the precise format set forth herein so long as the information required is included and disclosed in a clear, logical and understandable manner. The text of the offering circular may be interspersed with photographs and artist's renderings conforming to the advertising standards set forth in subdivision (F)(6) of Rule 8 and logos, mottoes, and slogans which, in the opinion of the Division, do not have a tendancy to defraud or deceive purchasers in this state. Any information or other material required by this Rule which is irrelevant or inapplicable to a particular offering of property need not be included in the offering circular. The offering circular should be prepared in a simple, narrative form. The length and complexity of the offering circular should be limited by careful organization and avoidance of unnecessary detail. Repetition should be avoided. Where the same information is required in more than one section of the offering circular, additional references to the same information should be brief with an appropriate cross reference to that portion of the offering circular where such material is more fully treated. Technical terms and terms which are not common to normal usage must be clearly defined, either in a distinct subpart of the offering circular or as they appear. The offering circular should be typed or printed on paper the dimensions of which are 8½ by 11 inches.

(A) Cover page. The offering circular shall contain a cover page:

(1) Of which no more than thirty-five percent (35%) shall be comprised of photographs or artist's renderings;

(2) Which shall clearly indicate the name of the development and of the developer as contained in its articles of incorporation, partnership agreement or other organizational documents as the case may be, the developer's address, and a telephone number specially designated as the number at which customer service may be obtained and complaints may be registered.

(3) Which shall contain the following information in substantially the same form as indicated in the table below:

	Price to Public	**Selling Commissions and Discounts**	**Proceeds to Registrant**
Per Unit			
Total			
	Average Per Unit	**Total**	
Land Cost			
Completed Improvements			
Promised Improvements (Est.)			
Total Land and Improvements (Est.)			

In the event that all units of the property are not offered at the same price, the per-unit price of each category of units shall be stated along with the number of units in each price category. As used in this table, "selling commissions and discounts" shall include all commissions, allowances, discounts, fees, expenses or other compensation or remuneration in any form which is paid, agreed or proposed to be paid, or given, directly or indirectly, by the developer or any person interested in the property to or on behalf of any dealer, affiliate of such dealer, salesman, or any finder, in connection with the offering but does not include expenditures by the developer for advertising or promotional expenses in connection with the offering.

(4) Which shall contain a statement that the difference between the cost of the land and improvements and the proceeds to developer noted in the above table is represented by advertising and selling costs and profits of the developer.

(5) Which shall contain the name, address, and telephone number of every dealer licensed by this state, including the developer if applicable, who is or will be engaged in connection with the sale of the property in this state; and

(6) Which shall, if required by the Division in its discretion, contain a legend warning of the existence of special risk factors or other features of the offering with a reference to the pages in the offering circular where an explanation of such features may be found;

(B) *Summary of Basic Information.* The first page of the offering circular immediatley following the reverse side of the cover page shall, under an appropriate label or

heading, contain a brief summary of the following items, which shall reference the pages on which more detailed information with respect to such items may be found:

(1) The name of the development of which the property being offered constitutes a part;

(2) The name of the developer;

(3) The general location of the development;

(4) The type of and total number of parcels, lots or units being offered;

(5) The total acreage of the property being offered and of the development;

(6) A description of existing improvements, if any, or a statement that the property and the development are not improved;

(7) A description of improvements which the developer or an affiliate thereof has undertaken to construct, and the completion dates thereof;

(8) The suitability standards or criteria which purchasers must meet in order to qualify for purchase of the property pursuant to Rule 12;

(9) The terms of sale;

(10) An estimate of the annual cost of ownership of a unit of the property, including the amount of annual principal and interest payments, dues, taxes, assessments, maintenance fees and all other costs and expenses which must be borne by the purchaser; and

(11) Any other information which the Division may in its discretion require to be included in such summary.

(C) *Table of Contents.* Immediately following the summary of information required by division (B) of this Rule, the offering circular shall contain a Table of Contents;

(D) *Risk Factors and Special Considerations.* Following the Table of Contents required by division (C) of this Rule, the offering circular shall contain a heading in bold-face type labelled "RISK FACTORS AND SPECIAL CONSIDERATIONS." Below such heading shall be a series of short paragraphs which list the principal risks, uncertainties, speculative factors and special considerations inherent in the offering, development, and ownership by purchasers of the property. The list required by this division shall include, but shall not necessarily be limited to the following items, where applicable:

(1) Encumbrances, restrictions, covenants, conditions, easements, zoning, and any other factors limiting or otherwise affecting the use of the property by purchasers;

(2) Topographical, geological, or geographical features affecting the use of the property, including the percentage of such property which is marsh, swamp, muck, water or subject to ponding;

(3) Any other factors affecting suitability of the property for its intended or implied prospective use;

(4) Circumstances upon which the installation of promised or proposed improvements, including both basic and common area improvements are contingent, such as the financial condition of the developer or the need for additional building permits or other governmental approvals;

(5) Pending legal or administrative actions and proceedings which may affect the developer's ability to complete the promised improvements or to fulfill other commitments relating to the property or which are otherwise material ro an investment decision;

(6) The presence or absence of a current resale market for the property being offered, and whether the developer will assist in resales in the manner required by Rule 14 or otherwise;

(7) Contract provisions relating to payments, to the acquisition of title, and to the consequences of a default;

(8) Provisions relating to the availability of and procedures for obtaining rescission of the purchase contract and a refund of any monies paid for property purchased; and

(9) Suitability standards or other criteria which purchasers must meet in order to qualify for purchase of the property.

(E) *Description and Features of Property.* The offering circular shall, under an appropriate heading or label, contain a description of the development, the property and its features, and the nature of the interest in such property being offered. Such description shall include:

(1) The general location of the property, including:

(a) Specific reference to the nearest city, its population, and the distance of the property therefrom;

(b) The population of the county or counties in which the property is situated, and the population of such county or counties at five (5) year intervals for the past ten (10) years;

(c) The principal employers of the county or counties in which the property is located, the current number of persons employed by each such employer and future plans publicly announced by such employers to increase, reduce or maintain the number of persons they currently employ;

(d) The current unemployment rate for the county or counties in which the property is located;

(e) A description of surrounding land use (e.g. farmland,

suburban, forest, desert, etc.) and nearby developments, including type, quantity and quality;

(f) The distance in both miles and minutes by automobile of the subject property from the nearest central business district, and major employment centers;

(g) A complete description of principal routes of access to the property and a statement as to whether any portion of the property abuts or is accessible to a major thoroughfare;

(h) A statement as to which of the following services and facilities are in existence and available or accessible to the property at the time of the qualification of the offering (and if not available or accessible to all of the property, the number of lots, parcels, or units of the property to which such services are available or accessible) and a complete description of those services and facilities which are in existence and available or accessible to the property and where appropriate, the cost and method of financing such services or facilities:

(i) Fire protection;

(ii) Police protection;

(iii) Garbage and trash collection;

(iv) Shopping and commercial facilities;

(v) Public schools including elementary, middle school, junior high, and high school;

(vi) Medical and dentral facilities, including hospitals, clinics, physicians and dentists;

(vii) Public transportation;

(viii) United States Postal Service;

(ix) Churches; and

(x) Recreational facilities; and

(i) A map drawn to scale which shall occupy not less than one (1) full page of the offering circular indicating, in relation to the property, the location of the nearest city, all highways, and topographical features included in subdivisions (4)(a) and (b) of this division;

(2) A detailed map of the development and surrounding area disclosing the locations of the property being offered for sale, existing recreational and other common-area improvements, and marshes, muck, swamp, excessive slope, ravines, gullies and other surface conditions affecting immediate use or development of the property;

(3) Any and all factors, considerations and conditions that might directly or indirectly affect the health, safety and welfare of residents of the property, including but not limited to fire hazards, water hazards, flood plain, industrial smoke and noise, pollution, proximity to airport flight patterns, unsightly views, pleasant scenery, and other positive and negative influences;

(4) The topography of the property, including:

(a) A statement as to whether the property is hilly, rolling and/or level, the extent of such characteristics, the highest point, lowest point, average elevation, and the extent of any slope on the property itself or affecting the property;

(b) A statement describing any and all other relevant and material physical characteristics or features of the property, including but not limited to lakes, ponds, swamps, marsh, rivers, surface drainage, flood plain, ravines or gullies, and, where relevant, soil type (including the results of any percolation of any soil borings), tree growth (heavy, sparse, scrub, open, etc.) and whether the subject site is adaptable to conventional construction without grading or cutting for building sites or streets and if not the extent of grading or cutting necessary; and

(c) A statement of the extent and estimated cost of clearing, draining, grading, filling or otherwise physically modifying the property to permit the use of conventional building techniques, if any of the preceding are necessary or contemplated;

(5) In tabular form, with each table containing the applicable information enumerated in the last sentence of subdivision (E) of this Rule, a listing of:

(a) All recreational and other common-area improvements to or serving the property which are presently completed and available for use, including location, ownership and/or responsibility for the maintenance thereof, and the cost to purchasers for the use of such improvements; and

(b) All promised recreational and other common-area improvements to or serving the property which are not presently completed and availalbe for use, including location, stage of completion, estimated cost to complete, completion commitment date, fees or cost to the purchasers for the use of such improvements, and ownership and/or responsibility for the completion and maintenance thereof;

(6) A description of the type of property offered and its proposed use, including whether it consists of unimproved lots, campsites, apartments, cooperative apartments, condominiums or other improved lots or units, or any interest or unit of participation in any of the foregoing;

(7) In tabular form all currently existing, promised and proposed basic improvements to the property, and the location, stage of completion, and availability for use of such basic improvements. The table of basic improvements shall include the following information for each basic improvement: (a) Description of Improvement; (b) Location (completed); (c) Percentage Complete/Proposed; (d) Certified Cost; and (e) Completion Commitment Date;

(8) In summary form a description of any dwelling units or other buildings constructed or to be constructed on the property. With respect to such dwelling units, such description shall include, where applicable, the following:

(a) Size of buildings and dwelling units and type of construction (concrete, steel, etc.);

(b) Exterior and interior walls and facing;

(c) Floors and ceilings;

(d) Painting and papering;

(e) Roof;

(f) Insulation and heating;

(g) Ventilation and air conditioning;

(h) Windows and doors;

(i) Kitchen equipment;

(j) Patios and sun decks;

(k) Hardware, lighting and other fixtures;

(l) Bedrooms, bathrooms, living rooms, closets and basement;

(m) Public halls, stairways, entrances and exist, elevators, sound proofing and fire proofing;

(n) Grading and landscaping;

(o) Parking and garage facilities;

(p) Laundry facilities;

(q) Service personnel and duties;

(r) Storage space per unit and general storage facilities; and

(s) Present condition and age of units, including material deficiencies in construction, operation, etc.;

(9) An aerial photograph of the property taken within thirty (30) days of the date of the application, which reasonably shows the existing state of the property and improvements;

(10) All restrictions imposed upon or relating to development and use of the property, including:

(a) Zoning classification of the property and contiguous or nearby tracts, and whether all requirements of such classifications have been complied with;

(b) Encumbrances with respect to the property and contiguous or adjacent tracts or other parcels of land owned by the developer or an affiliate thereof which may affect the property; and

(c) Covenants, conditions, restrictions, easements, rights, etc. affecting the property; and

(11) The following information regarding governmental regulation of the construction of improvements on the property:

(a) Any restrictions or regulations imposed by federal, state or local laws, ordinances, rules, regulations or governmental agencies which may materially affect the construction of improvements on the property, including housing and building codes;

(b) Whether the developer, to the best of its knowledge and belief, is in compliance with all laws, ordinances, rules and regulations of federal, state and municipal governments and regulatory agencies relating to the use and development of the property, and, if not, any pending actions with respect to such non-compliance and a description of such actions;

(c) The existence of any special districts with the power of taxation or levy; and

(d) If an Environmental Impact Statement is required to be filed under the National Environmental Policy Act, a description of the considerations, restrictions and recommendations made therein;

(F) *Information Concerning the Developer and Affiliates.* The offering circular shall, under an appropriate heading or label:

(1) State the year in which the developer was organized, its form of organization (partnership, corporation, etc.), the state of its organization and the states in which the developer is doing business;

(2) Briefly describe the business conducted and intended to be conducted by the developer and its affiliates and, to the extent relevant to the offering of the property, a description of the business of such affiliates;

(3) List the names, addresses, and business history for the past ten (10) years of all officers, directors, and controlling persons of the developer;

(4) If the developer is an affiliate controlled by another person, state with respect to such controlling person all of the information required by subdivisions (F)(1), (2), and (3) of this Rule;

(5) Summarize any pending legal or administrative actions or proceedings with respect to the developer, its affiliates, officers and directors which may materially affect, directly or indirectly, the subject offering, property, or plan of development, in addition to those actions or proceedings required to be described by subdivision (E)(11)(b) of this Rule;

(6) If any of the entities or persons listed in this subdivision (F) have been involved in any legal or administrative proceedings within five (5) years of the date of filing of the application for qualification of the offering which relate to the sale of securities, real estate, or consumer products, describe such legal or administrative proceedings, including the resolution thereof;

(7) Describe the developer's established criteria, procedures, and policies for processing complaints and attempts to exercise rescission rights which may arise in connection with the sale of the property and for remedying sales or production activities which are the basis of such complaints; and

(8) Include with respect to the developer, an audited balance sheet, income statement, and statement of source and use of funds, prepared by a certified public accountant in accordance with generally accepted accounting principles, and accompanied by an unqualified opinion thereon. If the developer is an affiliate controlled by another entity or person, said financial information shall also be provided for such controlling entity or person, and if the developer has any affiliates who are or may be materially involved in the development of the subject property, or if any other person is liable to purchasers upon the exercise by such purchasers of the rescission rights set forth in Rule 21, said financial information shall be provided for each such affiliate or other person;

(G) *Information with Regard to Certain Transactions.* Supply full information with respect to the following transactions involving the acquisition and financing of the real estate contained in or related to the development and improvements thereto:

(1) The transactions whereby the owner acquired the property, including the grantor, price and other financial considerations, and the terms of any loans obtained for such acquisition of the property;

(2) If the developer or any affiliate thereof owns or has options to purchase land adjacent to or near the property, a description of such land and the terms of the sale and/or option; and

(3) The terms of any loans or any commitments for any construction or permanent financing of the property and improvements by the developer;

(H) *Escrows and Completion and Performance Bonds.* Fully describe the terms of any escrow agreements or performance or completion bonds which have been or will be executed or obtained for the benefit of purchasers pursuant to these Rules;

(I) *Information Concerning the Developer's Use of Proceeds.* The offering circular shall, under an appropriate heading or label, in tabular form with accompanying footnotes or narration if appropriate, state the principal purposes for which the net proceeds to the developer from the sale are to be used, and if any material amounts of other funds are to be used in conjunction with the proceeds of sales, the amount and source of such other funds. Such table shall include the following items and an estimate of the amount of such proceeds allocated to each: land cost, cost of constructing basic improvements, cost of constructing recreational and other common-area improvements, selling commissions and expenses, advertising and promotional expenses, overhead and other expenses attributable to the property and profits to the developer;

(J) *Information Concerning the Marketing Program.* The offering circular shall, under an appropriate heading or label:

(1) Fully describe the program whereby units of the property will be sold to purchasers in this state, including the list of names, addresses, and telephone numbers of all dealers engaged in such sales (which list is also required to appear on the cover page of the offering circular pursuant to subdivision (A)(5) of this Rule).

(2) Include by means of an insert attached prior to delivery of the offering circular the following information with respect to the appropriate salesman: full name, address and telephone number; business history and experience for the preceding five (5) years; a summary of any legal or administrative proceedings within the preceding five (5) years relating to the sale of property, securities, real estate or any interest therein; and the developer's method of resolution of such proceedings, if any; a statement to the effect that such salesman is required by rule of the Division to visit the property as a condition of receiving a salesman's license, and the date on which such visit was made; and the number appearing on such salesman's license issued by the Division; and

(3) Include the following information with respect to each dealer involved in the sale of the property in this state: the established criteria, procedures and methods for dealing with inquiries and complaints from purchasers; a description of any legal or administrative proceedings within the preceding five (5) years relating to the offering or sale of property, securities, real estate or any interest therein and the resolution of such proceedings, if any;

(K) *Secondary Market Information.* The offering circular shall, under an appropriate heading or label, state the following information:

(1) Whether the developer or any of its affiliates makes a resale market in the property in the manner required by Rule 14 or otherwise, and if so, what is the procedure for obtaining information regarding current listings and prices therefor for each such market maker, and list the names and addresses of all other persons who are principal secondary market makers in the property offered or in a similar property. For purposes of this subdivision (K) (1) a "principal secondary market maker" means any person who currently has ten (10) or more lots, units, parcels or interests listed, and who has effected at least three (3)

sales thereof within the past six (6) months;

(2) Specify the average price at which the property or other real estate similar to the property is currently being sold in the county or counties where the property is located, and if the property is unimproved at the time of the offering, the price of comparable acreage of similar real estate; and

(3) Describe any conditions or construction occurring in such county or counties, or in the surrounding area which may affect the value of the property;

(L) *Purchase Contract.* At least two (2) copies of the entire purchase contract prepared in accordance with the requirements of Rule 7 shall be included in detachable form as the next to last item in the offering circular; and

(M) *Notification to Purchasers of Risk Factors; Signed Statement.* The last page of the offering circular shall contain a statement accompanied by signature and date blanks, to the effect that the summary of risk factors and special considerations required pursuant to division (D) of this Rule to be included in the offering circular have been read verbatim and explained to the purchaser prior to execution of the purchase contract and the salesman and prospective purchaser shall sign and date the statement to such effect on the offering circular.

RULE 7. PURCHASE CONTRACT PROVISIONS

(A) *Requirement of Purchase Contract.* The purchase contract included in the offering circular and approved by the Division shall be the only form of contract executed for the purchase and sale of property. For purposes of this Rule 7, the term "purchase contract" shall include any agreement between the purchaser and the developer conveying or to convey any interest in the property, including without limitation, contract of purchase and sale, land installment contract, lease, option to purchase, and stock purchase agreement for the sale of shares regarding a cooperative apartment;

(B) *Provisions to be Included in Purchase Contracts.* The purchase contract shall not contain any terms, covenants or conditions which the Division finds to be grossly unfair, or which might tend to defraud or deceive purchasers in this state. Such purchase contract shall include, without limitation, at least the following provisions:

(1) A complete description of the interest in the property offered (e.g. fee simple, leasehold, etc.);

(2) Complete price, deposit, and installment payment provisions, if any, (including those relating to interest, penalties, and all other financing charges);

(3) Truth-in-lending information in accordance with Federal Regulation Z;

(4) Provisions for payment or proration of taxes, assessments, rents and utilities, if any;

(5) A copy of the form of instrument of conveyance to be delivered to the purchaser;

(6) A copy of the affidavit to be delivered to the purchaser made by or on behalf of the seller stating facts relating to title to the property and the validity of the execution of the instrument of conveyance delivered to purchasers;

(7) Covenants of the developer to complete the basic, recreational and other common-area improvements promised to be constructed as described in the offering circular by the completion dates indicated, in a good and workmanlike manner, using high quality materials, and to obtain all permits, approvals and acceptances required to be obtained from any governmental authority having jurisdiction over such improvements;

(8) A provision that where the developer will provide recreational or other common-area improvements, such improvements will be maintained in accordance with Rule 16 and in a safe, orderly and clean condition;

(9) Provisions relating to use and possession of the property by the purchaser;

(10) A provision that in the event of material damage to or destruction of the property prior to the date of closing, the purchaser may elect either not to proceed with the closing and receive back any deposit or installment payments made, in which case all obligations and liabilities of both parties under the contract shall cease, or to proceed with the closing and receive either a reduction in the purchase price proportionate to such damage or all insurance proceeds attributable to the specific property purchased under the contract plus full credit against the purchase price for any uninsured portion of the loss or damage;

(11) A provision incorporating in the purchase contract the terms and representations set forth in the offering circular;

(12) A statement of all rescission rights enumerated in division (B) of Rule 21; together with a provision in bold face type stating that notice of the exercise by the purchaser of such rescission rights shall be deemed to have been given upon deposit of such notice in the United States mail, postage prepaid, and stating the address of the developer to which such notice shall be sent;

(13) A space in which the purchaser shall indicate the date upon which he intends to return to his residence for purposes of the exercise of the rescission rights in subdivision (B)(1)(a) of Rule 21 in the event that the purchaser executes such purchase contract outside of this state;

(14) A provision that all covenants and representations made in the contract shall survive the closing of the subject sale;

(15) A provision that the purchase contract shall constitute the entire agreement between the parties and that no other written, oral or implied agreements or understandings shall vary the terms thereof;

(16) A provision that the purchase contract shall be construed and enforced according to the laws of the State of Ohio;

(17) Where a fee simple title to the property is to be conveyed:

(a) A provision that the seller shall deliver, at the closing of the sale of the property or upon conveyance of the property pursuant to a land installment contract, a general warranty deed, and either a policy of title insurance directed to the purchaser and substantially conforming to the ALTA 1970 format or an abstract of title showing marketable title to the property. Such deed and title insurance policy or contract may contain no exceptions other than the following: liens, encumbrances, easements, covenants, conditions, and restrictions on the property, and other exceptions which do not interfere with the purchaser's intended use of the property; and

(b) Provisions for payment of closing costs; and

(18) In the case of an installment land contract, a provision that in the event of default in payment by the purchaser of any sum due under such installment land contract, a forfeiture of the interest of the purchaser under such contract may be enforced only after the expiration of thirty (30) days from the date of default and in accordance with the following procedure. After expiration of such thirty (30) day period the purchaser shall be given written notice describing the terms of such contract which have not been satisfied and stating that the purchaser's rights under such contract will be forfeited unless the purchaser complies with such terms within a period of ten (10) days following receipt of such notice by the purchaser.

(C) *Variances in Form Required by Law; Additions.* Variances from the provisions of the purchase contract required by division (B) of this Rule may be permitted by the Division where necessitated by the laws of the state in which the property is located, or otherwise. Provisions in the purchase contract in addition to those required to be included by division (B) of this Rule may be included if such additions are found by the Division not to be contrary to the degree of protection contemplated by this Rule and not otherwise grossly unfair, deceptive or misleading.

