

# AN ACT

To amend sections 1701.48, 1707.01, 1707.03, 1707.161, 1707.36, and 1707.44 and to enact section 1707.439 of the Revised Code to include electronic transmissions as a method of appointing a voting proxy, to apply the Ohio Securities Law's prohibitions against fraud to the purchase of securities, and to make other changes in the Ohio Securities Law.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 1701.48, 1707.01, 1707.03, 1707.161, 1707.36, and 1707.44 be amended and section 1707.439 of the Revised Code be enacted to read as follows:

Sec. 1701.48. (A) A person who is entitled to attend a shareholders' meeting, to vote ~~thereat at a shareholders' meeting~~, or to execute consents, waivers, or releases; may be represented at ~~such the~~ meeting or vote ~~thereat at the meeting~~, and may execute consents, waivers, and releases, and may exercise any of ~~his the person's~~ other rights, by proxy or proxies appointed by a writing signed by ~~such the~~ person or appointed by a verifiable communication authorized by the person.

(B) ~~A~~ Any transmission that creates a record capable of authentication, including, but not limited to, a telegram or, a cablegram appearing, electronic mail, or an electronic, telephonic, or other transmission, that appears to have been transmitted by such a person, or a described in division (A) of this section, and that appoints a proxy is a sufficient verifiable communication to appoint a proxy. A photographic, photostatic, facsimile transmission, or equivalent reproduction of a writing, appointing that is signed by a person described in division (A) of this section and that appoints a proxy is a sufficient writing to appoint a proxy.

(C) No appointment of a proxy is valid after the expiration of eleven months after it is made unless the writing or verifiable communication specifies the