(D) *Provisions Prohibited in Purchase Contracts and Financing Documents.* A purchase contract, promissory note, mortgage or any other document executed by the purchaser to the developer in connection with his purchase or financing of the property which contains any of the following provisions shall be deemed by the Division to be grossly unfair:

(1) Any provision obviating the applicability of the standard covenants of a general warranty deed;

(2) Any provision for waiver, alteration, or modification of any obligations of performance by the developer, or for waiver of any claims or defenses against the developer both as to the purchaser and his assignees or sublessees;

(3) Any cognovit or other provision authorizing or permitting the confession of judgment against the purchaser for a default in payment of the purchase price; and

(4) Any other provision which, under the circumstances of a particular offering, may be deemed by the Division to be grossly unfair, fraudulent or misleading.

RULE 8. ADVERTISING

(A) *Approval of Advertising*

(1) Unless, in the opinion of the Division, the circumstances of the offering or the selling or advertising practices of the developer, its affiliates or any person acting on their behalf are such that for the protection of the prospective purchasers residing in this state all advertising in connection with the sale of the property in this state must be approved by the Division, the Division will not require that advertising in newspapers published outside this state, periodicals circulated nationally and in multi-state regions or radio and television programming broadcast nationally or in multi-state regions be approved by the Division.

(2) No advertising except the advertising specified in subdivision (A)(1) of this Rule which the Division has not required to be approved shall be published, disseminated or used in connection with the sale of property in this state unless the Division has reviewed such advertising as to its tendency to defraud or deceive prospective purchasers in this state and such advertising has been approved by the Division.

(B) *Printed Advertising.* Printed advertising shall be deemed by the Division to have a tendency to defraud or deceive prospective purchasers residing in this state if such advertising is not in the form specified in subdivisions (1) and (2) of this division (B), if such advertising contains any representations not in accordance with division (F) of this Rule or if such advertising is not employed solely for the purpose of eliciting indications of interest in the property from prospective purchasers residing in this state. For purposes of this Rule the term "printed advertising" shall be defined to include advertising in newspapers, magazines and other publications as well as cards, pamphlets, letters, circulars, and other sales literature, except printed advertising not required by the Division to be approved pursuant to division (A) of this Rule.

(1) In addition to the provisions required by subdivision (2) of this division (B), printed advertising may contain no more than the following:

(a) The names of the development and the developer of the property;

(b) A brief description of the property including the name of the property or the development, the location of the property, its proposed use and the number of parcels, lots or units of the property to be sold;

(c) A brief description of the improvements on or servicing the property in accordance with the standards set forth in division (F) of this Rule;

(d) The interest (i.e. fee simple, leasehold) in the property being offered for sale;

(e) The per-unit offering price of the property and terms of sale or, in the event that all units of the property are not offered at the same price, the per-unit offering price of each category of units together with the number of such units in each price category;

(f) Photographs or artist's renderings which conform with the requirements set forth in division (F) of this Rule;

(g) Logos, mottoes or slogans of the developer or development which do not have a tendency to defraud or deceive persons residing in this state;

(h) Coupons in which prospective purchasers may insert their names and addresses for the purpose of indicating an interest in the property; and

(i) Any other item specifically approved by the Division in writing.

(2) All printed advertising shall contain the following:

(a) A legend in type equal in size to that used in the remainder of the text of the advertisement, as follows:

"A copy of the offering circular filed with the Division of Securities of the State of Ohio must be delivered to you no less than three (3) days prior to the date on which any sales presentation is made to you. This offering circular contains information which is relevant and important to your decision to purchase the property. You should read this offering circular carefully to determine the suitability of this purchase to you." and

(b) The name and address of the dealer licensed in this State from whom a copy of the offering circular may be obtained;

(C) *Television and Radio Broadcasts.* Advertising in the form of television and radio broadcasts shall be deemed by the Division to be a sales method which might defraud or deceive purchasers unless such television and radio broadcasts:

(1) Contain only the information set forth in division (B) of this Rule;

(2) Do not contain any of the representations contrary to the requirements of division (F) of this Rule; and

(3) Are employed solely for the purpose of eliciting indications of interest from prospective purchasers residing in this state so that they may obtain a copy of the offering circular;

(D) *Motion Pictures and Slide Presentations.* All advertising consisting of motion pictures and slide presentations shall be deemed by the Division to be a sales method which might defraud or deceive purchasers in this state, unless such motion pictures and slide presentations:

(1) Do not contain any representations not in accordance with division (F) of this Rule;

(2) Contain only information set forth in the offering circular; and

(3) Contain a discussion of the risk factors and special considerations contained in the offering circular as required by division (D) of Rule 6. Such discussion shall be at least one-sixth (1/6) of the length of such motion picture or slide presentation;

(E) *Additional Forms of Advertising.* Other forms of advertising in addition to those specified in this Rule may be approved by the Division upon application by the developer.

(F) *Advertising Standards.* Standards which will be applied by the Division in determining whether advertising has a tendency to defraud or deceive prospective purchasers in this state shall include, without limitation, the following:

(1) No advertising shall contain any untrue statement of a material fact or shall omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(2) No improvements shall be advertised unless:

(a) They are completed or installed and available for use; or

(b) A commitment has been made in the offering circular and the purchase contract to complete such basic improvements within three (3) years and complete such common-area improvements within five (5) years and, where applicable, a bond, escrow of funds, or other arrangements have been made as provided in Rule 19 to assure the completion of such improvements.

(3) No features which are not a part of the development may be advertised unless they are completed, in operation, and reasonably accessible to the development at the time that the advertising is submitted to the Division for its approval;

(4) No reference shall be made to points of interest, cities, towns, or other facilities or features located more than one (1) mile from the nearest point of the property, unless the distance in miles along existing roads and the nature thereof is clearly specified;

(5) No maps shall be used to show proximity to other communities or points of interest, unless such maps are drawn to scale and the scale appears on the map together with a statement of the distance in miles; and

(6) No photographs or artist's renderings of the property or any improvements may be included in any advertising in this state unless such photographs or artist's renderings comply with the following:

(a) Such photographs accurately represent the state of development and the characteristics of the property and improvements and of features which are not a part of the development and which may be depicted only if they satisfy the requirements of subdivision (3) and (4) of this division (F) as of the time that such advertising is published or disseminated;

(b) Artist's renderings shall not represent any improvements unless such improvements are not yet completed and the requirements of subdivision (F)(2) of this Rule have been met with regard to such improvement; and

(c) Artist's renderings of improvements shall bear a prominent legend below such rendering stating that the improvements depicted are an artist's conception, that the improvements depicted are not completed and the commitment date set forth in the offering circular is the date of such completion.

(G) *Submission of Advertising.* All advertising which must be approved by the Division as required by division (A) of this Rule shall be submitted in duplicate to the Division at least thirty (30) days prior to the date of its intended publication, dissemination and use, and in addition:

(1) Shall be accompanied by the certification of a duly authorized officer of the developer to the effect that:

(a) All photographs contained in such advertising and all slide presentations and motion pictures depict only the current state of development;

(b) Where such advertising consists of photographs, motion pictures, or slide presentations which depict features not a part of the development, captions accurately identify such features and their location in relation to the development; and

(c) Any artist's or architect's drawings contained in such advertising depict only improvements to be made to the property and accurately represent the future status of the improvement depicted;

(2) Upon review and approval of submitted advertising, the Division shall issue a Notice of Advertising Approval containing an Ohio Advertising Number for each piece of advertising approved. Such Ohio Advertising Number shall be included on each item of advertising published, used or disseminated in connection with the sale of the property in this state;

(3) Printed advertising to be used in a mailing program directed in whole or in part to offerees residing in this state which is submitted to the Division shall be accompanied by a list of names, addresses and telephone numbers, if available, of such offerees together with the source of such list and the method of selection of the offerees indicated thereon; and

(4) The Notice of Advertising Approval noted in subdivision (G) (2) of this Rule shall be effective until the expiration of a period of one (1) year from the date of said Notice or, until expiration of the Order of the Division qualifying the offering to which such advertising pertains, whichever first occurs. Upon expiration of the Notice of Advertising Approval regarding any item of advertising, such item of advertising must be resumbitted to the Division for approval before further use if the order qualifying the offering to which such advertising relates remains in effect.

RULE 9. DEALERS AND SALESMEN

(A) *Licensing.* In addition to complying with all other applicable rules, regulations and requirements of the Division, applicants for property dealer and salesman licenses shall be subject to the following requirements:

(1) An applicant may be licensed as a dealer in both property as defined in Rule 1 and other securities involving an interest in real estate securities such as condominiums with rental pools and real estate limited partnerships. In the event that a dealer is so licensed, the salesmen he employs may also be licensed to sell both property and such other securities. The Division will issue one license for each dealer and salesman bearing restrictions where appropriate, for both property and such other securities; provided, however, that the applicant must meet the licensing and testing criteria prescribed by the Division for both before a license authorizing sales by such person will be issued;

(2) An applicant for a dealer's or salesman's license in property must visit and become acquainted with the specific property which he seeks to be licensed to sell, and so state in the application. A licensed dealer or salesman shall not at any time solicit the sale of or sell property which he has not visited and become acquainted with prior to such sale. Dealers and salesmen shall be required to maintain their primary vocation in the field of real estate;

(3) To qualify as a licensed dealer in property, an applicant must have graduated from high school, have at least five (5) year's experience in the real estate field, and have at least two (2) year's experience as a licensed pro-

perty salesman. An applicant which is not a natural person must be represented by an officer who satisfies these requirements. To qualify as a licensed salesman of property, and applicant must have graduated from high school and have one (1) year's experience in the real estate field;

(4) No applicant who has been convicted of any felony, or against whom a judgment has been rendered or an action is pending for fraud or misrepresentation under the securities or consumer protection laws of the United States, or any state thereof shall be issued a dealer's or salesman's license in property. No such license shall be issued to any corporation, partnership, or association, where any principal officer, general partner, manager or affiliate has been convicted of any felony, or where a judgment has been rendered or an action is pending for fraud or misrepresentation under the securities or consumer protection laws of the United States or any state thereof against such corporation, partnership or association, or any principal officer, general partner, manager, or affiliate thereof; and

(5) An applicant for a dealer's license in property which is a corporation or partnership shall file with its application an audited financial statement and an applicant for a dealer's license in property who is a natural person shall file with his application a sworn financial statement. Such financial statements shall be prepared as of a date not more than ninety (90) days prior to the date of such application. Such financial statement must demonstrate a net worth of such applicant of not less than $25,000, calculated exclusive of home, home furnishings, and automobiles. For the purpose of determining net worth the valuation of assets and liabilities of such applicant shall be subject to adjustment by the Division to eliminate assets of uncertain value. Before such license will be issued the applicant must also obtain a surety bond in the amount of $100,000 conditioned upon compliance with the securities laws of Ohio and with these rules, and otherwise acceptable to the Division.

(B) *Compliance With Other Division Rules, Regulations and Requirements.* All licensed dealers and salesmen will be required by the Division to comply with other rules and regulations of the Division regarding licensed securities dealers and salesmen to the extent applicable, including, without limitation, reporting and record keeping requirements.

RULE 10. SELLING AND MARKETING METHODS

(A) *Gifts and Contests.* The offering or advertising of any goods or services at reduced prices or the offering or advertising of any gift or any opportunity to obtain any goods or services by means of a contest or drawing, in connection with the offering or sale of property in this state shall, except with respect to inspection trips in accordance with division (C) of this Rule, be deemed by the Division to be a sale in a method or on terms that might defraud or deceive persons in this state;

(B) *Sales Meetings and Dinner Parties.* The offering, advertising, or sale of property by means of dinner parties or other sales meetings at which more than one sale is solicited and at which are present more offerees and purchasers than would be interested in a single purchase shall be deemed by the Division to be a sale in a method or on terms that might defraud or deceive persons in this state; provided, however, that this division (B) shall not apply to gatherings of offerees and purchasers at the office of a developer, dealer or salesman where a group of offerees or purchasers is interested in a single transaction on behalf of the group, or where each purchaser is dealt with solely on an individual basis.

(C) *Inspection Trips and Vacations.* In connection with the offering, advertising or sale of property, the offering by the developer, dealer, or salesman to offerees of any trip to inspect the property shall be deemed by the Division to be a sale by a method or on terms which might defraud or deceive purchasers in this state unless:

(1) Any offer, certificate or advertisement of an inspection trip, vacation or any program for the visitation of the property by an offeree fully describes the trip offered and discloses all of the terms, conditions and limitations upon which such trips may be made by any offeree including, without limitation, the following:

(a) That the purpose of such trip will be to subject the offeree to a land sales presentation;

(b) The identity of the dealer or developer offering such trip;

(c) The length of such trip and the schedule to be followed by offerees on such trip;

(d) The identity of hotels, motels, places of lodging, transportation companies, restaurants, attractions and similar establishments which will honor or participate in such inspection trip;

(e) The date of the offeree's right to embark on such trip and the date upon which the offer of such trip expires;

(f) The costs and expenses of such trip to be paid by the offeror and any conditions imposed upon such payment;

(g) The costs and expenses of such trip to be paid by the offeree; and

(h) Any obligation imposed upon the offeree as a condition of his acceptance of such trip;

(2) All certificates or any other material offering inspection trips or evidencing the rights of a prospective purchaser to embark on such trips are submitted to the Division twenty-one (21) days before the date of their intended use, dissemination, or publication. The Division shall be informed of any material change in any inspection

trip as described in the certificate or other material previously submitted to the Division and any material change in such sales presentations prior to the intended date of the institution of such material change;

(3) The text of any sales presentation to be made to prospective purchasers on an inspection trip is submitted to the Division twenty-one (21) days before the date of its intended use or dissemination. An inspection trip sponsored by the developer or a person acting on its behalf shall be considered by the Division to be a method of dealing in property which might defraud or deceive purchasers where, in the opinion of the Division, prospective purchasers would be subjected to sales practices or presentations which violate any relevant and material provisions of these Rules, or statements or representations which tend to be misleading;

(4) Any reimbursement or repayment to the offeree for any expenses incurred in connection with an inspection trip is not conditioned upon his purchase of the property; and

(5) A copy of the most recent offering circular is delivered to each offeree three (3) days prior to his embarkation on an inspection trip; and each prospective purchaser completes an inspection of the principal features of the development and of the specific portion of the property which is offered to him for sale.

(D) *Telephone Solicitation.* In connection with any offering or sale of property:

(1) Solicitation of offerees by telephone shall be deemed to be a sale in a method or on terms that might defraud or deceive persons in this state unless:

(a) Such telephone solicitation is limited to responding to or eliciting an indication of interest from the offeree in the property being offered, arranging a meeting with such offeree and establishing the place, time, date and general purpose of such meeting; provided, however, telephone communications of broader scope following personal solicitation shall not be prohibited and shall not be subject to the requirements of this subdivision and subdivisions (D)(2) and (3) of this Rule;

(b) Only the information set forth in division (B) of Rule 8 is communicated to the offeree; and

(c) Such telephone solicitation does not contain any representations contrary to the requirements of division (F) of Rule 8.

(2) The script or content of any telephone solicitation program intended to elicit an indication of interest from offerees or any material changes in the same shall be submitted to the Division for its approval twenty-one (21) days prior to the intended date of commencement of such solicitation program; and

(3) A copy of any list of names, addresses and telephone numbers of offerees to be contacted in any telephone solicitation program together with the source of such list and the method of selection of such offerees shall be submitted to the Division twenty-one (21) days prior to the commencement of such telephone solicitation program;

(E) *Home Solicitation.* Any offering or sales activity regarding the property conducted at the home of any offeree by any dealer or salesman shall be deemed to be a sale in a method or on terms that might defraud or deceive persons in this state unless such offeree has requested, prior to any visitation by such dealer or salesman, that such offering or sales activity take place at his home for his own convenience and unless a copy of the most recent offering circular has been delivered to such offeree at least three (3) days prior to such offering or sales activity;

(F) *Compliance Program.* If, in connection with the offering and sale of property, the Division is of the opinion that it is necessary for the protection of offerees and purchasers residing in this state, the Division may require that the developer establish and maintain a compliance program designed to insure compliance with Sections 1707.01 through 1707.45, inclusive, of the Ohio Revised Code, compliance with these Rules and the protection of offerees and purchasers residing in this state. Such compliance program shall be directed by an officer or employee of the developer whose income does not result from direct sales commissions, who is not subject to the control of persons responsible for marketing operations and whose responsibilities shall include, without limitation, the following:

(1) Instruction of dealers and salesmen regarding:

(a) All characteristics of the property and terms upon which it is offered for sale, including contents of the offering circular and purchase contract;

(b) Requirements imposed by statute, rule or order regarding dealers and salesmen, selling and marketing practices, and liabilities resulting from violation thereof; and

(c) Representations and selling practices which are defined by the Division in these Rules or otherwise to be grossly unfair, fraudulent, deceptive or misleading, and liabilities resulting from violation thereof;

(2) Contacting purchasers of the property by questionnaire or otherwise within thirty (30) days after such purchasers have entered into purchase contracts to determine whether any misrepresentations, fraudulent or deceptive practices or selling methods were used by the dealer or salesman in connection with the sale of the property. In the event that the compliance officer determines that misrepresentations or sales practices occurred in the sale of the property which would give rise to rescission rights under Rule 21 or otherwise he shall notify the purchaser of an opportunity to affirm or rescind his purchase of the property;

(3) Processing of all requests by purchasers for rescission, pursuant to Rule 21 or otherwise, of their purchase of the property;

(4) Investigation of all purchaser complaints regarding sales of the property, performance by the developer of covenants and representations in the offering circular and purchase contract and appropriate determinations as to the disposition thereof in conjunction, where necessary, with legal counsel for the developer;

(5) Preparation of a daily log regarding interviews of the compliance officer with purchasers and containing such information as the name, address and telephone number of such purchasers, date and time of the interview and relevant comments regarding conclusions of the compliance officer as to whether any misrepresentations were made or any fraudulent or deceptive sales practices or methods were used in connection with the sale of the property;

(6) Keeping of records regarding the disposition of purchaser complaints and attempts to exercise rescission rights, which information shall be included in the quarterly report required to be filed pursuant to Rule 20(A); and

(7) Taking of appropriate remedial action in the event such compliance officer determines that a dealer or salesman has violated any provision of Sections 1707.01 through 1707.45, inclusive, of the Ohio Revised Code, has violated these Rules or has engaged in any other misrepresentation or sales method which is otherwise found to be grossly unfair, fraudulent, or misleading. Such remedial action shall include, without limitation, one or more of the following:

(a) A personal interview with such dealer or salesman;

(b) If a number of dealers or salesmen have engaged in such violations, such compliance officer may conduct a special meeting of all dealers and salesmen offering or selling the property in this state to correct such violations;

(c) The compliance officer may recommend termination of the dealer or salesman engaging in such violations; or

(d) Such compliance officer may submit his findings regarding such violations to the Division for potential prosecution or suspension of the licenses of such dealer or salesman.

RULE 11. UNFAIR, FRAUDULENT AND DECEPTIVE PRACTICES

It shall be deemed by the Division to be a grossly unfair, deceptive and fraudulent practice for any developer, affiliate of such developer, dealer, salesman, or any other person acting on behalf of any of the foregoing, in connection with any offer or sale or property, to engage in any of the following activities or practices; provided, however, that the specific practices set forth in this Rule shall not be exhaustive of all practices which may be deemed by the Division to be grossly unfair, deceptive, or fraudulent:

(A) Representing that the offeree has been contacted for any reason other than a solicitation of the sale of property, including any representations that the offeree has been contacted for the purpose of conducting a poll, survey or similar inquiry;

(B) Offering or purporting to offer any property or interest therein which the developer, affiliate of the developer, dealer, salesman, or other person acting on behalf of any of the foregoing does not in fact intend to sell;

(C) Effecting the sale of a lot, parcel, or unit of property with the expectation that the purchaser will later discover such lot, parcel, or unit to be unsuitable and as a result be induced to purchase another lot, parcel, or unit of the same or a related property at a material increase in purchase price or other material change or alteration in the purchaser's interest or position. The burden of proof shall be on the developer, affiliate of the developer, dealer, salesman or other person acting on behalf of any of the foregoing, as the case may be, to show that such person exercised reasonable care in an attempt to ascertain the particular needs and circumstances of the purchaser and his intended use of the property;

(D) Exaggerating the nature of extent of future improvements existing or to be constructed within the development or the expected rate of completion of such improvements;

(E) Representing that credit for the purchase of the property is readily available, or that the terms of such available credit are favorable when in fact neither of such claims can be demonstrated to be true;

(F) Representing that the property is currently selling at a substantial discount from the established price, unless such established price has been in effect for a substantial period of time prior to the implementation of such discount;

(G) Representing that a future increase in the price of the property is imminent and that the offeree should purchase the property quickly in order to avoid such increase, when such increase has not yet been approved by the Division;

(H) Representing that an offeree will realize a gain through natural appreciation in the value of the property where such claim cannot be justified by the documentation of past increases in value which are of equivalent magnitude;

(I) Representing that the property can be resold when in fact there is no active secondary market in such property;

(J) Advising or permitting an offeree to execute a purchase contract or any other document in connection with the offering of the property in which all blank spaces are not filled in or inapplicable spaces are not clearly stricken prior to execution of such contract or other document by the offeree;

(K) Altering, deleting or adding any terms to the purchase contract or any other documents executed by the offeree without such offeree's written consent;

(L) Inducing or attempting to induce an offeree to waive the rescission rights set forth in Rule 21 without the prior written approval of the Division;

(M) Influencing any offeree to refrain from obtaining the assistance of an attorney at law or investment advisor in connection with a sale of the property;

(N) Representing that the property or the terms of the offer or sale are favorable by virtue of regulation of the offering by the Division, or representing that the Division has in any way endorsed the offering by qualifying the offering for sale in Ohio;

(O) Using, publishing or disseminating any advertising, sales or promotional material other than the offering circular most recently approved by the Division, advertising published and disseminated in accordance with Rule 8, telephone solicitation and material relating to inspection trips in accordance with Rule 10, and the items excepted from the definition of advertising contained in division (A) of Rule 1;

(P) Engaging in any act or practice deemed pursuant to Rule 10 to be a sale in a method or on terms which might defraud or deceive persons in this state;

(Q) Stating, representing or implying any fact which materially varies from any information presented in the offering circular;

(R) Employing any device, scheme or artifice to defraud;

(S) Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(T) Engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

RULE 12. MINIMUM INVESTMENT AND SUITABILITY

The sale of property shall be deemed by the Division to be grossly unfair unless the terms of such sales require an initial minimum cash investment by the purchaser in an amount not less than the greater of twenty per cent (20%) of the purchase price of the property or $1,000 and unless such sale is limited to persons who meet the following minimum financial suitability requirements, computed exclusive of home, home furnishings and automobiles:

(A) *Residential Property, Property Immediately Available for Use and Property Situated in a Mature Development.* For residential property, property which is immediately available for use, and property situated in a mature development, purchasers shall have a net worth of not less than $10,000 or an annual gross income of not less than $8,000. For purposes of this Rule, property which is "immediately available for use" means:

Property consisting of lots, or parcels that is offered as being suitable for home sites and which has on the date of filing of the application for qualification of the offering, basic improvements as such term is defined in division (D) of Rule 1.

(B) *Developmental Property.* For developmental property, purchasers shall have a net worth of not less than $20,000 or an annual gross income of not less than $15,000. For purposes of this Rule, "developmental property" means property other than that meeting the requirements of division (A) of this Rule which is primarily offered for future development and on which,

(1) the basic improvements as such term is defined in division (D) of Rule 1 will be completed within three (3) years following the date of filing of the application for qualification of the offering; and

(2) any improvements other than those basic improvements described in subdivision (1) of this paragraph (B) which are offered or advertised in connection with the sale of the property will be completed within five (5) years from the date of filing of the application for qualification of the offering.

(C) *Speculative Property.* For speculative property, purchasers shall have a net worth of not less than $50,000 or an annual gross income of not less than $25,000. For purposes of this Rule, "speculative property" includes all property other than that described in divisions (A) or (B) of this Rule. Where a purchaser acquires more than one non-adjacent lot, parcel or unit of property, such additional lots, parcels, or units shall be deemed to be "speculative property," regardless whether such property meets the requirements of divisions (A) or (B) of this Rule.

(D) *Discretion of Division.* The Division shall have the discretion to increase the minimum investment and suitability standards established by this Rule, or to decrease such standards, where, based upon the purpose for which property is offered and the purchasers' apparent or intended use of property, the Division finds such increase or decrease necessary or appropriate.

(E) *General Suitability Standard.* In addition to satisfying the net worth and annual gross income standards set forth in this Rule, additional factors must be taken into consideration by the developer, dealer, and

salesman in determining the suitability of particular property for a prospective purchaser including the purchaser's age, occupation, financial needs and investment objectives, his intended use of the property and his ownership of other real estate of a similar nature.

RULE 13. PRICING

(A) *Purchase Price.* The sale of property shall be deemed by the Division to be on grossly unfair terms unless the purchase price of each lot, parcel or unit of the property bears a reasonable relationship to its fair market value. Such value may be demonstrated by the submission to the Division of:

(1) An appraisal based upon the free market sales price of comparable properties prepared and certified by an independent real property appraiser;

(2) A statement of the cost of the property to the developer, including, without limitation, the cost of the land, interest and other costs relating to the acquisition and financing of the property, the cost of subdividing and developing the property, the cost of constructing improvements to the property, and the cost of constructing other improvements to the development serving the property which are properly apportioned to the property, certified by a duly authorized officer of the developer;

(3) Where applicable, an appraisal based upon the capitalization of income from the property to be received by purchasers, prepared and certified by an independent real property appraiser; or

(4) Other evidence substantiating a sufficient valuation of the property;

(B) *Presumption of Unreasonableness.* The purchase price of the property shall be presumed by the Division to be unreasonable if:

(1) In the case of property consisting of campsites, cabinsites, recreational vehicle parks, lots, parcels or acreage:

(a) The purchase price of any lot, unit or parcel of the property exceeds two hundred percent (200%) of the cost of the property to the developer properly apportioned to each such lot, unit or parcel. For purposes of this division (B) the "cost of the property to the developer" shall be deemed to include, without limitation, the cost of the land, interest and other costs relating to acquisition, and financing of the property and improvements on or servicing the property, the cost of subdividing and developing the property, the cost of constructing improvements to the property, and the cost of constructing other improvements to the development serving the property which are properly apportioned to the property. Such costs shall not include construction overhead which, in the opinion of the Division, is unreasonable, and shall not include contractor's profit unless the improvements are constructed by an independent contractor. Where appropriate, and where specifically identified as such, appraised value of the land and replacement costs of the improvements may be substituted for actual costs incurred by the developer in the past, and future costs may be estimated based upon inflation factors; provided, however, that such future costs may be required by the Division to be discounted to present value costs; or

(b) In the case of property consisting of houses, apartments, condominiums, cooperative apartments and other dwelling units to be constructed by or on behalf of the developer, the purchase price of such units exceeds one hundred twenty-five percent (125%) of the cost of the property to the developer as defined in subdivision (B)(1)(a) of this Rule apportioned to each such unit; or

(2) The purchase price is in excess of one hundred fifty percent (150%) of the average sale price of similar property of the development based upon a significant number of sales, as determined by the sale price of such property listed by the developer for resale pursuant to the requirements of Rule 14, where applicable, or as otherwise determined;

(C) *Price Increases.* After the Division has issued an order qualifying the offering of property for sale:

(1) It shall be a violation of such order and grounds for suspension of registration where such property is offered at a price greater than that specified in the application at the time such order qualifying the offering was issued unless the offering at such increased price has been subsequently approved by the Division;

(2) To obtain approval for an increase in the offering price, the offeror shall file with the Division an application for requalification of the offering and evidence of appreciation in value, increased costs or other changes in circumstances which would justify such price increase; provided, however, that information included in the previous application for qualification may be incorporated by reference to the extent that there has been no material change in such information. The requested price increase shall be deemed reasonable if the percentage increase over the current price will not exceed the percentage resulting from a multiplication of the percentage increase in the costs set forth in subdivision (A)(2) of this Rule subsequent to the date of original registration over original estimates of such costs by the developer by the percentage of the original offering price represented by the original estimates of such costs;

(3) If an application for an increase in offering price has been filed with the Division in accordance with subdivision (C)(2) of this Rule, and if the Division finds that appreciation in value, increased costs or other circumstances justify the requested price increase, and that the offering is not otherwise on grossly unfair terms, it shall allow the qualification of such property at such increased price.

RULE 14. RESALES: MARKET STABILITY

(A) *Creation of and Assistance in Resale Market.* Each developer of property, except as provided in paragraph (B) of this Rule, shall, in order to create and maintain a stable secondary market with respect to property which it has sold where no such secondary market otherwise exists, shall either:

(1) Act as a broker for the resale of such property and, in the performance of such function:

(a) List lots or parcels of persons who purchased property from such developer for resale at the request of such persons; provided, however, that the developer shall be entitled to a reasonable commission payable upon resale of the property in return for such service; and

(b) Take measures sufficient to inform the general public of the availability of lots or parcels listed with such developer for resale, including notification to persons offered property by the developer of the availability of such listed properties by inserting in the offering circular the secondary market information required by subdivision (K)(1) of Rule 6; or

(2) Offer to repurchase such property from persons who purchased the property from the developer upon request of such persons for a resale price of at least fifty percent (50%) of the purchase price stated in the contract executed by such purchasers for the original sale of the property at any time within five (5) years from the date upon which such purchasers executed the original contract to purchase the property;

(B) *Applicability of Resale Requirement.* Division (A) of this Rule shall not apply to residential property, property immediately available for use, as such term is defined in division (A) of Rule 12, property situated in a mature development, or other property for which a stable secondary market otherwise exists.

RULE 15. DEVELOPMENT PATTERN

(A) *Developmental Feasibility.* Except in the case of campsites, cabinsites, recreational vehicle parks, condominium developments of fewer than 200 units and mature developments, offerings of property shall be deemed by the Division to be grossly unfair if an orderly pattern of growth for the development is not feasible. An orderly pattern of growth for the development will be deemed not to be feasible where there is no likelihood that the property or the development can be converted into productive use in the near future without an inordinate expenditure of funds and there is no reasonable likelihood of potential growth for the development or for the area in which the property is located in the foreseeable future.

(B) *Feasibility Studies.* An application for qualification of property to which this Rule applies by the terms of division (A) above and which is located more than twenty (20) miles from a metropolitan area with a population of not less than 50,000 shall be accompanied by a feasibility study certified by an independent land planner. Such feasibility study shall include an opinion with supporting factual data and analysis concerning the feasibility of successful development of the property and the growth potential of the property and surrounding area, with particular reference to development and growth factors relevant to the intended use of the property. Development factors shall include, without limitation, rock and soil conditions, topography of the development, drainage, and availability of electricity, gas, water supply, and telephone service. Growth factors shall include, without limitation, the possibility of new industry, new or increased commercial activity, residential growth, and recreational development. The sale of such property shall be deemed by the Division to be grossly unfair where the feasibility study filed pursuant to this Rule discloses that there is little or no possibility that successful development will be feasible or that there will be growth in the area sufficient to enable the property to be used as intended or discloses that such development or growth, even if possible can be accomplished only by means of an inordinate expenditure of funds.

(C) *Scale of Development.* The offering will be deemed by the Division to be grossly unfair unless the contemplated size of the development bears a reasonable relationship to the expected rate of utilization of the property based upon population, employment and other relevant factors.

RULE 16. COMMON AREAS

Where the offering of any property involves the development of common areas and/or recreational improvements, such offering shall be deemed by the Division to be grossly unfair and shall not be approved by the Division unless the following requirements are met:

(A) *Title Retained by Developer.* Where the developer retains ownership of common areas and recreational improvements:

(1) The developer shall agree in the purchase contract to maintain such common areas and recreational improvements in a condition of reasonable safety, order, cleanliness and repair; and

(2) Fees charged for maintenance and operation of such common areas and recreational improvements shall not, without justification, be substantially greater than fees charged for maintenance and operations of other similar services in similar developments in the same geographical area;

(B) *Maintenance Bonds or Escrows.* The Division may, in its discretion, require the developer to post a surety bond or other adequate security in order to insure that there are sufficient funds for maintenance of such common areas and recreational improvements, or, in the alternative, require an escrow of the amounts equal to the

estimated costs of operation and maintenance of such common areas and recreational improvements during the period that less than sixty percent (60%) of the units of the property have been sold; provided, however, that no surety bond, security, or escrow shall be required where the property is developed by a seasoned developer or is mature property; and

(C) *Title Not Retained by Developer.* Where the developer will not retain ownership of common areas and recreational improvements, the developer shall provide for the creation of an owner's association or other governing body which shall maintain and control such common areas and recreational improvements, and, in addition to being subject to the requirements and limitations of division (A) of this Rule, such owner's association or governing body shall contain at least the following covenants, restrictions and provisions in the Articles of Incorporation, bylaws or other organizational documents, the substance of which must be satisfactory to the Division:

(1) Provisions for creation of such association and transfer of title or control of the property to such association;

(2) Provisions establishing procedures for making and collecting special assessments for capital improvements to the property or other purposes on the same basis as regular assessments. which contain suitable monetary limitations on special assessments or expenditures without prior approval of a majority of the owners affected;

(3) Provisions for the attachment of liens against individual lots or units of the property, and the foreclosure thereof, in the event of failure to pay duly levied assessments;

(4) Provisions, if appropriate, for annexation of additional land to the property or the development, with suitable substantive and procedural safeguards against increased per capita assessments due to such annexation;

(5) Provisions for fines or suspension of the use privileges and voting rights of members who breach the restrictions, bylaws or other governing documents, which provide hearings for such members;

(6) Provisions creating a board of directors or other governing body to be elected by vote of members of such association at an annual or special meeting to be held not later than six (6) months after the sale of the first lot or unit of the property:

(7) Provisions establishing procedures for electing and removing members of the board of directors or other governing body, including provisions for concurrent terms of office and cumulative voting in the election and removal of such members;

(8) Provisions requiring such association to maintain the property and operate the property, where appropriate;

(9) Provisions enumerating the powers of the board of directors or governing body, which shall include at least the following: (i) enforcement of applicable restrictions of the bylaws and other governing documents; (ii) payment of taxes and assessments which are or may become a lien on such common areas or improvements or any part thereof; (iii) delegation of powers to committees, officers, or employees; (iv) power to contract on behalf of the association for materials, services, and the maintenance and operation of common areas and recreational improvements, provided that such contracts shall be limited to a period of one (1) year where such contracts have not been approved by a majority of members of the association, except in regard to property where the terms of such contracts have been approved by the Federal Housing Administration or Veterans Administration; (v) entry upon any privately owned lot or unit where entry is necessary in connection with the construction, maintenance or repair of the property for the benefit of the owners in common;

(10) Provisions for allocation of voting rights to members of such owners' association on the basis of lot or unit ownership or on other reasonable and equitable bases;

(11) Provisions requiring preparation of an annual operating statement reflecting income and expenditures of such association for each fiscal year of such association, with provision for distribution of a copy of such report to each member within ninety (90) days after the end of such fiscal year;

(12) Provisions for annual and special meetings of members of such owners' association, including requirements for reasonable written notice to members no less than ten (10) days prior to an annual or special meeting of the association, specifying the place, date and hour, and in the case of a special meeting, the nature of the business to be undertaken;

(13) A requirement that the quorum for meetings of members of the association be fifty percent (50%);

(14) Provisions for the voting of proxies at association meetings;

(15) A requirement that at least fifty-one percent (51%) of all owners consent to the amendment of restrictions, by-laws or rules regarding the management, operation, and control of such common areas, recreational improvements and the association;

(16) A prohibition or restriction upon the severability of commonly owned interests through partition or otherwise; and

(17) Provisions creating procedures to be followed in the event of destruction or extensive damage of such common areas and recreational improvements including provisions with respect to use and disposition of insurance proceeds payable to the association on account of such destruction or damage.

RULE 17. GOVERNMENTAL REQUIREMENTS

(A) *Registration under Federal and State Law.* The sale of the property shall be deemed by the Division to be on grossly unfair terms unless such offering has been registered, where required, with the federal government, including registration with the Department of Housing and Urban Development under the Interstate Land Sales Act, 15 U.S.C. sections 1701 *et.seq.*, and with the state or any subdivision thereof in which the property is located;

(B) *Compliance with Federal, State and Local Law.* The sale of the property shall be deemed by the Division to be on grossly unfair terms if all licenses, permits, inspections and approvals relating to development of the property and the construction of improvements which are required by the laws, ordinances, rules and regulations of federal, state, county and local governmental authorities appropriate to the current stage of development of the property have not been obtained or if there is reason to believe that such licenses, permits, inspections, and approvals applicable to later stages promised or intended by the developer are not capable of being obtained. By way of illustration and not limitation, the offering will be deemed grossly unfair unless, where applicable, the following are obtained at the time indicated below:

(1) Prior to the filing with the Division of the application for qualification of the offering, regardless of the stage of development of the property or construction of the improvements:

(a) In the case of a subdivision, planned unit development or other project in which a recorded plat is required, the plat by which lots, parcels or units are offered for sale has been recorded in the plat records of the county or other political subdivision where the property is located; and

(b) The zoning of the property corresponds with, or does not prevent, the use for which the property is offered;

(2) Prior to the commencement of construction of the improvements to be constructed on the property by or on behalf of the owner or developer:

(a) Sewer tap permits or the approval of the local authority for the installation of septic tanks;

(b) Water tap permits or any approval of the local authority required for the drilling of wells;

(c) Permits or approvals regarding the construction of storm sewers and drains;

(d) Building, electrical and plumbing permits;

(e) Permits to install elevators and heating, ventilating and air conditioning equipment; and

(f) Permits or approvals of the local governing body for the construction or installation of advertising signs; and

(3) Prior to the completion of construction of improvements and commencement of occupancy by residents or operations by the developer:

(a) Occupancy permits for apartment projects, cooperative apartments or condominiums;

(b) Licenses or permits pertaining to the operation of a mobile home park or campgrounds;

(c) Licenses and health and fire inspections relating to the operation of a resort or restaurant; and

(d) Liquor licenses for establishments serving intoxicating beverages.

RULE 18. TITLE CONSIDERATIONS

(A) *Retention of Mineral Rights.* Where the developer or any person other than the purchaser retains mineral rights in the property, the sale of the property shall be deemed by the Division to be on grossly unfair terms;

(B) *Blanket Encumbrances.* Where property is sold subject to a blanket encumbrance, the Division shall deem the sale to be on grossly unfair terms unless one or more of the following conditions are met:

(1) The blanket encumbrance provides for release of the property from such encumbrance upon payment of a specific sum which sum does not exceed the lesser of the unpaid portion of the purchase price of the property or an amount not to exceed 150% of the pro-rated indebtedness secured by the encumbrance and the purchase contract provides that the purchaser may pay such sum to the holder of the blanket encumbrance and reduce payment to the seller accordingly;

(2) All sums paid by the purchaser or a portion thereof which the Division determines to be sufficient to protect the interests of the purchaser are deposited in escrow with an independent third party acceptable to the Division to be returned to the purchaser if a valid release of the property is not obtained from such blanket encumbrance or, in the case of an installment land contract, to be returned to the vendee if the vendor defaults. If it is determined that the purchaser, by reason of default or otherwise, is not entitled to a return of all or a portion of such sums, then such sums to which he is not entitled may be released to the developer or to such person as the developer directs; or

(3) A bond, cash, certified check, or an irrevocable letter of credit or other financial commitment is deposited in trust for the benefit of purchasers of the property in such amounts and subject to such terms as may be approved by the Division, and each bond or the agreement governing the disposition of such cash, certified check, letter of credit or other financial commitment provides for the return of all sums paid by any purchaser of the property if a valid release from such blanket encumbrance is not obtained. If it is determined that the purchaser, by

reason of default or otherwise, is not entitled to a return of all or a portion of such sums, then such bond, cash, certified check, letter of credit or other financial commitment may be released to the developer upon approval of the Division except to the extent of any amounts to which the purchaser may nevertheless be entitled. Any bond, letter of credit, or other financial commitment shall be issued by a responsible surety company or a financial institution authorized to do business in this state or which has given its irrevocable consent to be sued in this state;

(C) *Blanket Encumbrance Defined.* For purposes of paragraph (B) of this Rule, "blanket encumbrance" means a mortgage, deed, mechanic's lien or any other lien or encumbrance, securing the payment of money and affecting all or a portion of the property or an agreement affecting all or a portion of the property by which the owner or developer holds an interest in such portion of an option, contract to sell, or trust agreement. Such term shall not include any lien for tests and assessments levied by any public or governmental authority which are not yet due and payable at the time that the property is purchased.

RULE 19. FINANCIAL RESPONSIBILITY

(A) *Rescission Fund.* With respect to all funds paid by purchasers of property, except where such property is offered by a seasoned developer, such funds shall, until the unqualified rights of rescission set forth in subdivisions (B)(1)(a) and (b) of Rule 21 have lapsed, be deposited in escrow with a bank possessing trust powers or an independent third party acceptable to the Division, within ten (10) days following each payment, to be returned to the purchaser upon exercise of such unqualified rights of rescission or, if such rescission rights are not exercised, to be transferred to any escrow established in accordance with subdivisions (B)(1) or (2) of this Rule, or delivered to the developer;

(B) *Assurance of Completion of Improvements.* Where all improvements on the property and all improvements in the development and serving the property which are represented in the offering circular as promised or intended to be constructed by or on behalf of the owner or developer are not completed at the time that the application is filed with the Division to qualify the offering of the property, except as provided in division (C) of this Rule, the Division shall deem the offering to be on grossly unfair terms unless arrangements have been made which give adequate assurance that such improvements will be completed. Arrangements giving such adequate assurance will be deemed to have been made if one or more of the following requirements have been satisfied:

(1) A sum which is in the opinion of the Division sufficient to pay the amount which would be due to Ohio purchasers in rescission upon failure to complete such promised or intended improvements is deposited in escrow with a bank possessing trust powers in this state or other independent third party upon such terms and conditions as the Division may reasonably require;

(2) An amount sufficient in the opinion of the Division to pay the cost of completion of such improvements shall be deposited in escrow with a bank possessing trust powers or an independent third party acceptable to the Division under a written agreement providing for disbursements from such escrow as construction of such improvements progresses and subject to such terms and conditions as the Division may require;

(3) A performance bond, irrevocable letter of credit or other financial commitment is obtained in an amount sufficient, in the opinion of the Division, to pay the costs of completion of such improvements and upon such terms and conditions as the Division may reasonably require. Any such bond, letter of credit, or other financial commitment shall be issued by a responsible surety company or financial institution authorized to do business in this state or which has given its irrevocable consent to be sued in this state; or

(4) Compliance by the developer with an alternative plan designed to assure the completion of said improvements which is acceptable to the Division.

(C) *Exception for Seasoned Developers and Mature Developments.* The requirements of division (B) of this Rule shall not be applied to offerings of the following property:

(1) Property offered by a seasoned developer, where such developer has assumed responsibility for the construction of such improvements and liability for amounts due to purchasers upon exercise of their rescission rights for failure to complete such improvements, and

(2) Property situated in a mature development and other property for which such improvements, at the time of qualification of the offering, are substantially completed;

(D) *Financial Feasibility.* An offering of property shall be deemed by the Division to be grossly unfair if the property or the development as offered is not financially feasible. All applications for qualification of property shall be accompanied by a financial plan including a cash flow projection of the development and an analysis thereof certified by a duly authorized officer of the developer. Factors which will be considered by the Division in determining the financial feasibility of the project shall include, without limitation, the financial condition of the developer, such cash flow projection and analysis, availability and terms of financing of land and improvements, and the impact on such financial plan of compliance with performance bonds, escrow agreements and other requirements of the Division.

RULE 20. REPORTING

(A) *Quarterly Reports.* All developers of property qualified by the Division will be required to file with the

Division quarterly reports, in the form and accompanied by exhibits required by the Division, within forty-five (45) days after the end of each fiscal quarter of such developer following the effective date of the order qualifying the offering. In addition to such other exhibits and other information as may be required by the Division, each quarterly report shall be accompanied by a detailed financial statement consisting of at least a balance sheet and income statement of the developer and any other person who is liable to purchasers for completion of improvements to the property and the development. Such financial statement of the developer shall be prepared as of the end of the most recent fiscal quarter of such developer. The financial statement of such other person liable to purchasers shall be prepared as of the end of the most recent fiscal quarter of such person. Such financial statement shall be accompanied by an unqualified opinion of an independent certified public accountant or certified by a duly authorized officers of the developer or such other person. If the initial qualification of an offering becomes effective during the first half of a fiscal quarter of the developer or such other person liable to purchasers, financial statements in the form provided in the quarterly report shall be filed with the Division within forty-five (45) days after the end of the preceding fiscal quarter.

(B) *Annual Reports.* In the case of offerings qualified pursuant to Division order specifying a period of effectiveness exceeding one (1) year, registrants shall file with the Division an annual report in the form and accompanied by exhibits required by the Division within ninety (90) days after the end of the fourth fiscal quarter of the registrant following the effective date of qualification. Such annual report shall be filed in lieu of the quarterly report for each such fourth fiscal quarter of the registrant. In addition to such other exhibits and other information as may be required by the Division, each annual report shall be accompanied by a financial statement in the form specified in division (A) of this Rule, except that such financial statement shall be required to be accompanied by an unqualified opinion of an independent certified public accountant and no alternative shall be accepted by the Division.

RULE 21. REMEDIES

(A) *Remedies of Purchasers.* The developer shall be responsible for any violations of Sections 1707.01 through 1707.45 of the Ohio Revised Code or of Rules 1 through 24, inclusive, except violations of Rules which do not materially affect the interests of offerees and purchasers, by any person or persons offering or selling property in this state on its behalf, including dealers and salesmen. Any such violation shall be grounds for suspension or revocation of the developer's registration pursuant to Section 1707.13 of the Ohio Revised Code. In addition, where circumstances warrant, the Division may initiate injunctive proceedings pursuant to Section 1707.26 of the Ohio Revised Code to restrain such violations, incorporating such ancillary relief as may be appropriate under the circumstances. In addition to civil liability in equity or at common law arising from failure to satisfy other contractual obligations, the developer shall be specifically liable for violation of those provisions required to be included in the purchase contract by operation of Rule 7, including the items enumerated in Division (B) of this Rule, in order that the sale of property in this state be deemed to be not on grossly unfair terms.

(B) *Rescission Rights of Purchasers.* A purchaser of property shall have the right to rescind such purchase, obtain a return of any funds and other consideration paid by him, and terminate all obligations and liabilities of the parties under the purchase contract, in the following circumstances:

(1) All purchasers of property shall have, regardless of any act or omission by or on behalf of the developer, the following rights of recission:

(a) An unconditional right of rescission exercisable by notice to the salesmen, dealer, or developer within ten (10) days after the date of execution of the purchase contract; provided, however, that in the event the purchase contract is executed by the purchaser while on an inspection trip to view the property or otherwise outside of this state, such right of rescission shall be exercisable within ten (10) days after the date on which the purchaser plans to return to his residence as indicated in the space provided therefor in the purchase contract pursuant to subdivision (B)(13) of Rule 7; and

(b) In the event that the purchaser has not performed an on-site inspection of the specific property which he purchased prior to execution of the purchase contract, such purchaser shall have an unconditional right of rescission upon completion of such inspection, exercisable by written notice to the developer, dealer or salesmen within ten (10) days after the date of the purchaser's return to his residence; provided, however, that such inspection must be made within six months following the date of the execution of the purchase contract or, if the specific property is not accessible for inspection at such time, within six months after such property becomes accessible.

(c) For purposes of this subdivision (B)(1), notice to the developer shall be deemed to have been given upon deposit of such notice in the United States Mail, postage prepaid, and addressed to the developer, dealer, salesman or any other person who, acting on behalf of the developer, personally solicited the sale.

(2) Purchasers shall further have a right of rescission under the following circumstances:

(a) Use or dissemination of any advertising, sales or promotional material in connection with the offer or sale of the property other than the most recent offering circular, advertising used, published and disseminated in accordance with the requirements of Rule 8, telephone solicitation and material relating to inspection trips in accordance with Rule 10, and the items excepted from the definition of advertising contained in division (A) of

Rule 1;

(b) Failure to deliver a copy of the most recent offering circular to such purchaser at least three (3) days prior to the date of any offer or any act which would constitute a sale of the property, except pursuant to advertising published and disseminated in accordance with Rule 8, telephone solicitation in accordance with Rule 10, the offering circular itself, and the items excepted from the definition of advertising contained in division (A) of Rule 1;

(c) Failure to read verbatim and explain to the purchaser prior to the execution of the purchase contract the summary of risk factors and special considerations required to be contained in the offering circular. The absence of the signatures of both the salesman and the purchaser on the statement contained on the last page of the offering circular to the effect that such summary of risk factors and special considerations were read and explained to the purchaser shall constitute a prima facie showing that such reading and explanation was not performed;

(d) The making of any untrue statement of a material fact or any omission to state a material fact necessary in order to render the statements made, in the light of the circumstances, not misleading, contained in the offering circular or made by the developer, affiliate of the developer, dealer, salesman, or any person acting on behalf of any of the foregoing;

(e) Engaging, in connection with the offering or sale of property, in any act or practice which the Division has defined in Rule 11 to be unfair, fraudulent or deceptive;

(f) Failure to fulfill, in accordance with its terms, any material covenant or condition of the purchase contract, including covenants of the offering circular materially affecting the interests of purchasers; or

(g) Any violation by the developer, any affiliate of the developer, dealer, salesman, or any person acting on behalf of any of the foregoing, of Sections 1707.01 through 1707.45, inclusive, of the Ohio Revised Code or any of the terms of the Division order qualifying such property for sale in this state, which violation substantially prejudices the interests of purchasers.

(C) *Representation of Purchasers.* Where the Division deems it necessary to do so due to the risks, uncertainties or speculative nature of the offering, the Division may require the developer to appoint a representative with the power to hire an attorney at law, licensed to practice in the state where the property is located, in this state, or in such jurisdiction where venue would otherwise be proper for any action set forth in this division (C), to represent purchasers of property as a class, if so requested by a member of such class, at the developer's expense, in the event of receivership, bankruptcy or any other insolvency proceeding brought by or against the developer, or in the event of any material violation of the terms of the purchase contract or of Sections 1707.01 through 1707.45 of the Ohio Revised Code relating to a substantial number or class of such purchasers.

RULE 22. COMPUTATION OF TIME

Any period of time prescribed by these Rules or in any order of the Division issued pursuant to these Rules shall be computed by excluding the first and including the last day of any such prescribed period. When the last day of such period falls on a Saturday, Sunday or any day made a legal holiday by the laws of this state or of the United States, such day shall be omitted from such computation and the last day of such prescribed period of time shall be deemed to be the next succeeding day other than a Saturday, Sunday or legal holiday.

RULE 23. SEVERABILITY

In the event that any Rule or any portion thereof is declared by any court to be invalid, the remainder of these Rules not found to be invalid shall remain in full force and effect.

RULE 24. EFFECTIVE DATE

These Rules shall take effect and remain in full force on and after , 1975.

Ann H. Casto

PROPOSED BROKER-DEALER RULES

The following proposed Broker-Dealer Rules are published at this time for commentary only and not for promulgation as final rules pursuant to the Administrative Procedures Act (Chapter 119, Ohio Revised Code). The Division encourages interested persons to provide comments and criticisms concerning the viability and practicality of these proposed Rules.

The Division has previously promulgated and currently maintains in full force and effect Rule COs-1-07 (formerly designated Rules DS-1 - DS-19). For discussion of this current Rule *see* "Policy Developments – Interpretation of DS Series Regulations" Volume II, No. 2, P. 3, *Ohio Securities Bulletin.* The following proposed Rules are intended to supersede Rule COs-1-07 which will simultaneously be repealed.

Unlike present Rule COs-1-07, these proposed Rules are divided into five specific categories. Proposed Rule 1 contains definitions to be used throughout these Rules. Proposed Rule 2 deals with activities of broker-dealers which are deemed to involve fraud and misrepresentation. The thirteen sub-paragraphs [Rule 2(b)(1-13)] are derived primarily from the rules of the Securities and Exchange Commission (S.E.C.) promulgated under Section 15(c)(1) and 15(c)(2) of the Exchange Act of 1934 (namely 17 CFR 240.15c1-1 through 17 CFR 15c2-11). Sub-paragraph 2(b)(13) generally requires compliance

with the registration requirements of Section 15(a) of the Exchange Act of 1934. This Rule applies to all broker-dealers including broker-dealers licensed under Section 1707.331, Ohio Revised Code to deal in foreign real estate. Special record-keeping is required under this Rule for discretionary accounts.

Proposed Rule 3 sets forth six specific sub-paragraphs delineating just and equitable principles of trade for broker-dealers who are not members of a National Securities Association or a national securities exchange registered with the S.E.C. Again these provisions are derived from rules of the S.E.C. promulgated under Section 15(b)(10) of the Exchange Act of 1934 (namely 17 CFR 240.15b10-1 through 17 CFR240.15b10-10). This proposed Rule also includes material from the National Association of Securities Dealers' Interpretations of Rules of Fair Practice (see S.E.C. Release 34-9420 for a comparison of the NASD Interpretations and S.E.C. Rules) and the rules of the California Department of Corporations. The objective of this proposed Rule is to prohibit certain trade practices which have been determined by the Division to be contrary to the legislative purposes of the Ohio Securities Act (Chapter 1707, Ohio Revised Code). There is a record-keeping provision in this Rule for certain items by operation of Rule 5 which would otherwise not apply to all non-member broker-dealers.

Proposed Rule 4 deals with financial responsibility of non-issuer broker-dealers. Terms within the Rule are defined in accordance with S.E.C. Rule 15c3-1 (17 CFR 240.15c3-1) such as the definitions of "net capital," "aggregate indebtedness" and "adequate subordination agreement." Segregation of customer's funds and securities has been continued from current Rule COs-1-07. Minimum net capital has been raised to $50,000 with certain exceptions. Included in the Rule is a sub-paragraph derived from Rule 15c3-2 (17 CFR 240.15c3-2) dealing with a broker-dealer's use of a customer's free credit balance. The Rule also contains a mandatory surety bond requirement of $100,000 to cover claims resulting from violation of the provisions of Chapter 1707, Ohio Revised Code.

Proposed Rule 5 sets forth specific record-keeping, reporting and preservation of records requirements for broker-dealers who are not issuers in addition to those contained in Rules 2 and 3. These requirements deal generally with records and reporting of financial condition and customer transactions and accounts, preservation of records, qualification of accounts and applications of salesmen for employment. This Rule was primarily derived from rules of the S.E.C. and N.A.S.D.

Proposed Rule 6 deals with licensing requirements, in addition to those set forth in the Ohio Securities Act (Chapter 1707, Ohio Revised Code). This proposed Rule will be published for commentary in a later issue of the *Ohio Securities Bulletin.*

The Division contemplates that the impact of these proposed Rules will be primarily on broker-dealers not currently registered with the S.E.C. and those who are currently registered but are not N.A.S.D. members. These Rules will be promulgated through the express rule-making power contained in Section 1707.19, Ohio Revised Code. They will be used in both licensing activities under Sections 17071.15, 1707.16 and 1707.331 as well as in administrative and civil actions under Section 1707.19, Ohio Revised Code. However, pursuant to Section 1707.40, Ohio Revised Code, the Division believes that these create no civil liabilities under Chapter 1707, Ohio Revised Code.

Alan P. Baden

RULE 1. DEFINITIONS

(A) *Definitions.* as used in Rules 1 through 6, inclusive:

(1) The term "Division" means the Division of Securities of the Department of Commerce, State of Ohio, which is the agency of the Department of Commerce created by the Director of Commerce to exercise the power, authority and responsibility of Chapter 1707, Ohio Revised Code.

(2) The term "Broker-dealer" means a broker-dealer licensed under Ohio Revised Code Sections 1707.15 or 1707.331, and in addition, unless the context indicates otherwise, a salesman licensed under Sections 1707.16 or 1707.331, Ohio Revised Code, and all employees and salesmen of such broker-dealer. "Nonmember broker-dealer" means a broker-dealer who is not a member of the National Association of Securities Dealers and not a member of a national securities exchange registered with the Securities and Exchange Commission. "Non-issuer broker-dealer" means a broker-dealer who is not the issuer of securities as defined in Section 1707.01(G), Ohio Revised Code.

(3) The term "customer" shall not include a broker-dealer.

(4) The term "the completion of the transaction" means:

(a) In the case of a customer who purchases a security through or from a broker-dealer, except as provided in paragraph (b), the time when such customer pays the broker-dealer any part of the purchase price, or, if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(b) In the case of a customer who purchases a security through or from a broker-dealer and who makes a payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(c) In the case of a customer who sells a security

through or to a broker-dealer, except as provided in paragraph (d), if the security is not in the custody of the broker-dealer at the time of the sale, the time when the security is delivered to the broker-dealer, and if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer;

(d) In the case of a customer who sells a security through or to a broker-dealer and who delivers such security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

RULE 2. FRAUDULENT, EVASIVE, DECEPTIVE, AND GROSSLY UNFAIR PRACTICES AND DEVICES BY BROKER-DEALERS.

(A) *Prohibition.* Fraudulent, evasive, deceptive, or grossly unfair practices or devices in the purchase or sale of securities are hereby prohibited in accordance with the provisions of this Rule.

(B) *Fraud and Misrepresentation.* The following shall constitute a "fraudulent, evasive, deceptive, or grossly unfair practice or device in the purchase or sale of securities," as those terms are used in Section 1707.19, Ohio Revised Code:

(1) *Fraud and Misrepresentation.*

(a) Any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Ib) Any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading.

(2) *Confirmation of Transactions.* Any act of any broker-dealer designed to effect with or for the account of a customer any transaction in any security unless such broker-dealer, at or before the completion of such transaction, gives or sends to such customer written notification disclosing:

(a) Whether he is acting as a broker for such customer, as a dealer for his own account, as a broker for some other person, or as a broker for both such customer and some other person; and

(b) In any case in which he is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by him in connection with the transaction.

(3) *Disclosure of Control of Issuer.* Any act of any broker-dealer controlled by, controlling, or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, such security unless such broker-dealer, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control, and unless such disclosure, if not made in writing, is supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(4) *Disclosure of Interest in Distribution.* Any act of any broker-dealer designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security in the primary or secondary distribution of which such broker-dealer is participating or is otherwise financially interested unless such broker-dealer, at or before the completion of each such transaction, notifies such customer of the existence of such participation or interest.

(5) *Churning.* Any act of any broker-dealer designed to effect with or for any customer's account with respect to which such broker-dealer is vested with any discretionary power, or with respect to which he is able by reason of the customer's trust and confidence to influence the volume and frequency of the trades, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

(6) *Record of Transactions in Discretionary Accounts.* Any act of any broker-dealer designed to effect with or for any customer's account in respect to which such broker-dealer is vested with any discretionary power any transaction of purchase or sale unless immediately after effecting such transaction such broker-dealer makes a record of such transaction, which record includes the name of such customer, the name, amount and price of the security, and the date and time when such transaction took place.

(7) *Control of the Market.* Any representation made to a customer by a broker-dealer that any security is being offered to such customer "at the market" or at a price related to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated, or by any person controlled by, controlling, or under common control with him. A written notification to a customer at or prior to the completion of the transaction that a broker-dealer making the principal market in a security may be in control of the market, by virtue of the fact that he is the

only broker-dealer regularly appearing in the sheets or by reason of the volume of his transactions in relation to the total volume of trading by all broker-dealers, shall be sufficient to negate any representation which might otherwise be implied that he is selling "at the market."

(8) *Use of ProForma Balance Sheets.* The use of financial statements purporting to give effect to the receipt and application of any part of the proceeds from the sale or exchange of securities, unless the assumptions upon which each such financial statement is based are clearly set forth as part of the caption to each such statement in type at least as large as that used generally in the body of the statement.

(9) *Hypothecation of Customers' Securities.*

(a) The direct or indirect hypothecation by a broker-dealer, or his arranging for or permitting, directly or indirectly the continued hypothecation of any securities carried for the account any customer under cir cumstances:

(1) that will permit the commingling of securities carried for the account of any such customer with securities carried for the account of any such customer, without first obtaining the written consent of each such customer to such hypothecation;

(2) that will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such broker-dealer under a lien for a loan made to such broker-dealer; or

(3) that will permit securities carried for the account of customers to be hypothecated, or subjected to any lien or liens or claim or claims of the pledgee or pledgees, for a sum which exceeds the aggregate indebtedness of all customers in respect of securities carried for their accounts; except that this clause is not violated by reason of an excess arising on any day through the reduction of the aggregate indebtedness of customers on such day, provided that funds or securities in an amount sufficient to eliminate such excess are paid or placed in transfer to pledgees for the purpose of reducing the sum of the liens or claims to which securities carried for the account of customers are subjected as promptly as practicable after such reduction occurs, but before the lapse of one-half hour after the commencement of banking hours on the next banking day at the place where the largest principal amount of loans of such broker-dealer are payable and, in any event, before such broker-dealer on such day has obtained or increased any bank loan collateralized by securities carried for the account of customers.

(b) For the purpose of this sub-paragraph (9).

(1) the term "customer" does not include any general or special partner or any director or officer of such broker-dealer, or any participant, as such, in any joint group or syndicate account with such broker-dealer or with any partner, officer or director thereof;

(2) the term "securities carried for the account of any customer" shall mean:

(a) securities received by or on behalf of such broker-dealer for the account of any customer;

(b) securities sold and appropriate by such broker-dealer to a customer, except that if such securities were subject to a lien when appropriated to a customer they are not "securities carried for the account of any customer" pending their release from such lien as promptly as practicable;

(c) securities sold, but not appropriated, by such broker-dealer to a customer who has made any payment therefor, to the extent that such broker-dealer owns and has received delivery of securities of like kind, except that if such securities were subject to a lien when such payment was made they are not "securities carried for the account of any customer" pending their release from such lien as promptly as practicable;

(3) "aggregate indebtedness" shall not be reduced by reason of uncollected items; and, in computing aggregate indebtedness, related guarantee and guarantor accounts shall be treated as a single account and considered on a consolidated basis, and balances in accounts carrying both long and short positions shall be adjusted by treating the market value of the securities required to cover such short positions as though such market value were a debit; and

(4) in computing the sum of the liens of claims to which securities carried for the account of customers of a broker-dealer are subject, any rehypothecation of such securities by another broker-dealer shall be disregarded.

(c) The provisions of sub-paragraph (a)(1) hereof shall not apply to any hypothecation of securities carried for the account of a customer in a special cash account within the meaning of Section 4(c) of Regulation T of the Board of Governors of the Federal Reserve System, provided that at or before the completion of the transaction of purchase of such securities for, or of sale of such securities to such customer, written notice is given or sent to such customer disclosing that such securities are or may be hypothecated under circumstances which will permit the commingling thereof with securities carried for the account of other customers.

(d) The provisions of sub-paragraphs (a)(2), (a)(3), and (f) hereof shall not apply to any lien or claim of the clearing corporation, or similar department or association, of a national securities exchange, or a registered national securities association for a loan made and to be repaid on the same calendar day, which is incidental to the clearing of transactions in securities or loans through such corporation, department or association; provided, however, that for the purpose of sub-paragraph (a)(3) hereof, "aggregate indebtedness of all customers in respect of securities carried for their accounts" shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this sub-paragraph.

(e) The provisions of sub-paragraph (a)(2) hereof shall not prevent such broker-dealer from permitting securities not carried for the account of a customer to be subjected (a) to a lien for a loan made and (b) to be repaid on the same calendar day. For the purpose of this exemption, a loan is "made against securities carried for the account of customers" if only securities carried for the account of customers are used to obtain or to increase such loan or as substitute for other securities carried for the account of customers.

(f) No broker-dealer shall hypothecate any security carried for the account of a customer unless, at or prior to the time of each such hypothecation, he gives written notice to the pledgee that the security pledged is carried for the account of a customer and that such hypothecation does not contravene any provision of this Section, except that in the case of an omnibus account the broker-dealer for whom such account is carried may furnish a signed statement to the person carrying such account that all securities carried for the account of his customers and that the hypothecation thereof by such broker-dealer will not contravene any provision of this Rule. The provisions of this sub-paragraph shall not apply to any hypothecation of securities under any lien or claim of a pledgee securing a loan made and to be repaid on the same calendar day.

(g) The fact that securities carried for the accounts of customers and securities carried for the accounts of others are represented by one or more certificates in the custody of a clearing corporation or other subsidiary organization of either a national securities exchange or of a registered national securities association, or of a custodian bank, in accordance with a system for the central handling of securities established by a national securities exchange or a registered national securities association, pursuant to which system the hypothecation of such securities is effected by bookkeeping entries without physical delivery of such securities, shall not, in and of itself, result in a commingling of securities prohibited by sub-paragraph (a)(1) or (a)(2) hereof, whenever a participating member broker-dealer hypothecates securities in accordance with such system; provided that (1) any custodian of any securities held by or for such system has entered into an agreement approved by the Securities and Exchange Commission that it will not for any reason, including the assertion of any claim, right or lien of any kind, refuse or refrain from promptly delivering any such securities (other than securities then hypothecated in accordance with such system) to such clearing corporation or other subsidiary organization or as directed by it, except that nothing in such agreement shall require the custodian to deliver any securities in contravention of any notice of levy, seizure or similar notice, or order, or judgment, issued or directed by a governmental agency or court, or officer thereof, having jurisdiction over such custodian, which on its face affects such securities; and (2) such system has safeguards in the handling, transfer, and delivery of securities and provisions for fidelity bond coverage of the employees and agents of the clearing corporation or other subsidiary organization and for periodic examinations by independent public accountants, approved by the Securities and Exchange Commission.

(10) *Transmission or Maintenance of Payments Received in Connection with Underwritings.* The participation by any broker-dealer in any distribution of securities, other than a firm commitment underwriting, by accepting any part of the sale price of any security being distributed unless:

(a) the money or other consideration received is promptly transmitted to the persons entitled thereto; or

(b) if the distribution is being made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs, (1) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto, or (2) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

(11) *Disclosure and Other Requirement When Extending or Arranging Credit in Certain Transactions.*

(a) The offering or selling by any broker-dealer of any security to, or the attempting to induce the purchase of any security by, any person, in connection with which such broker-dealer, directly or indirectly, offers to extend any credit to or to arrange any loan for such person, or extends any credit to or participates in arranging any loan for such person, unless such broker-dealer, before any purchase, loan or other related element of the transaction is entered into:

(1) delivers to such person a written statement setting forth the exact nature and extent of (i) such person's obligations under the particular loan arrangement, including, among other things, the specific charges which such person will incur under such loan in each period during which the loan may continue or be extended, (ii) the risks and disadvantages which such person will incur in the entire transaction, including the loan arrangement, and (iii) all commissions, discounts, and other remuneration received and to be received, in connection with the entire transaction including the loan arrangement by the broker-dealer or salesman, by any person controlling, controlled by, or under common control with the broker-dealer or salesman, and by any other person participating in the transaction; and

(2) obtains from such person information concerning his financial situation and needs, reasonably determines that

the entire transaction, including the loan arrangement, is suitable for such person, and delivers to such person a written statement setting forth the basis upon which the broker-dealer or salesman made such determination.

(b) This sub-paragraph shall not apply to any credit extended or any loan arranged by any broker-dealer only for the purpose of purchasing or carrying the security offered or sold in compliance with the requirements of Regulation T, Retulation U or Regulation G (issued by the Board of Governors of the Federal Reserve System).

(12) *Delivery of Prospectus or Offering Circular.* The failure of any broker-dealer to deliver a prospectus in accordance with the requirements of the Securities Act of 1933 and any order of the Division concerning delivery of a prospectus or offering circular pursuant to Chapter 1707, Ohio Revised Code.

(13) *Federal Registration Requirement.* Any business conducted by a broker-dealer in violation of registration requirements for broker-dealers [Section 15(a) of the Exchange Act of 1934] of the Federal Securities laws.

RULE 3. JUST AND EQUITABLE PRINCIPLES OF TRADE FOR BROKER-DEALERS.

(A) *Definitions.* For purposes of this Rule, in addition to the applicability of the definitions contained in Rule 1, the following definitions shall apply except where a particular paragraph of this Rule contains a separate definition of the same term for purposes of that paragraph:

(1) the term "salesman" and "salesmen" means any partner, officer, director, branch manager, or salesman, of a nonmember broker-dealer (or any person occupying a similar status or performing similar functions), or any natural person directly or indirectly controlling or controlled by such nonmember broker-dealer, and shall include any employee of such nonmember broker-dealer (other than employees whose functions are clerical or ministerial).

(2) the term "complaint" means any statement by a customer, or a person acting on a customer's behalf, pertaining to a customer's grievance involving the securities activities of the nonmember broker-dealer or any of his salesmen.

(B) *Prohibition.* Fraudulent, evasive, deceptive, or grossly unfair practices or devices in the purchase or sale of securities are hereby prohibited in accordance with the provisions of this Rule.

(C) *General Business Conduct.* It shall constitute a "fraudulent, evasive, deceptive, or grossly unfair practice or device in the purchase or sale of securities," as used in Section 1707.19, Ohio Revised Code, for any nonmember broker-dealer and salesman to fail to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business, or to violate any of the provisions of this Rule.

(D) *Suitability of Recommendations.* Every nonmember broker-dealer and every salesman who recommends to a customer the purchase, sale or exchange of any security shall have reasonable grounds to believe that the recommendation is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by such nonmember broker-dealer or salesman.

(E) *Supervision of Salesmen.*

(1) Every nonmember broker-dealer shall exercise diligent supervision over the securities activities of all of his salesmen.

(2) Every salesman shall be subject to the supervision of a supervisor designated by the nonmember broker-dealer. The supervisor may be the nonmember broker-dealer in the case of a sole proprietor, or a partner, officer, office manager, or any other qualified salesman.

(3) As part of his responsibility under this Rule, every nonmember broker-dealer shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall state at which business or offices the nonmember broker-dealer keeps and maintains the records required by Rule 5, and which shall set forth the procedures adopted by the nonmember broker-dealer to comply with the following duties imposed by this Rule:

(a) The review and written approval by the designated supervisor of the opening of each new customer account;

(b) The frequent examination of all customer accounts to detect and prevent irregularities or abuses;

(c) The prompt review and written approval by the designated supervisor of all securities transactions by salesmen and all correspondence pertaining to the solicitation or execution of all securities transactions by salesmen.

(d) The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account to a stated salesman or salesmen of the nonmember broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and

(e) The prompt review and written approval of the handling of all customer complaints.

(4) Every nonmember broker-dealer who has designated more than one supervisor pursuant to sub-paragraph (E)(2) of this Rule shall designate from among his partners, officers or other qualified person or group of persons who shall:

(a) supervise and periodically review the activities of the supervisors designated pursuant to sub-paragraph (E)(2) of this Rule and;

(b) periodically inspect each business office of the nonmember broker-dealer to insure that the written procedures are enforced.

(F) *Discretionary Authority.*

(1) No nonmember broker-dealer or salesman shall exercise any discretionary power or authority for any customer unless such customer has given prior written authorization to exercise such power or authority to a stated salesman, and has indicated the reasons for such authorization.

(2) This Rule shall not apply to transactions in which the nonmember broker-dealer's or salesman's discretion is limited to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specific purchase or sale of a definite amount of a specified security shall be executed.

(G) *Record Keeping.*

(1) Every nonmember broker-dealer shall make and keep current a record of each person who becomes a customer after the effective date of this Rule, which record shall state:

(a) the customer's name, date of birth, address, nationality or citizenship, tax identification or social security number, the salesman regularly handling the account and a supervisor designated pursuant to subparagraph (E)(2) of this Rule.

(b) if the nonmember broker-dealer, or any salesman has made any recommendation to the customer to purchase, sell or exchange any security, the record for such customer shall also state the customer's occupation, marital stauts, investment objectives, other information concerning the customer's financial situation and needs which the nonmember broker-dealer or the salesman considered in making the recommendation, and the signature of the nonmember broker-dealer or salesman who made the recommendation to the customer.

(2) If, after the effective date of this Rule, a nonmember broker-dealer or salesman has made any recommendation to any person who became a customer prior to the effective date of this Rule, the nonmember broker-dealer shall make and keep current a record for such customer which shall state the information required by sub-paragraphs (G)(1)(a) and (G)(1)(b) of this Rule.

(3) Any item of information required by sub-paragraph (G)(1)(a) or (G)(1)(b) of this Rule need not be contained in the customer's record if, after reasonable inquiry, the customer declines to furnish such item of information and a statement to that effect is placed in such record; provided, however, that the customer's record must state the customer's name, address and social security or tax identification number.

(4) Every nonmember broker-dealer shall make and keep current:

(a) A record or records with respect to each discretionary account which shall include:

(i) The customer's written authorization to exercise discretionary power or authority with respect to such account;

(ii) The reasons given by the customer for granting discretionary authority in his account;

(iii) The written approval of a supervisor designated pursuant to sub-paragraph (E)(2) of this Rule and, if appropriate, the written approval of the person or persons designated pursuant to sub-paragraph (E)(4) of this Rule, of the delegation of discretionary authority;

(iv) The written approval of a supervisor designated pursuant to sub-paragraph (E)(2) of this Rule of each transaction in such account indicating the exact time and date of such approval;

(b) A separate file for all complaints by customers and persons acting on behalf of customers. Such complaints shall be filed alphabetically by customer's name and shall include copies of all material relating to the complaint, and a record of what action, if any, has been taken by the nonmember broker-dealer. Copies of such material and records of action taken shall be kept in the office through which the customer account is handled.

(c) Every nonmember broker-dealer shall preserve all records required by the rule for a period of not less than six years, the first two years in an easily accisible place. After the first two years, a photograph on film may be substituted for the records for the balance of the required time.

(H) *Mark-ups and Markdowns.* No nonmember broker-dealer and no salesman shall enter into any transaction with a customer in any security at a price not reasonably related to the current market price of the security, or charge a commission which is not reasonable.

RULE 4. FINANCIAL RESPONSIBILITY FOR BROKER-DEALERS

(A) *Prohibition.* Fraudulent, evasive, deceptive, or grossly unfair practices or devices in the purchase or sale of securities are hereby prohibited in accordance with the provisions of this Rule.

(B) *Noncompliance with Rule.* It shall constitute a "fraudulent, evasive, deceptive, or grossly unfair practice or device in the purchase or sale of securities" for a broker-dealer to sell securities within this state or engage in the business of buying, selling, or dealing in securities

while in contradiction of paragraphs (C), (D) or (E) of this Rule, which provide safeguards for the protection of customers' funds and securities in the custody or otherwise under the control of broker-dealers selling or engaged in the business of buying, selling or dealing in securities in this state.

(C) *Net Capital Requirements.*

(1) No broker-dealer shall permit his aggregate indebtedness to all other persons to exceed at any time 1500 percentum of his net capital, and every broker-dealer shall have and maintain at all times a net capital of not less than $50,000, unless such broker-dealer's minimum net worth requirement is lowered pursuant to sub-paragraphs (C)(2) or (C)(3) of this Rule,

(2) A broker-dealer meeting any of the following conditions shall only be required to have and maintain a net capital of not less than $25,000 with an aggregate indebtedness not to exceed 2000 percentum of his net capital:

(a) His dealer transactions (as principal for his own account) are limited to the purchase, sale and redemption of redeemable shares of investment companies registered under the Investment Company Act of 1940 (except that a broker-dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his own account with or through another broker-dealer); and his transactions as broker are limited to: (1) the sale and redemption of redeemable securities of such registered investment companies; (2) the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and (3) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of such registered investment companies; or

(b) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

(3) Sub-paragraphs (C)(1) and (C)(2) notwithstanding, if a broker-dealer has been duly licensed as a dealer in Ohio prior to the effective date of this Rule:

(a) He shall maintain a net capital of not less than $10,000 for a period of one year after the effective date of this Rule.

(b) After one year after the effective date of this Rule, he shall maintain a net capital and aggregate indebtedness in accordance with sub-paragraphs (C)(1) or (2) of this Rule.

(4) The provisions of this Rule shall not apply to any non-issuer broker-dealer or member in good standing and subject to the capital rules of the American Stock Exchange, the Midwest Stock Exchange, and the New York Stock Exchange, or upon application, any other comparable securities exchange whose rules, settled practices and applicable regulatory procedures are deemed by the Division to impose requirements more comprehensive than the requirements of this Rule; provided, however, that the exemption as to the members of any exchange may be suspended or withdrawn by the Division at any time, by sending ten (10) days written notice to such exchange, if it appears to the Division to be necessary or appropriate in the public interest or for the protection of investors to do so.

(5) *Definitions.* For the purpose of this Rule:

(a) The term "aggregate indebtedness" shall be deemed to mean the total money liabilities of a broker-dealer arising in connection with any transaction whatsoever, including, among other things: money borrowed; money payable against securities loaned and securities "failed to receive"; the market value of securities borrowed (except for delivery against customers' sales) to the extent to which no equivalent value is paid or credited; customers' free credit balances; credit balances in customers' accounts having short positions in securities; and equities in customers' commodities futures accounts; but excluding:

(1) Indebtedness adequately collateralized, as hereinafter defined, by securities or spot commodities owned by the broker or dealer;

(2) Indebtedness to other broker-dealers adequately collateralized, as hereinafter defined, by securities or spot commodities owned by the broker-dealer;

(3) Amounts payable against securities loaned which securities are owned by the broker-dealer;

(4) Amounts payable against securities failed to receive which securities were purchased for the account of, and have not been sold by; the broker-dealer;

(5) Indebtedness adequately collateralized, as hereinafter defined, by exempted securities;

(6) Amounts segregated in accordance with the Commodity Exchange Act and the rules and regulations thereunder;

(7) Fixed liabilities adequately secured by real estate or any other asset which is not included in the computation of "net capital" under this Rule;

(8) Liabilities on open contractual commitments; and

(9) Indebtedness subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement, as hereinafter defined.

(10) Liability Reserves established and maintained for refunds of charges required by Section 27(d) and 27(f) of the Investment Company Act of 1940, but only to the

extent of the amounts on deposit in segregated trust account in accordance with Rule 27d-1 under the Investment Company Act of 1940.

(b) The term "net capital" shall be deemed to mean the net worth of a broker-dealer (that is, the excess of total assets over total liabilities), adjusted by:

(1) Adding unrealized profits (or deducting unrealized losses) in the accounts of the broker-dealer and, if such broker-dealer is a partnership adding equities (or deducting deficits) in accounts of partners, as hereinafter defined;

(2) Deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness secured thereby) including, among other things, real estate; furniture and fixtures; exchange memberships; prepaid rent, insurance and loans; customers' unsecured notes and accounts; deficits in customers' accounts, except in bona fide cash accounts within the meaning of section 4(c) of Regulation T of the Board of Governors of the Federal Reserve System; and the funds on deposit in a "segregated trust account" in accordance with Rule 27d-1 under the Investment Company Act of 1940, but only to the extent that the amounts on deposit in such segregated trust account exceed the amount of liability reserves established and maintained for refunds of charges required by Sections 27(d) and 27(f) of the Investment Company Act of 1940.

(3) Deducting the percentages specified below of the market value of all securities, long and short (except exempted securities) in the capital, proprietary and other accounts of the broker-dealer, including securities loaned to the broker-dealer pursuant to a satisfactory subordination agreement, as hereinafter defined, and if such broker-dealer is a partnership, in the accounts of partners, as hereinafter defined:

(i) In the case of nonconvertible debt securities having a fixed interest rate and a fixed maturity date which are not in default, if the market value is not more than 5 per cent below the face value, the deduction shall be 5 per cent of such market value; if the market value is more than 5 per cent but not more than 30 per cent below the face value, the deduction shall be a percentage of market value, equal to the percentage by which the market value is below the face value; and if the market value is 30 per cent or more below the face value, such deduction shall be 30 per cent;

(ii) In case of cumulative, nonconvertible preferred stock ranking prior to all other classes of stock of the same issuer, which is not in arrears as to dividends, the deduction shall be 20 per cent;

(iii) In the case of a debt security not in default which has a fixed rate of interest and a fixed maturity date and which is convertible into an equity security, the deduction shall be as follows: If the market value is 90% or more of the face value, the deduction shall be 30% of the market value, but in no event shall such deduction reduce the value of such security below 80% of face value for the purposes of this Rule; if the market value is below the face value by more than 10% but not more than 30%, the deduction shall be a percentage of market value equal to the percentage by which the market value is below the face value; if the market value is 30% or more below the face value, the deduction shall be 30%;

(iv) On all other securities, the deduction shall be 30 per cent; provided, however, that such deduction need not be made in the case of (1) a security which is convertible into or exchangeable for other securities within a period of 30 days, subject to no conditions other than the payment of money and the other securities into which such security is convertible, or for which it is exchangeable, are short in the accounts of such broker-dealer or partner, or (2) a security which has been called for redemption and which is redeemable within 90 days.

(4) Deducting 30 per cent of the market value of all "long" and all "short" future commodity contracts (other than those contracts representing spreads or straddles in the same commodity and those contracts offsetting or hedging any "spot" commodity position) carried in the capital, proprietary or other accounts of the broker-dealer and, if such broker-dealer is a partnership, in the accounts of partners as hereinafter defined;

(5) Deducting, in the case of a broker-dealer who has open contractual commitments, the respective deductions as specified in sub-paragraph (iii) above, from the value (which shall be the market value whenever there is a market) of each net long and each net short position contemplated by any existing contractual commitment in the capital, proprietary and other accounts of the broker-dealer and, if such broker-dealer is a partnership, in accounts of partners, as hereinafter defined; provided, however, that this deduction shall not apply to exempted securities, and that the deduction with respect to any individual commitment shall be reduced by the unrealized profit, in an amount not greater than the deduction provided for in subparagraph (iii) of this sub-paragraph, (or increased by the unrealized loss) in such commitment; and that in no event shall an unrealized profit on any closed transactions operate to increase net capital.

(6) Deducting an amount equal to 1½% of the market values of the total long or total short futures contracts in each commodity, whichever is greater, carried for all customers.

(7) Excluding up to 50% of the liabilities of the broker-dealer which are subordianted to the claims of general creditors pursuant to a satisfactory subordination agreement as herein defined; and

(8) Deducting, in the case of a broker-dealer who is a sole proprietor, the excess of (a) liabilities which have not been incurred in the course of business as a broker-dealer over (b) assets not used in the business.

(9) Deducting 10% of the contract price of each item in

the securities failed to deliver account which is outstanding 40 to 49 calendar days; deducting 20% of the contract price of each item in the securities failed to deliver account which is outstanding 50 to 59 calendar days; and deducting 30% of each item in the securities failed to deliver account which is outstanding 60 or more calendar days.

(c) The term "exempted securities" shall mean those securities specifically defined as exempted securities in Section 3(a) of the Securities Exchange Act of 1934;

(d) The term "accounts of partners," where the broker-dealer is a partnership, shall mean accounts of partners who have agreed in writing that the equity in such accounts maintained with such partnership shall be included as partnership property;

(e) The term "contractual commitments" shall include underwriting, when-issued, when-distributed and delayed delivery contracts, endorsements of puts and calls, commitments in foreign currencies, and spot (cash) commodities contracts, but shall not include uncleared regular way purchases and sales of securities and contracts in commodities futures; a series of contracts of purchase or sale of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment;

(f) Indebtedness shall be deemed to be "adequately collateralized" within the meaning of this Rule, when the difference between the amount of the indebtedness and the market value of the collateral is sufficient to make the loan acceptable as a fully secured loan to banks regularly making comparable loans to broker-dealers in the community;

(g) The term 'satisfactory subordination agreement" shall mean a written agreement duly executed by the broker-dealer and the lender, which agreement is binding and enforceable in accordance with its terms upon the lender, his creditors, heirs, executors, administrators, and assigns, and which agreement satisfies all of the following conditions:

(1) It effectively subordinates any right of the lender to demand or receive payment or return of the cash or securities loaned to the claims of all present and future creditors of the broker-dealer;

(2) The cash or securities are loaned for a term of not less than one year;

(3) It provides that the agreement shall not be subject to cancellation by either party, and that the loan shall not be repaid and the agreement shall not be terminated, rescinded or modified by mutual consent or otherwise if the effect thereof would be to make the agreement inconsistent with the conditions of this rule or to reduce the net capital of the broker-dealer below the amount required by this Rule;

(4) It provides that no default in the payment of interest or in the performance of any covenant or condition by the broker-dealer shall have the effect of accelerating the maturity of the indebtedness;

(5) It provides that any notes or other written instruments evidencing the indebtedness shall bear on their face an appropriate legend stating that such notes or instruments are issued subject to the provisions of a subordination agreement which shall be adequately referred to and incorporated by reference;

(6) It provides that any securities or other property loaned to the broker-dealer pursuant to its provisions may be used and dealt with by the broker-dealer as part of his capital and shall be subject to the risks of the business;

(7) Two copies of such agreement, and of any notes or written instruments evidencing the indebtedness, are filed, within 10 days after such agreement is entered into, with the Division, together with a statement of the full name and address of the lender, the business relationship of the lender to the broker-dealer, and whether the broker-dealer carried funds or securities for the lender at or about the time the agreement was entered into. If each copy of such agreement is bound separately and clearly marked "Non-Public" such agreements shall be maintained in a non-public file; provided, however, that they shall be available, for official use, to any official or employee of the United States or any State; to any national securities exchange and any registered national securities association of which the broker-dealer filing such agreements is a member; and to any other person to whom the Division authorizes disclosure in the public interest.

(h) The term "customer" shall mean every person except the broker-dealer; provided, however, that partners who maintain "accounts of partners" as herein defined shall not be deemed to be customers insofar as such accounts are concerned.

(i) The term "clearing fund" shall mean a fund established by a clearing agency to receive and hold deposits of cash or securities or both cash and securities from members of such clearing agency for use in payment, and as security for payment, of the liabilities of such members to such clearing agency, or for use in payment by the clearing agency of liabilities it has incurred as a result of its clearing and settling of securities transactions.

(j) The term "continuous net settlement system" shall mean that system for the clearing and settlement of securities transactions whereby a clearing agency: (A) compares trade execution data submitted by members to arrive at agreed upon contract terms; (B) on a given date nets purchases and sales of securities by a member with such member's previously unfulfilled purchase or sale obligations with respect to such securities; (C) Allocates delivery obligations as to money and securities between members and the clearing agency itself for unsettled transactions; and (D) acts as the other party in the settlement of cleared transactions between members with respect to both money and securities.

(6) Any asset items disallowed by such rules for not being readily convertible into cash may be included in net capital for broker-dealers whose businesses meet the funds and securities handling requirements of sub-paragraphs (C)(2)(b) and (C)(7) of this Rule, to the extent that an independently determined fair market value can be ascertained.

(7) When a broker-dealer's net capital is below $25,000, or when the broker-dealer's aggregate indebtedness exceeds 1500% of his net capital, such broker-dealer shall segregate customers' funds and securities as hereinafter provided:

(a) Such broker-dealer shall establish a trust account for customers' funds in a special account with any bank whose deposits are guaranteed by the Federal Deposit Insurance Corporation. Funds which shall be received by such broker-dealer from or for the account of customers for the purchase or sale of securities shall be deposited in such trust account until used for the purchase of securities for customers or paid over to customers. In addition such broker-dealer shall set up a special ledger account showing debits and credits to customers designated by the same name as the bank account.

(b) Any broker-dealer required to allocate and physically set aside securities of customers shall place all such securities, whether received from or for the account of a customer for sale and remittance or pursuant to purchase or for safekeeping with an independent custodian, such as the same bank with which funds are deposited.

(D) *Use of Customer Free-credit Balance.* No broker-dealer shall use any funds arising out of any free credit balance carried for the account of any customer in connection with the operation of the business of such broker-dealer unless such broker-dealer has established adequate procedures pursuant to which each customer for whom a free credit balance is carried will be given or sent, together with or as a part of the customer's statement of account, whenever sent but not less frequently than once every three months, a written statement informing such customer of the amount due to the customer by such broker-dealer on the date of such statement, and containing a written notice that (1) such funds are not segregated and may be used in the operation of the business of such broker-dealer, and (2) such funds are payable on the demand of the customer: provided, however, that this section shall not apply to a broker-dealer which is also a banking institution supervised and examined by state or federal authority having supervision over banks.

(E) *Surety Bond Requirement.*

(1) A broker-dealer who is licensed under either Section 1707.15 or Section 1707.331, Ohio Revised Code, shall file with the Division a surety bond in the amount of $100,000.00 on a form provided by the Division and shall maintain such bond in that amount at all times while licensed as a broker-dealer. Such bond shall provide for suit thereon only by a person who has a cause of action under Chapter 1707, Ohio Revised Code, or a cause of action in this state by reason of any embezzlement, defalcation or misappropriation of securities or funds by the broker-dealer, its salesmen or employees. The Division may exempt a licensed broker-dealer from this surety bond requirement or may vary its terms, only if justified and appropriate under special circumstances.

(2) In lieu of the bond required under sub-paragraph (E)(1), a broker-dealer may make a deposit of $100,000.00 or a deposit of securities having a market value of $100,000.00 on the date of deposit which shall be restored to $100,000.00 in the event of any recovery. Such deposit shall consist of securities which are the obligation of and are guaranteed as to both principal and interest by the government of the United States, the government of a state, or a municipality within the United States. The deposit of cash or securities shall be held in trust by the Treasurer of the State, and subject to an agreement satisfactory to the Division with the same coverage as is required in a surety bond under sub-paragraph (E)(1).

RULE 5. RECORD KEEPING AND REPORTING REQUIREMENTS FOR BROKER-DEALERS

(A) *Prohibition.* It shall be prohibited as a "fraudulent, evasive, deceptive, or grossly unfair practice or device in the purchase or sale of securities" as those terms are used in Section 1707.09, Ohio Revised Code, for a broker-dealer to violate any provision of this Rule.

(B) *Adequate Records of Financial Condition and Transactions Required.* Every non-issuer broker-dealer shall keep and maintain books and records and a balance sheet which shall be adequate to enable the Division to determine at all times the financial condition of such non-issuer broker-dealer, and which fully discloses all transactions entered into by such broker-dealer.

(C) *Contents of Records.* The books and records required to be kept by sub-paragraph (B)(1) of this Rule shall include, in addition to any records which the Division may in its discretion require from a particular non-issuer broker-dealer or from non-issuer broker-dealers generally, to the extent applicable, the following books and records relating to the business of the non-issuer broker-dealer kept current:

(1) The most recent balance sheet prepared either in accordance with the non-issuer broker-dealer's usual practice or as required by any state or federal securities laws, rules or regulations, and all other financial statements which are necessary to demonstrate compliance or non-compliance with the financial requirements of Rule 4 of the Division.

(2) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disburse-

ments of cash, and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchases are received or to whom sold or delivered.

(3) Ledgers (or other records) reflecting all asset, liability, income, expense, and capital accounts.

(4) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer, and of such non-issuer broker-dealer and partners thereof, all purchases, sales, receipts and deliveries of securities for such account, and all other debits and credits to such account.

(5) Ledgers (or other records) reflecting the following:

(a) Securities in transfer;

(b) Dividends and interest received;

(c) Securities borrowed and securities loaned;

(d) Monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral); and

(e) Securities failed to receive and failed to deliver.

(6) A securities record or ledger reflecting for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such non-issuer broker-dealer for his account or for the account of his customers, partners or officers and showing the location of all securities long, and offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.

(7) A memorandum of each brokerage order and of any other instructions given or received for the purchase or sale of securities, either executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such non-issuer broker-dealer or any employee thereof shall be so designated. For purposes of this paragraph,

(a) The term "instruction" includes instructions between partners or officers and employees of a non-issuer broker-dealer;

(b) The term "time of entry" means the time when such non-issuer broker-dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

(8) A memorandum of each purchase and sale of securities for the account of such non-issuer broker-dealer showing the price and, to the extent feasible, the time of execution.

(9) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners or officers of such non-issuer broker-dealer.

(10) A record of all puts, calls, spreads, straddles and other options in which such non-issuer broker-dealer has any direct or indirect interest or which such non-issuer broker-dealer has granted or guaranteed, containing an identification of the security and the number of units involved.

(11) A record of the proof of money balances of all leger accounts in the form of trial balances and a record of the computation of aggregate indebtedness, net liquid capital, branch office reconciliations, internal audit working papers, and net capital as of the trial balance date, pursuant to Rule 4.

(12) All check books, bank statements, cancelled checks, and cash reconciliations.

(13) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the non-issuer broker-dealer as such.

(D) *Requirement and Content of Customer Records.* In addition to maintaining the books and records by paragraphs (B) and (C) of this Rule, every non-issuer broker-dealer shall maintain and keep current a record for each customer which shall contain, to the extent applicable:

(1) The customer's name, date of birth, address, nationality or citizenship, tax identification number or social security number, occupation, marital status, investment objectives, and any other material information concerning the customer's financial situation and needs, and the signatures of the customer, the salesman who regularly handles the customer's account, and any supervisor of such salesman; provided, however, that if after reasonable inquiry the customer declines to furnish such information and a statement to that effect is placed in the customer's record, only the customer's name, address, and tax identification or social security number are required by this paragraph.

(2) Each cash and margin account for a customer and all transactions therein as required by sub-paragraph (C)(5), free credit balances of a customer's account and all securities held for safekeeping or otherwise in connection with the account of a customer.

(3) If the non-issuer broker-dealer or any salesman has

made any recommendation to the customer to purchase, sell or exchange any security, a memorandum disclosing the content of such recommendation and the reasons for recommending such purchase, sale or exchange.

(4) For each discretionary account, in addition to the information required in sub-paragraphs (C)(1), (2) and (3),

(a) the customer's written authorization to exercise discretionary power or authority with respect to such account;

(b) the reasons given by the customer for granting discretionary authority in his account; and

(c) the written approval of a supervisor of the salesman in charge of such account, and of each transaction in such account, including notation of the exact time and date of such approval.

(E) *Special Designation of Agency Accounts.* When a non-issuer broker-dealer carries on his books an agency account, such account shall be designated by the word "agent." In every such case, the non-issuer broker-dealer shall further identify such account with the name of the principal or shall keep a separate record of the identity of the principal for whom such account is maintained.

(F) *Questionnaire Required; Contents.*

(1) Every non-issuer broker-dealer shall prepare upon the employment of each salesman, shall maintain in an accessible place, and shall preserve for a period of at least three years after a salesman has terminated his employment and all other connections with the non-issuer broker-dealer a questionnaire or application for employment executed by such salesman which shall be approved in writing by an authorized representative of such non-issuer broker-dealer and which shall contain at least the following information with respect to such salesman:

(a) His name, address, social security number and the starting date of this employment or other association with the non-issuer broker-dealer;

(b) His date of birth;

(c) The educational institutions which he attended and whether or not he graduated therefrom;

(d) A complete, consecutive statement of all his business connections for at least the preceding years, including his reason for leaving each prior employment and whether the employment was part-time or full-time;

(e) A record of any denial of membership or registration, and of any disciplinary action taken or sanction imposed upon him by any federal or state agency, or by any national securities exchange or national securities association, including any findings that he was the cause of any disciplinary action or had violated any law;

(f) A record of denial, suspension, expulsion or revocation of membership or registration of any broker-dealer with which he was associated in any capacity when such action was taken;

(g) A record of any permanent or temporary injunction entered against him or any broker-dealer with which he was associated in any capacity at the time such injunction was entered;

(h) A record of any arrests, indictments or convictions for any felony or any misdemeanor, except minor traffic offenses, of which he has been the subject; and

(i) A record of any other name or names by which he has been known or which he has used.

Such questionnaire or application shall be maintained at the office of the non-issuer broker-dealer at which the salesman is employed or from which he carries on the majority of his activities on the non-issuer broker-dealer's behalf.

(2) A questionnaire or application required by paragraph (F) of this Rule shall be made for all persons who are salesmen of the non-issuer broker-dealer at the time of adoption of this Rule.

(G) *File of Complaints Required.*

(1) Every non-issuer broker-dealer shall keep and maintain a separate file for all complaints against such non-issuer broker-dealer. Such file shall contain copies of all material relating to the complaint, including correspondence connected therewith, and a record of what action, if any, has been taken by or against the non-issuer broker-dealer with respect to each complaint.

(2) For purposes of sub-paragraph (G)(1) of this Rule only the term "complaint" includes:

(a) Any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of the non-issuer broker-dealer or his salesmen; and

(b) Complaints filed in any criminal or civil proceeding or in any administrative or disciplinary proceeding by any individual or any public or private regulatory agency against the non-issuer broker-dealer or his salesmen, in connection with the broker-dealer's securities business in Ohio, including any securities transactions in Ohio or any securities transactions affecting the non-issuer broker-dealer's operations in Ohio, and particularly in connection with the solicitation or execution of any transaction or the disposition of funds or securities of a customer.

(H) *Place of Keeping Records.* Every non-issuer broker-dealer who operates one or more offices in the State of Ohio shall keep and maintain in at least one Ohio office all records required by paragraphs (B) and (C) and

sub-paragraph (I)(2) of this Rule. Every non-issuer broker-dealer who operates more than one office in Ohio shall keep and maintain the records for each customer specified in paragraph (D) of this Rule at the office or offices through which transactions for each such customer are effected.

(I) *Time Periods for Preservation of Records.*

(1) Every non-issuer broker-dealer shall preserve all records required by paragraphs (B) and (C) of this Rule according to the following requirements:

(a) For not less than six years, the first two years of which in an easily accessible place, all records required to be made pursuant to sub-paragraphs (C)(2), (3), (4) and (6) and paragraph (D) of this Rule; provided however, that the records required by paragraph (D) of this Rule shall be preserved for a period of not less than six years after the closing of the account.

(b) For not less than three years, the first two of which is an easily accessible place, all other records required to be made pursuant to sub-paragraphs (C)(1), (5), and (7) through (13) of this Rule.

(2) Every non-issuer broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or the corporate charter, minute books, and stock certificate books.

(3) If any non-issuer broker-dealer ceases to be licensed in Ohio, such non-issuer broker-dealer shall despite the discontinuance of its license continue to preserve the records which it theretofor was required to preserve pursuant to paragraph (E) of this Rule for the remainder of the periods of time therein specified.

(4) After a record has been preserved for two years pursuant to sub-paragraph (1) of this Rule, a photograph thereof on film may be substituted therefor for the balance of the required time.

(J) *Annual Reporting Requirement.*

(1) Every non-issuer broker-dealer shall file annually in accordance with a form prescribed by the Division, a balance sheet, income statement, statement of net capital, and ratio of aggregate indebtedness to net capital, all prepared in accordance with generally accepted accounting principles and Rule 4, as of the close of such non-issuer broker-dealer's fiscal or calendar year. Such annual statement shall be filed within 90 days after the close of such fiscal or calendar year.

(2) Each statement filed pursuant to sub-paragraph (J)(1) of this Rule shall be prepared and filed as follows:

(a) The statement shall be certified by an independent certified public accountant or a public accountant who in fact shall be independent.

(b) Attached to the statement shall be an oath or affirmation that, to the best knowledge and belief of the person making such oath or affirmation, the financial statement and supporting schedules are true and correct, and neither the broker-dealer nor any partner, officer or director, as the case may be, has any proprietary interest in any account classified solely as that of a customer. This oath or affirmation shall be made before a person duly authorized to administer such oaths or affirmations. If the non-issuer broker-dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if the non-issuer broker-dealer is a partnership, it shall be made by a general partner; and if the non-issuer broker-dealer is a corporation, it shall be made by a duly authorized officer.

(3) The Division will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of his place of residence or principle office. The Division will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residence or principle office.

(4)(a) The accountant's certificate shall be dated, shall be signed manually, and shall identify without detailed enumeration the items of the report covered by the certificate.

(b) The accountant's certificate (i) shall contain a reasonably comprehensive statement as to the scope of the audit made, including a statement as to whether the accountant reviewed the procedures followed for safeguarding the securities of customers, and including, if with respect to significant items in the report covered by the certificate any auditing procedures generally recognized as normal have been omitted, any specific designation of such procedures and of the reasons for their omission; (ii) shall state whether the audit was made in accordance with generally accepted auditing standards applicable in the circumstances; and (iii) shall state whether the audit made omitted any procedure deemed necessary by the accountant under the circumstances of the particular case.

(c) Nothing in this Rule shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by sub-paragraph (J)(4)(d) of this Rule.

(d) The accountant's certificate shall state clearly the opinion of the accountant with respect to the financial statement covered by the certificate and the accounting principles and practices reflected therein.

(e) Any matters to which the accountant takes exception shall be clearly identified; the exception thereto shall be specifically and clearly stated; and, to the extent practicable, the effect of each such exception on the related item of the report shall be given.

(K) *Quarterly Report Required.* Every non-issuer

broker-dealer shall file on a form prescribed by the Division within 30 days after the end of each quarter of the non-issuer broker-dealer's fiscal or calendar year a balance sheet, income statement, statement of net capital, and ratio of aggregate indebtedness to net capital, both with respect to that quarter and cumulatively for that fiscal or calendar year; all prepared in accordance with generally accepted accounting principles and Rule 4. Such quarterly statements need not be certified by an independent certified public accountant or public accountant but shall contain the oath or affirmation in accordance with sub-paragraph (J)(2)(b) of this Rule.

(L) *Interim Reports Required in Discretion of Division.* The Division may in its discretion require any non-issuer broker-dealer to submit interim reports of its financial condition containing such information as is prescribed by the Division, as of any date selected by the Division. The Division shall specify whether or not such reports are to be certified by a certified public accountant. Such report shall be accompanied by an oath or affirmation in accordance with sub-paragraph (J)(2)(b) of this Rule.

(M) *Net Capital and Aggregate Indebtedness Reports.* Every non-issuer broker-dealer shall file with the Division the following reports concerning its net capital and ratio of aggregate indebtedness to net capital:

(1) Immediate written or telegraphic notice to the Division at any time that its net capital becomes less than $50,000.00 or $25,000.00 or its aggregate indebtedness exceeds 1500% on 2000% of its net capital whichever is required under Rule 4, which notice shall specify the non-issuer broker-dealer's net capital, aggregate indebtedness, and net capital ratio on the date of such notice.

(2) A signed copy of every report or notice required to be filed by the non-issuer broker-dealer with the Securities and Exchange Commission pursuant to Rule 17a-11 under the Securities and Exchange Act of 1934 (17 CFR 240.17a-11), not later than the date of filing of such report or notice.

(N) *Replacement of Accountants; Notice Required.* Every non-issuer broker-dealer shall file a notice with the Division not more than fifteen days after:

(1) The non-issuer broker-dealer has notified the accountant who certified the report of financial condition in the most recent report filed with the Division that his services will not be utilized in future engagements; or
or

(2) The non-issuer broker-dealer has notified an accountant who was engaged to certify a report of financial condition under this Rule that the engagement has been terminated; or

(3) A new accountant has been engaged to certify a report of financial condition without any notice of termination having been given to or by the previously engaged accountant; or

(4) An accountant has notified the non-issuer broker-dealer that he will not continue under an engagement to certify a report of financial condition.

Such notice shall state (1) the date of notification of the termination of the engagement or engagement of the new accountant as applicable and (2) the details of any problems existing during the 24 months (or the period of the engagement if less) preceding such termination or new engagement relating to any matter of accounting principles or practice, financial statement disclosure, auditing procedure, or compliance with applicable rules of the Division, which problems, if not resolved to the satisfaction of the displaced accountant, would have caused him to refer to them in his opinion. The non-issuer broker-dealer shall also request the displaced accountant to furnish such non-issuer broker-dealer with a letter addressed to the Division stating whether he agrees with the statements contained in this notice of the non-issuer broker-dealer and, if not, stating the respects in which he does not agree. The non-issuer broker-dealer shall file three copies of the notice and the accountat's letter, one copy of which shall be manually signed by the sole proprietor, a general partner, or a duly authorized corporate officer as the case may be, and by the accountant, respectively.

(O) *Notice of Theft of Funds or Securities.* Each non-issuer broker-dealer shall give immediate telegraphic or written notice to the Division of the theft or mysterious disappearance of any significant amount of securities or funds from any office in this state, relating all material facts known to it concerning such theft or disappearance.

(P) *Extension of Reporting Time Limits.* In the event that any non-issuer broker-dealer finds that it cannot file a report required by paragraphs (J), (K) and (L) of this Rule without undue hardship, it may file with the Division an application for an extension of time to a specified date, which shall not exceed the following periods:

(a) For an extension for the report required under sub-paragraphs (J)(1) and (J)(2), not more than 90 days from the date the report as to which an extension is sought was required to be filed.

(b) For an extension for the report required by paragraph (K), not more than 30 days from the date the report as to which an extension is sought was required to be filed.

(c) For an extension for the reports required by paragraph (L), not more than 15 days from the date the report as to which an extension is sought was required to be filed, provided that if certification is required by the Division the extension shall be for such reasonable time as is necessary to obtain such certification. The application for an extension shall state the reasons for the request and shall contain an agreement to file the report on or before the specified date. The application shall be deemed

granted unless the Division within ten days after receipt thereof enters an order denying it.

THE SECTIONS

REGISTRATION SECTION

Variable Interest Rate Notes With Right of Redemption To Noteholder -- A New Source of Capital?

A. *NATURE OF THE PROBLEM.* Recent attempts to tap an unwilling investing public for sorely needed funds has forced the investment banking community to indulge in creative financing thereby giving birth to "new securities", the latest of which is the variable interest rate note. Contrary to popular belief, this type of security is not novel and has been sold in Europe since the early sixties in the form of flating rate Eurodollar long term bank loans. However, Citicorp (the holding corporation for First National City Bank of New York) added a redemption feature at the option of the noteholder which made the 650 million dollar Citicorp offering very popular and has lead other members, and lately nonmembers, of the banking community to imitate the Citicorp format with nominal variations.

Recent inquiries to the Division of Securities and local interest in making a public offering of this type coupled with the fact that the U.S. securities markets lack precedent for this type of securities prompted the Division of Securities to conduct a preliminary research to gain familiarity with the "nature of the beast". Furthermore, and from a more pragmatic viewpoint, it was incumbent upon the Division to determine whether or not a substantial amount of manpower should be allocated to the development and formulation of guidelines to regulate this type of hybrid security.

For the benefit of those who are not acquainted with the Citicorp prospectus, the following is a synopsis of the characteristics of the Citicorp offering that differentiates it from the conventional debt security. First of all, the interest rate instead of being fixed throughout the life of the security is pegged at one per cent above the interest rate paid by the U.S. Treasury on three month treasury bills. Secondly, the notes can be redeemed at the option of the noteholder at the end of two years from date of issuance upon thirty days notice and every six months thereafter upon thirty days notice. Needless to say, the number of variations on the above format is limited only by the imagination of the investment banking community.

Discussions with Wall Street lawyers, investment bankers, and other state regulatory agencies, enables the Division to make the following observations: First of all, it is noteworthy that the first offering of this sort in this country was made by a bank holding corporation. Bankers do not have the reputation of "giving" their money away, let alone paying dearly for it unless it is necessary. Apparently, tight money market conditions coupled with the fact that financial institutions can loan money at rates substantially higher than the interest paid on the notes would in all probability account for the fact that the innovative impetus was found in the banking community. Secondly, with rare exceptions, it would seem that, thus far, all of the issuers of floating rate redeemable notes were corporations with substantial earning capacity and considerable liquid assets in an amount several times larger than their variable interest rate notes offerings. Thirdly, all indications would lead the Division to believe that this type of offering will subside as suddenly as it appeared on the marketplace, or that at the very least its attractiveness will be limited to few potential issuers. Finally, since the Division's investigation has revealed that the predominant characteristics of this type of security raise certain problems (which will be discussed below in greater detail), it is imperative that any issuer desiring to offer variable interest rate notes redeemable at the option of the noteholder should do so only after careful consideration of its potentially lethal financial repercussions.

B. *REGISTRATION SECTION'S CONCERN WITH THIS TYPE OF SECURITY*

1. *DEBT SERVICE.* In determining whether or not a debt offering is on grossly unfair terms, the Registration Section examiner verifies, among other things, that the issuer has the ability to service the debt for one year. In a normal debt offering, there is no difficulty in making that particular determination since the debt service (total offering multiplied by yearly interest) is readily ascertainable. However, in a variable interest rate offering, since the maximum interest rate that the issuer will have to pay is unknown, it is extremely difficult to make that assessment accurately. It is true that it is possible to assume that the maximum interest rate will not exceed 12%(?). However, it is also true that in marginal cases, whether or not the interest will be 11% or 12% can make a difference as to whether or not the issuer will be in the position to service the debt. It will be noted that of the few variable interest rate offerings that have been made, the issuers have ample earnings to cover extreme increases in interest rates. Finally, it is also true that banking institutions, unlike many others, can "pass on' the increased rate to their customers. However, a non-banking institution might not be in the position to do so without pricing its product out of the market place; and at best, in cases where the interest is increasing, refinancing might be an illusory panacea to the debt service problem since the issuer could be "locked in" at a rate higher than the one it originally started with thereby rendering it less competitive.

2. *REDEMPTION BY NOTEHOLDER.* Again, this is a rather drastic departure from the standard debt security offering, since normally any redemption would be at the option of the issuer. Furthermore, such an issuer will not exercise that power unless it is financially capable to do so. However, in a debt offering featuring redemption at the option of the noteholder, it is conceivable that the issuer will not be able to withstand a potential "run at the window". In fact, even though the issuer was financially

sound, it is very possible that there could be mass redemptions as a result of a combination of any of the following factors that have materialized since the offering became public:

a. Movements in interest rates (this could be an acute problem depending on whether or not the issuer placed a floor or ceiling on the interest rate to be paid);

b. Movements of the stock market;

c. The existence of a market in the notes themselves (e.g., if the market price is lower than the redemption price, the probability of redemption will be increased since the securities would then be selling at a discount. The reverse situation would have an opposite effect);

d. The nature of the investor (this type of security is primarily attractive to the investor who seeks liquidity; therefore, the appearance of more liquid or more attractive investment vehicles will increase the probability that he will redeem).

In a standard debt security offering to be outstanding more than 10 years, the Division has sought to insure that the issuer will be able to retire the debt at maturity by requiring the issuer to provide for a sinking fund with annual contributions designed to cover substantially all of the debt. Thus the issuer will have earmarked funds sufficient for repayment when confronted with the high "balloon" at maturity. Since in a debt offering where the redemption is at the option of the noteholder, the issuer is confronted with the same type of problem except much sooner, the argument could also be made that an escrow would be the answer to the problem in redeemable note offerings as well. However, it could also be the death of this particular type of offering for the reason that if the issuer has to set aside in an escrow account an amount equal to substantially all of the proceeds of the public offering in anticipation of possible mass redemption, the resultant consequence would be a material decrease in the effective use of the funds which in turn would completely defeat the purpose of the public offering.

Since it is obvious from the above discussion that the imposition of an escrow account is at best impractical, the Division has considered the implementation of various alternatives. First, keeping in mind that the issuer can be confronted with a redemption of the entire principal, plus in some cases the accumulated debt service, there could be a requirement that the issuer assure the Division that it has secured lines of credit in an amount equal to the public offering (it is fully recognized that except for excellent and very substnatial bank customers, generally speaking, an issuer would be hard pressed in finding a bank that would commit a line of credit except on a short term basis). Another possibility is to require that the issuer's offering be limited to the amount of its liquid assets. Again in many cases this type of requirement would be lethal to the issuer depending on the nature of its business. Since the above alternatives carry with them salient negative features, since the issuer is more qualified to determine which feature is more acceptable and pertinent to his corporation, and furthermore since lack of precedent and statistical information on the subject prevent the Division from prescribing with any specificity the type and size of the "mix" of the aforementioned alternatives, this particular task will be left to the discretion of the issuer. The Division will also consider the nature of the use of proceeds (i.e. whether or not the proceeds of the offering will be primarily spent in the acquisition of liquid assets) and also the size of the issuer's liquid assets and retained earnings in relation to the size of the public offering. The Division will also require the issuer to indicate in a separate section of the prospectus the potential consequences of mass redemptions and also include a brief description of the plan that has been formulated to meet such an eventuality. At this time it should be noted that the Division is confronted with the fact that at the time of filing, it must attempt to determine whether or not the issuer will be able to redeem two years hence. In any event, the burden will be on the issuer to demonstrate to the Division's satisfaction that any combination of the above factors will enable the issuer to meet any possible redemption call in any amount.

C. *CONCLUSIONS.* From the Division's preliminary investigation of the variable interest rate note redeemable at the option of the noteholder, the following conclusions can be made: First of all, this type of security saw its birth as a result of abnormal money market conditions and in all probability will disappear as quickly as a normal money market and investment climate will reappear. Secondly, this type of security, so far, appears to have been limited, with a few exceptions, to banking institutions with considerable financial resources capable of withstanding abnormally high debt service and wholesale redemptions without seriously affecting their financial condition. Furthermore, as a result of the unique nature and peculiarity of this type of security, in the event the applicant is not a financial institution, the burden will be on the issuer to demonstrate to the Division that a variable interest rate note offering with a redemption feature at the option of the noteholder is not grossly unfair.

Since the redemption of this investment vehicle in the marketplace indicates a strong probability that this type of security will be short lived, it is deemed impractical for the Division to commit a substantial amount of manpower at this time to the formulation and development of fairness standards and guidelines for this exotic security. In recognition of the pecularities and attendant problems of this type of security, the Division will consider each application on its own merits and will attempt to impose necessary safeguards which adequately protect the investing public while at the same time attempt to be fair and not cause an unreasonable hardship to applicants.

Offering Price for Non-Public Offerings Registered Pursuant to Section 1707.06

Inquiries concerning the Division's unfavorable consideration of non-public offerings attempted to be

registered pursuant to Section 1707.06 that set an offering price at book value or some multiple thereof rather than at a sum certain necessitate clarification of the Division's position in this area.

Recently the Registration Section in conjunction with the Audit personnel of the Enforcement Section performed a set of examinations of various entities which had registered non-public offerings pursuant to Section 1707.06 in order to determine their respective compliance with the Ohio Securities Act and with the terms of their respective Certificates. These examinations revealed, among other things, that a significant number of issuers who had registered their stock by description for sale at book value or some multiple thereof actually sold it at whatever prices they could obtain for it, which price had no relationship whatsoever to their respective book values at the time of sale. Division attempts to prove that these sales violate *Ohio Revised Code* Section 1707.44(E) because they were consummated upon terms at a material variance with information filed with the Division have not been fruitful because in many instances there are no audited financial statements available as the issuer is merely a start-up corporation.

In order to curb this kind of abuse, the Division considers a registration by description pursuant to Section 1707.06 of a non-public offering of securities to be grossly unfair unless the securities to be sold at book value or some multiple thereof are sold pursuant to a written purchase agreement such as a stock option plan or unless the issuer has reasonably demonstrated to the Division's satisfaction that the book value will be computed according to a readily ascertainable formula.

Release of the Proceeds of a Public Offering From Escrow

Recently several registrants have attempted to convince the Division to release from escrow the proceeds of their respective public offerings on the basis of telegrams or telephone calls from their attorneys to the effect that the escrow amount had been reached. At this point in time, the Division wishes to reiterate that it will not accept such telegrams and calls as sufficient notification for its release of escrows. Rather, the procedure specified in Section V.(B)(2)(d)(ii) of the Division's Corporate Guidelines, which may be found on page 14 of the July, 1973 issue of the *Ohio Securities Bulletin,* must be followed in order for the Division to authorize such a release. The Division interprets the language "a written application requesting authorization for such a release" found therein to require a letter from the escrow agent signed by its authorized agent which contains the necessary statements.

After receipt of such a letter, the Division will, upon request from the escrow agent, sent it a telegram authorizing the release of the escrowed funds to the registrant. This telegram will subsequently be confirmed by a Division letter. Although the Division's authorization to release is normally issued within twenty-four hours of notification from the escrow agent, the Division strongly suggests that the registrants allow a minimum of forty-eight hours from the time of notification to the time of the issuance of the authorization to release.

Requests for Examination and Reproduction of Registration Files

The Registration Section file room has been deluged by requests for examination and reproduction of Registration files that come from individuals who visit the Division without any advance notice of their intentions. Although the Registration Section fully intends to fulfill its statutory responsibility pursuant to *Ohio Revised Code* Section 1707.12 to provide for public inspection of its files, and although it would like to comply with requests for inspection immediately, the large number of impromptu requests and the limited human resources of the file room necessitate the creation of some type of advance notification procedure in this area. The implementation of such a procedure seems to be the only method by which requests for inspection can be expeditiously handled without the imposition of an undue burden upon the file room personnel.

A person who wishes to inspect and/or duplicate Registration files should submit a written request to the section supervisor that also states the purpose of the request. This latter information enables the supervisor to determine, in accordance with the mandate of Section 1707.12, whether the request should be denied because of its unreasonable or improper motivation. Furthermore, in order to spare the time and the expense of unnecessary duplication, the Registration Section urges that as much information concerning the request as possible be provided to permit the file room personnel to identify the relevant documents.

The Registration Section will notify the person who makes the request for inspection of the time when the files will be available for his perusal. This notification will be made by mail. A waiting period will often occur because Registration files are stored in different locations and because a Division attorney must examine the relevant files in order to remove any material not open to public inspection, such as investigative reports and the like.

The utilization of this procedure will enable the person who wishes to inspect Registration files to do so without the bother of unnecessary visits to the Division or long periods of waiting before the files are presented for his examination. In addition, it should also permit the file room personnel to respond more rapidly to the volume of requests that they process. The Registration Section encourages everyone who desires to obtain information from its files to comply with this procedure.

Offering Price For A Primary Public Offering Of Securities By A Corporate Issuer Classified As A Going Concern: The Need For A More Realistic Standard

Pursuant to sections I.(0)(4) and II.(b)(1) of the *General Standards Used in Determining Whether a Proposed Offering of Corporate Securities Is Being Made on Grossly Unfair Terms* [hereinafter the *Corporate Guidelines*], which are located on pages 11 and 12 of the June, 1973 issue of the *Ohio Securities Bulletin,* the Division presently permits a corporate issuer classified as a going concern to register its securities for a primary public offering at a proposed price per share not in excess of twenty-five times that issuer's average annaulized net earnings per share for its most recently completed accounting period. Stated another way, the ratio between the proposed offering price per share and the average annual net earnings per share (the so-called "P/E ratio") may not exceed twenty-five. The Division has become quite disenchanted with this standard, and the first part of this article will enumerate the reasons for this disaffection. Then possible alternatives to the "twenty-five times earnings" test will be presented, after which will come the announcement of a modified guideline for the offerings of bank holding corporations.

A. THE PRESENT STANDARD. For no discernible reason, the "twenty-five times earnings" test has remained the same over the years despite varying economic conditions. Perhaps its longevity can be attributed to a lack of understanding concerning its origin as an offering price limitation; few people seem to know the rationale behind its selection, and a random Division survey of twelve securities lawyers failed to unearth an adequate explanation for the existence of this standard. Actually, a maximum limitation of twenty-five times earnings on the offering price of corporate securities simply seeks to provide a minimum return on investment of four per cent if the issuer continues to produce the same annual earnings. Evidently, a four per cent return was considered an adequate investment objective at the time of this standard's formulation. Today, one may very well query the propriety of sales of securities with such a low projected rate of return.

The "twenty-five times earnings" standard causes the Division the most concern in the context of a "best-efforts" offering by a going concern for whose securities there is no presently existing trading market. The proposed offering price per share in that situation can be as high as twenty-five times the earnings per share of that concern under the Division's present price guideline. This proposed offering price is particularly objectionable in those instances where the price-earnings ratios of similarly situated corporations in the same industry justify only an offering price that is a much lower multiple of the concern's earnings figure. Such an artificially inflated offering price adversely affects the investing public, the investment banking industry, and the business com munity.

Of course, the investing public bears the direct thrust of the adverse consequences caused by the overly high offering price. To begin with, the investors most likely have overpaid for their investment in this company. If no trading market develops in these securities, the investors will own a highly illiquid investment whose intrinsic value is much less than their purchase price. And even if a trading market does develop, the price of the securities will probably seek the price level of similar securities of similar companies in the same industry. In that case, the investors can either retain their investment at its depreciated market value or sell it at a loss, a most unattractive choice.

The negative impact of the inflated price on the investment banking and business communities is much more indirect but nonetheless real. The unnecessary overpayment for these securities decreases the amount of investment capital potentially available to the remainder of the business community more than their intrinsic value merits. This extra decrement in the supply of capital increases the costs of acquisition of the capital that is available to the business community, thereby adding to the operating costs of business. In addition, this extra decrement needlessly reduces the basic resource of the investment banking industry, whose viability directly depends upon the existence of available investment capital. Furthermore, the investment banking industry may experience much more difficulty in obtaining capital from an investing public disgruntled over the adverse results of previous investments such as those described in the immediately preceding paragraph of this article.

B. *PROPOSED ALTERNATIVES.* Presently the Division is considering several possible alternatives to the "twenty-five times earnings" standard. Since the probable rationale for that standard concerns the minimum return on investment that the prospective investor will receive, one alternative is to simply increase the minimum rate of return to five or six per cent such that the offering price would at the most be twenty or seventeen times earnings. This maximum earnings multiple could then be revised periodically, perhaps annually, to reflect changes in the economy and/or the capital markets. Under this alternative, a proposed offering price in excess of the maximum earnings multiple would be deemed to be grossly unfair unless the issuer can satisfactorily demonstrate to the Division by industry comparison or some other method that the higher price is warranted.

There is a difficulty with the above proposal, however, in that applying one P/E standard to all companies generally ignores differences in the industry involved and in the market place (unless a particular issuer can justify a different price). A more realistic and comprehensive proposal is being considered by the Division. Under this proposal, the Division would develop P/E ratios for all major industries; the industries would be selected by categorizing the various economic activities, and a composite P/E for each industry would be determined. As in the first proposal, the P/E ratios would be periodically revised to reflect changing economic conditions. An acceptable deviation from each industry P/E would be

determined, and an offering price resulting in an excess thereof would be grossly unfair unless the issuer could demonstrate to the satisfaction of the Division that special circumstances justify a higher offering price and consequent P/E ratio. These special circumstances would generally be those currently applicable factors when a sale price in excess of twenty-five times P/E is desired.

The Division recognizes, however, that it is not possible to develop composite P/E's for all industries in a short time, although it is believed that the second proposal above is superior to the first. Thus, as a corollary to the second proposal, the Division is considering an interim procedure which would be applied to industries where a composite P/E has not yet been developed. Under this interim procedure, an overall P/E ceiling would be imposed in accordance with the first proposal, which would be lower than the current twenty-five times P/E standard. At the same time the Division would commence development of P/E ratios for the various industries. To the extend P/E ratios are computed and correlated for specific industries, such would be controlling and the overall ceiling limitation would not be applicable. Any increase above the industry P/E would have to be justified without regard to the standard for industries wherein P/E ratios are not complete. But issuers in industries where no P/E ratio has been established would be subject to the ceiling limitation, and could sell at a price resulting in a higher P/E ratio only if the higher price can be justified. Such justification could be based upon the issuer's analysis of the P/E ratio for his industry, and to the extent issuers can satisfactorily demonstrate a higher P/E for an industry not yet subject to a computation by the Division, the issuer will not only excape the overall ceiling, but will also aid the Division in determining the P/E ratio applicable to that industry.

C. *MODIFICATION OF CURRENT GUIDELINE FOR BANK HOLDING COMPANIES.* The above proposed changes in the current offering price limitation guideline are published at this time for comment, and are still under consideration; none are intended to be currently applicable. However, the Division's guidelines, including the current twenty-five times earnings standard, are designed to be flexible and subject to change by the Division when the need is perceived and the bases are identified. In accordance with the spirit of the guidelines, the Division will at this time apply a modification of the current price limitation with respect to the inter and intrastate bank holding company industries. The Division has access to and is able to compute quarterly P/E ratios on the majority of the Ohio bank holding companies; this provides a representative base for a reliable and fair determination of that industry's P/E ratio in Ohio. Similar information on other bank holding companies on a nationwide basis is easily accessible. Thus, under the newly modified guideline for bank holding company offerings in Ohio, where a holding company is a going concern as defined in the *Ohio Securities Bulletin,* June, 1973, p. 10, with no existing public market in its securities as defined in the same volume of the *Ohio Securities Bulletin,* p. 11, and proposes to sell equity securities on a best efforts or all or nothing basis (but not through a firm commitment underwriting), the offering price will be grossly unfair if it results in a P/E ratio in excess of the bank holding industry P/E, either in Ohio, or nationwide, as the case may be. The issuer must justify a multiple in excess of the industry ratio by pointing to special circumstances which indicate to the Division that a higher offering price is justified before such higher price will not be deemed grossly unfair. This modification of the offering price limitation guidelines with respect to the bank holding company industry does not necessarily mean that the proposal for creating P/E ratios for all industries will be chosen. But the ready access to P/E information, the relative homogeneity of the bank holding company industry, and the fact that the Division has very recently examined several bank holding company filings, all indicate that a modified standard which more accurately reflects industry conditions is necessary for bank holding company offerings.

D. *CONCLUSION.* The Division believes that the current twenty-five times earnings guidelines is no longer a viable method of determining the fairness of the terms of an offering, although the Division is nevertheless required by statute to determine whether an offering price is grossly unfair. The above proposals, except for the bank holding company modification, are being considered as alternative guidelines for making this determination although other procedures not suggested above may be possible; the Division hopes that interested persons will provide meaningful input such that these proposals and others may be evaluated in light of the needs of industry as well as the investing public. The revision of the current guidelines with respect to bank holding companies, while applicable to future applications for registration, is also published at this time for purposes of eliciting commentary, as well as to provide notice to issuers who may be affected. The Division especially desires commentary on the merits of a guideline based upon industry composites, recomputed periodically to reflect economic and market changes, as opposed to a guideline based upon an overall ceiling for all issuers despite industry differences.

Bernard G. Boiston

ENFORCEMENT SECTION

Second Weedout Project Initiated: The number of potential enforcement cases pending before the Division as a result of complaints and investigative activity has again reached a level (approximately 700 at present) which necessitates a comprehensive review and evaluation of all active enforcement files in order to focus attention upon those cases warranting further involvement on the part of the Division as a matter of priority (a maximum of approximately 100 based upon current resource levels) and to accomplish a summary disposition of the remainder so that optimum efficiency of the Enforcement

Section can be maintained.

During the course of this endeavor (a similar project having been successfully completed toward the end of 1973) cases which, due to their size, complexity, or interstate character, can be more effectively handled at the Federal level are being referred to the S.E.C., which has been very cooperative in assisting the Division with matters of this nature. In cases of lower priority, complainants (and where appropriate, other investors) are being advised with respect to the civil remedies which are available to them. The Division is proceeding as expeditiously as possible with additional investigation, formal administrative action, and civil and criminal litigation in the courts in connection with the remaining cases of highest priority. It is not unusual, however, for cases in this category to require hundreds of hours of work by investigators and attorneys in order that a satisfactory resolution may be achieved.

The principal objectives sought by the Division in the conduct of its enforcement cases are the curtailment of further violations, protection of the interests of existing investors through rehabilitation of investment vehicles, and the deterrence of similar violations in the future by the same or other persons. Meaningful rehabilitation is by far the most expensive of the three and the most difficult to achieve. Prevention of violations by means of the application of definitive regulatory standards in connection with the registration, licensing, and reporting processes remains the least expensive and most effective form of regulation which can be implemented by the Division. No system, however, is perfect and even an optimization of results through the balancing of complementary functions will not reduce the number of cases referred to the Division to a level which will allow every enforcement matter to be pursued to its ultimate conclusion or every case which is pursued to receive immediate attention. Persons who contact the Division with respect to enforcement situations should keep this fact in mind and not view the Division as an absolute guarantor of their investments. Those who receive, as a result of the application of priorities, a notification that the Division will not be able to proceed further with a matter in which they are interested, should not conclude that the Division is not seriously concerned with enforcement of the law and, similarly, those who have an interest in a large and complex case with which the Division is proceeding should not necessarily expect an instant remedy to be forthcoming. Such are the realities of legal proceedings and governmental economics.

William L. Case, III

BROKER–DEALER SECTION

Dealer Licensing For Real Estate Offerings

In many of the real estate offerings that are registered with the Division and that require a dealer's license in order to sell the interests registered, a principal of the registering entity obtains the necessary dealer's license in an individual capacity rather than on behalf of the entity. By obtaining this license in his own name, the principal must comply with more stringent standards of financial responsibility and reporting than would the entity had it been the holder of the license. In the case of small real estate offerings, the standards which the individual licensee must meet are often excessively burdensome financially. And, even though the licensed principal is often highly knowledgeable about the real estate industry in general and about real estate investment programs in particular, he typically possesses little or no experience concerning compliance with Division financial reporting requirements for dealers. This combination of circumstances often causes much consternation at compliance examination time.

The Division realizes that this licensing of the principal instead of the registering entity most often occurs when the principal plans to participate in several real estate offerings over a period of time. But the Division hopes to demonstrate by this article that, even in this situation, licensing of each registering entity as the dealer for its own offering is less burdensome and less costly than licensing of one common principal as the dealer for all of the offerings.

The principal who obtains a dealer's license must comply with the net worth requirement of Regulation COs-1-07(D) [formerly Regulation DS-4], 2 *CCHBlue Sky L. Rep.* ¶38,664, and with the periodic financial reporting requirements of Regulation COs-1-07(I)(3) [formerly Regulation DS-9(C)], 2 *CCH Blue Sky L. Rep.* ¶38,669. Generally, the principal must have a liquid net worth of at least $10,000 at the time of application for a dealer's license absent special circumstances. And he must maintain that net worth above $5,000 at all times thereafter. Annually he must file with the Division an audited financial statement certified by an independent accountant. This requirement can be waived by the Division only after one such statement has been filed and only upon application and good cause shown.

By contrast, the registering entity that obtains a dealer's license may avoid the net worth requirement entirely and may comply with the Division's financial reporting requirements without the use of certified financial statements. Regulation COs-1-07(D) allows the Division to waive the net worth requirements in the case of an issuer who applies for a dealer's license restricted to the sale of its own securities if the Division is satisfied that investors will not be prejudiced by such action. Regulation COs-1-07(I)(3) by its terms excepts from its reporting requirements an issuer licensed as a dealer for the sole purpose of selling its own securities. Such an issuer need only comply with the financial reporting requirements of Regulation COs-1-06(B) [formerly Regulation Q-2], 2 *CCH Blue Sky L. Rep.* ¶38,652. That regulation requires semi-annual reports to be filed with the Division so long as the issuer shall continue to make sales of the registered securities. Each report must indicate the number and

amount of securities sold during the preceding six months and must include a balance sheet and a profit-and-loss statement for a period ending not more than ninety days prior to the date of filing.

Comparison of the two sets of requirements demonstrates that the issuing entity which obtains a dealer's license restricted to the sales of its own securities must comply with less rigorous financial responsibility and reporting standards than would a principal of that entity who obtains the license in an individual capacity. The entity avoids the cost of preparation of audited, certified financial statements by an independent accountant, which is probably the biggest stumbling block that the licensed principal encounters. In fact, even in the instances of repeated offerings by the same principals, the cost of separate dealer's licenses for each offering has been found to be less than the cost of the certified financial statements that are required for the one license that the principal can obtain for all of the offerings.

One possible objection to the multiple-license approach for repeated offerings is that *Ohio Revised Code* Section 1707.15 requires each applicant to pass a written examination that covers its knowledge of Ohio's securities laws. It may seem that this section mandates that the same principal repeatedly take the same examination each time he wants to obtain a dealer's license on behalf of an entity. Obviously, this procedure seems to be an onerous burden to impose upon the principal. The Division recognizes this problem and thinks that, once the principal passes the dealer's examination on behalf of the first entity for which he seeks license restricted to the sales of its own securities, he has in most instances satisfied the examination requirement for future entities of which he is a principal that desire similar licenses.

The Division recommends the entity-as-licensee approach in order to avoid the administrative and practical problems that arise from the requirements of audited, certified financial statements from individual licensees. The Division hopes that this article convinces future applicants for restricted dealer's licenses to opt for the entity approach.

James C. Warneka

FOREIGN REAL ESTATE SECTION
Expiration of Division Orders of Qualification

Since October of 1973, all Division Orders of Qualification issued pursuant to *Ohio Revised Code* Section 1707.33 have been limited to a one-year period of effectiveness. As a result, the permissible offering period for the real estate qualified by such an order expires one year from the date of issuance of the order. Offers for sale or sales of this real estate subsequent to the termination date of the order without timely requalification thus violate the provisions of *Ohio Revised Code* Sections 1707.33, 1707.44(C)(1), and 1707.44(G).

Ohio Revised Code Section 1707.33(G) vests the Division with stautory authority to impose this one year limitation on the effectiveness of orders of qualification for foreign real estate. That subsection, in pertinent part, provides that the Division "shall allow the qualification of such real estate . . . on the terms stated in the application or on such other terms, calculated to prevent fraud or deception, as the Division approves." The Division thinks that the one-year limitation is in furtherance of its statutory responsibility for investor protection and is consistent with the intent of Section 1707.33(G) by reason of the following:

(1) The method of financing for large scale community development is subject to short-term fluctuations in interest rates that have a dramatic effect upon both the total developmental costs and the developer's cash flow situation. Both of these factors, in turn, significantly affect the feasibility of the overall developmental program.

(2) The community development process typically involves phased improvement schedules. This segmentation, which may contemplate the installation of improvements over a protracted period of time, necessitates an annual review of the constantly changing economics of the developmental process in order to assure that the developer has met the developmental commitments and timetables which he had set for the project and that he possesses the financial capability to proceed with the long-term developmental scheme.

(3) Periodic revisions in the pricing structure of the development generally occur at least annually.

(4) Since rapidly evolving federal and state environmental laws, rules, regulations and policies have a profound impact on the viability of the large scale development, frequent review of the developmental program in light of the latest environmental regulatory scheme becomes important to insure that the development will reach completion in accordance with that scheme.

(5) The Division thinks that the large number of complaints that it annually receives from Ohio residents concerning project abandonments by developers, bankruptcies or developers, and failures to install promised improvements on time necessitates more frequent Division review of the terms and the progress of foreign real estate developments being sold to the Ohio residents.

The Division cautions registrants who offer and sell foreign real estate in Ohio pursuant to Division Orders that have respective one-year periods of effectiveness that, in order to provide the investor protection mandated by the Ohio Securities Act, the Division will pursue available administrative and/or judicial remedies in those instances where it discovers that such registrants are offering properties for sale in Ohio after the expiration of their

respective orders of qualification. For those registrants who want to continue to market their developments beyond the effective periods of their respective orders of qualification, the Division encourages them to submit applications for requalification pursuant to Section 1707.33 not less than sixty days prior to the respective termination dates of their present orders.

R. Michael Jones

CONSUMER FINANCE SECTION

Disposition Of Collateral By Secured Parties After Its Voluntary Surrender By, Or Its Peaceful Repossession From, Defaulting Debtors

Historically, all secured parties in Ohio have relied heavily upon the procedure specified in former *Ohio Revised Code* §1319.07 in order to dispose of collateral that was acquired from defaulting debtors by either voluntary surrender or peaceful repossession. Reference to the use of this procedure can be found in Regulation 2, para. 6.e., of the Division Regulations promulgated pursuant to the Small Loan Act, *Ohio Revised Code* §1321.01-.33 and 1321.99, and in Rule 2, para. f.(5), of the Division Rules promulgated pursuant to the Mortgage Loan Act, *Ohio Revised Code* §1321.51-.60 and 1321.99.

But the Ohio General Assembly repealed Section 1319.07 when it amended the Retail Installment Sales Act, *Ohio Revised Code* §§1317.01-.16, through passage of Amended Substitute House Bill 350. This repealer took effect on April 4th of 1973. Even though this event occurred more than eighteen months ago, recent indications to the Division demonstrate a lack of widespread knowledge among secured parties in Ohio that they can no longer rely upon the procedure detailed in section 1319.07. This absence of knowledge has prompted the Division to publish this notification in the hopes that the problem will be corrected.

In the absence of Section 1319.07, *Ohio Revised Code* §1309.47 is the general section that applies to the disposition of repossessed collateral by secured parties, except that *Ohio Revised Code* §1317.16 slightly modifies its procedure in the case of retail installment sales contracts. As a convenience to *Bulletin* readers, the Division presents the following reprint of Section 1309.47 for their information:

Sec. 1309.47 (A) A secured party after default may sell, lease, or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to Sections 1302.01 to 1302.98 of the Revised Code. The proceeds of disposition shall be applied in the order following to:

(1) the reasonable expenses of retaking, holding, preparing for sale, selling, and the like;

(2) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(3) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(B) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(C) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(D) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of Sections 1309.44 to 1309.50 of the Revised Code or of any judicial proceedings:

(1) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders, or the person conducting the sale; or

(2) in any other case, if the purchaser acts in good faith.

(E) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement, or the like

and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under Sections 1309.01 to 1309.50 of the Revised Code.

(F) This Section is subject to the limitations of Section 1317.16 of the Revised Code.

Robert P. Fickell

CREDIT UNION SECTION

Summary Of Proposed Amendments To The Ohio Credit Union Act

The Ohio Credit Union League will sponsor a legislative program to amend the Ohio Credit Union Act in the General Assembly this year. A Division representative has attended the meetings of the League's legislative committee and has contributed to the formulation of the general thrust of the program. It is expected that the credit union industry in Ohio will seek the Division's support for this program in the legislature. This article will attempt to survey the highlights of the proposed amendments to date.

Several of the proposed amendments represent possible answers to credit union problems created by the adverse economic climate which this country presently faces. The key to survival of the credit union industry today lies in its ability to expand fields of membership in order to introduce new capital into the industry and to promote the more productive investment of this capital. Two of the proposed amendments are addressed to the expansion of fields of membership while another pertains to the more productive use of capital.

Presently, the chartering process provided in the statute is the only method by which credit union services can be extended to individuals who do not fall within the respective fields of membership of existing credit unions. Many groups of such individuals do not possess the potential enrollment needed to sustain a viable credit union organization. One proposed amendment will alter the statutory field-of-membership provision to allow credit unions to provide membership services to certain identifiable groups of such individuals. This proposed expansion of credit union services will enable thousands of people throughout the state who otherwise cannot qualify for credit union membership to benefit from their use as well as provide the credit union industry with a new source of capital.

Another proposed amendment that pertains to expansion of fields of membership focuses upon the merger procedure for credit unions. This amendment will provide for merger of entire fields of membership rather than of present participants only. Such consolidation of fields of membership coincides with the present thought that fewer credit unions, each composed of larger numbers of members, will provide greater efficiency in their administration and better service to their members.

The depressed status of the economy and the marginal returns on investment which credit unions have been experiencing have stimulated interest in the possibility of an increase in the maximum interest charge on personal loans to 1½% per month on the unpaid balance of loans outstanding. Traditionalists may recoil at this proposed violation of the present 1% per month ceiling, which has existed in the credit union industry since its creation. And such an increase in the maximum interest charge may very well prolong the existence of individual credit unions whose management techniques are inadequate for them to survive otherwise. But more rigorous Division examination of internal administrative procedures of credit unions can negate this latter possibility. Also, since the proposed figure is simply a permissive ceiling rather than a mandatory standard for the industry, each credit union will remain free to set its interest charge on personal loans at whatever level within the maximum that it considers to be optimum for its particular circumstances.

Another proposed amendment that will most likely be presented to the legislature this year also reflects the current economic climate of this country. Since certain credit unions in this state may not survive the present economic crunch, protection of the members' share deposits becomes more critical. The proposed amendment, a mandatory requirement of share deposit insurance, aims to provide that protection. Current thought among this proposal's supporters calls for mandatory application for such insurance within several months after the effective date of the legislation with qualification for the coverage no less than two years later. Failure to qualify within that time period will force the Division to take administrative sanctions against the offending credit union. The chances that mandatory share deposit insurance will become Ohio law have increased because of the formation of the Ohio Credit Union Shareowners' Guaranty Association (OCUSGA) as an alternative to the National Credit Union Administration's plan of insurance. OCUSGA met charter requirement in May of 1974; currently, it is operating with total assets in excess of $900,000 and total members' shares in excess of $90 million.

The 1971 revision of the Ohio Credit Union Act extended the availability of proxy voting to credit unions and eliminated the fifteen-day "show cause" period that had previously been required to precede any credit union suspension by the Division. Since the practical results of these two provisions have not been entirely satisfactory, proposed amendments deal with these respective areas of concern.

Few credit unions have used proxy voting because of the cost and time factors. The real need is a more democratic form of representation at annual meetings of shareholders. The proposed amendment aims to meet this need by mail balloting. In addition, the mail ballots, with stringent

qualifications as to control within the organization, may contribute to the quorum requirement for annual or special meetings of the membership. Use of mail ballots will most likely spread the responsibility of management over a much larger segment of the membership and encourage a more informed membership to participate in, as well as to review, the activities of management.

The elimination of the "show cause" provision allows the Division to suspend a credit union that violates the Credit Union Act or the rules promulgated thereunder or that operates in an unsafe or unsound manner without delay. But the industry is concerned about the negative impact which a Suspension Order carries; sometimes the adverse reaction by a credit union's members to the suspension creates insurmountable problems in a situation where the credit union can otherwise correct the cause of the suspension. The industry proposes that a nominal "show cause" period of at least five days be re-incorporated into the statute in order to encourage constructive discourse between the credit union and the Division without the detrimental effect of a total suspension.

The proposed amendments which have been mentioned in this article do not bear the unqualified endorsement of the Division. These provisions have not been finalized in a comprehensive package to date. The Division reserves the right to withhold approval of the legislative amendments pending receipt and review of the entire package.

John Gouch

OTHER DEVELOPMENTS

During the early part of January, 1975, several key members of the Division staff will be leaving public service to pursue career objectives in the fields of law and business:

On Wednesday, January 8, 1975, Jack D. Jester, Attorney-Inspector, will be leaving the Division to accept a position as general counsel of a major development company in Miami, Florida. In his capacities as Supervisor of the Enforcement and Foreign Real Estate Sections of the Division during the past year Jack has, by virtue of his special expertise in litigation and real estate law and his almost inexhaustible energy and determination, increased considerably the vitality and effectiveness of what are probably the two most difficult regulatory functions of the Division. His efforts have generated a momentum in the activities of the Enforcement Section which, if maintained, will inure to the benefit of public investors in Ohio for many years to come.

On Friday, January 10, 1975, Alan P. Baden, Special Counsel for Policy Matters, will be leaving the Division to enter private law practice with a major firm in Cleveland. As one of the most knowledgeable members of the Division staff in the fields of Federal and State securities law and with his special talents for organization and problem-solving, Alan has made, during the past eighteen months, an immeasurable contribution to the administrative and policy development programs of the Division. He has been especially instrumental in the preparation of important proposals for the revision of S.B. 338 and in the formulation of an aggressive new regulatory attitude toward the activities of intrastate broker/dealers. Alan's versatility and general proficiency has greatly enhanced the capacity of the Division to build a more relevant regulatory structure in all areas of its activity for the future.

On Friday, January 31, 1975, R. Michael Jones, Supervisor of the Foreign Real Estate Section, will leave the Division to enter the real estate business in Columbus. Mike's aggressive and unyielding perseverance in combating chronic abuses associated with the development and sale in Ohio of land located outside the state and in implementing for the first time a securities law approach to regulation in this area consistent with the dictates of the Ohio Securities Act in the face of hostile opposition from a powerful and previously unchecked industry has enabled the Division to assume a position of leadership among the states in this important area of public protection.

These three members of the Division staff are examples of the kind of bright, ambitious, and dedicated young people which the Division has been fortunate to attract to public service during the past two years. The future success or failure of government as an institution will be dependent in no small part upon the ability of public agencies such as the Division to continue to attract persons of this caliber by maintaining a high level of relevance in the objectives of their administrative programs.

William L. Case, III

ADMINISTRATIVE ACTIONS

Summary of Enforcement Activity for September, October, November and December, 1974

Broker-Dealer Suspensions

Mutual Sales and Investment Company	9/74

Salesman Suspensions

Steve F. Jankowski	12/74
Orris A. Mays	12/74

Salesman License Revocations

Phillip Lombardo	10/74

Salesman License Refusals

Emil Elias	12/74

Registration Suspensions

Sugar Creek	11/74
Dennison, Inc.	11/74

Hearings

Multi-State Unit, Inc.	10/74
Harold L. Agee	12/74
Robert J. Bloom	12/74

Court Actions

Martin Silverberg -- Entered Plea of Guilty	8/74
Buckeye Finance --Consent Injunction	10/74
Charcoal Angus	10/74

Summary of Credit Union Activity for September, October, and November, 1974

Suspension of Normal Operations

Calvary Baptist Credit Union (Continuation)	9/18/74
PERCWCU (Continuation)	9/25/74
American Crayon Employees, Sandusky, Ohio	10/21/74
Lordstown Credit Union, Lordstown, Ohio	11/4/74

Hearings Held

Calvary Baptist Credit Union, Toledo, Ohio	10/30/74
PERCWCU Credit Union	11/7/74

Mergers Approved

Anchor Fasteners merged with Buell Industries, Connecticut	9/12/74
Burndy, Toledo merged with Toledo Central	9/24/74
AZCO merged with Ohio Central	9/30/74
Spanish-American merged with Ohio Central	9/30/74
A.S.F. (Alliance) Employees merged with Ohio Federal Employees	10/21/74

Other Actions

New Charter Granted:	
Rike's Associates Credit Union, Dayton, Ohio	9/16/74
Ordered into Liquidation:	
A.S.F. (Alliance) Employees Credit Union, Alliance, Ohio	9/23/74

Summary of Consumer Finance Activity for September, October, and November, 1974

September, 1974

	Issued	Cancelled	Suspended
Small Loan Licenses	1	19	0
Second Mortgage Licenses	2	14	0
Premium Finance Licenses	1	0	0
Pawnbroker Licenses	0	0	0

Compliance Examinations Made: 241
Financial Examinations Made: 7

October, 1974

	Issued	Cancelled	Suspended
Small Loan Licenses	5	7	0
Second Mortgage Licenses	0	1	0
Premium Finance Licenses	0	0	0
Pawnbroker Licenses	4	0	0

Compliance Examinations Made: 379
Financial Examinations Made: 5

November, 1974

	Issued	Cancelled	Suspended
Small Loan Licenses	3	10	0
Second Mortgage Licenses	0	3	0
Premium Finance Licenses	1	0	0
Pawnbroker Licenses	1	0	0

Compliance Examinations Made: 221
Financial Examinations Made: 5

Hearings Held Pursuant To Section 1321.04

Household Consumer Discount Company
1104 Oak Harbor Road
Fremont, Ohio 10/74

C.I.T. Financial Service, Inc.
25475 Lorain Road
North Olmsted, Ohio 11/74

Continental Acceptance Corporation
6785 W. 130th Street
Parma Heights, Ohio 11/74

STATISTICS

REGISTRATIONS
September, 1974

Registration	Certificates
2 (B)	25
3-0	536
5 (A)	0
6 (A) (1)	132
6 (A) (1) With Offering Circular	7
6 (A) (2)	118
6 (A) (3)	49
6 (A) (3)-0G	1
6 (A) (4)	10

	Applications Received	Orders
Interstate Corporate	11	17
Stock Option & Purchase Plan	2	14
Intrastate Corporate	6	12
Investment Companies	42	16
R.E.I.T.	0	1
Real Estate Ltd. Partnerships	13	17
Oil & Gas Offerings	20	14
Cattle Funds	3	1
Other Non-Corporate	6	2
Form 39	0	0

Note: 1 Request for Cursory Review
13 Withdrawals

October, 1974

Registration	Certificates
2 (B)	41
3-0	554
5 (A)	1
6 (A) (a)	84
6 (A) (1) with Offering Circular	6
6 (A) (2)	53
6 (A) (3)	16
6 (A) (3) -OG	1
6 (A) (4)	5

	Applications Received	Orders
Interstate Corporate	17	17
Stock-Option & Purchase Plan	0	4
Intrastate Corporate	8	0
Investment Companies	42	47
R.E.I.T.	1	0
Real Estate Ltd. Partnerships	15	15
Oil & Gas Offerings	23	10
Cattle Funds	1	0
Other Non-Corporate	17	11
Form 39	0	0

Note: 1 Request for Cursory Review
12 Withdrawals

November, 1974

Registration	Certificates
2 (B)	42
3-0	490
5 (A)	1
6 (A) (1)	133
6 (A) (1) with Offering Circular	4
6 (A) (2)	67
6 (A) (3)	25
6 (A) (3) -OG	3
6 (A) (4)	2

	Applications Received	Orders
Interstate Corporate	20	11
Stock-Option & Purchase Plan	0	2
Intraspace Corporate	3	3
Investment Companies	27	31
R.E.I.T.	1	0
Real Estate Ltd. Partnerships	20	3
Oil & Gas Offerings	21	5
Cattle Funds	3	0
Other Non-Corporate	5	2
Form 39	0	0

Note: 6 Requests for Cursory Review
7 Withdrawals

Securities Broker-Dealer Applications (Form 15) Received in September, October, and November, 1974

Hickman, Williams & Company	9/3/74
Booz, Allen & Hamilton Inc.	9/5/74
Missouri Pacific Railroad Company	9/11/74
Robert H. Leshner & Co., Inc.	9/11/74
Monsanto Company	9/11/74
Snap-on Tools Corporation	9/19/74
Eastern Securities Corporation	9/23/74

Muller and Company	9/24/74
Clarence L. Mackey	9/26/74
Robintech Incorporated	9/26/74
Anchor Daily Income Fund, Inc.	9/30/74
Rapoca Energy Corporation	9/30/74
Greenshields & Co., Inc.	10/2/74
First Steuben Bancorp., Inc.	10/3/74
Cuyahoga Broadcasting, Inc.	10/3/74
Property Associates, Ltd.	10/3/74
Gamble–Skogmo, Inc.	10/7/74
Southland Equity Corporation	10/9/74
Richard F. Gauch	10/9/74
Tymshare, Inc.	10/11/74
Capital Liquidity, Inc.	10/15/74
M.S. Wien & Co., Inc.	10/15/74
Worthington Mortgage Co.	10/17/74
Meridian Oil and Gas Enterprises, Inc.	10/17/74
Bates & Springer Investment Corporation	10/21/74
CCI Securities, Inc.	10/21/74
Carl David Glickman	10/21/74
Hydron Europe, Inc.	10/23/74
Hydron Pacific, Ltd.	10/23/74
Hydro Med Sciences, Inc.	10/22/74
Bay State Gas Company	10/23/74
Brockton Taunton Gas Company	10/23/74
Northeast Utilities	10/22/74
H. J. Heinz Company	10/25/74
Bache Group Inc.	10/25/74
Columbus Equipment Company	10/25/74
The Nassau Fund	10/28/74
NEA Mutual Fund, Inc.	10/29/74
Heinold, O'Connor & Cloonan, Inc.	11/4/74
A. G. Becker & Co. Incorporated	11/6/74
Becker Securities Corporation	11/6/74
ENI Corporation	11/6/74
Ivemed Associates, Incorporated	11/12/74
BFTG Securities Corporation	11/12/74
First Midwest Corporation	11/12/74
William C. Draner	11/12/74
National Grape Cooperative Association, Inc.	11/18/74
Amtex Oil & Gas	11/18/74
CleveCorp Securities	11/19/74
CIDCO Investment Services, Inc.	11/19/74
Industrial Natural Gas Corporation	11/19/74
Southernwood Associates	11/20/74
Liquid Capital Income, Inc.	11/20/74
Joseph Alexander Magnus, dba Joseph Alexnader & Co.	11/21/74
Gruntal & Co.	11/22/74
Emery Air Freight Corporation	11/22/74
Life Investors Management Corporation	11/27/74
Ashland Finance Company	11/27/74
W. Carl Elswick	11/27/74

Foreign Real Estate Broker-Dealer Applications (Form 331-A) Received in September, October, and November, 1974

Truesdale, Lynch and Associates, Incorporated	9/4/74
Bates & Springer Investment Corporation	10/21/74

Salesman Applications Received in September, October, and November, 1974

September	
Form 16 – Securities	194
Form 331-B – Foreign Real Estate	31
Total Salesmen for September	225
October	
Form 16 – Securities	238
Form 331-B – Foreign Real Estate	14
Total Salesmen for October	252
November	
Form 16 – Securities	233
Form 331-B – Foreign Real Estate	14
Total Salesmen for November	247

EDITOR'S NOTE:

This publication represents the twelfth issue of the *Ohio Securities Bulletin.* With its distribution the Division has fulfilled its contractual promise to the subscribers to Volume I of "one year of the *Bulletin.*" At this time, the Division staff plans to continue the publication of the *Bulletin.* Based upon the experience of the past two years, a bimonthly publication schedule seems possible. The Division will disseminate a separate letter after the new administration takes office to inform present subscribers of the terms of future subscriptions to the *Bulletin.*

William C. Phillippi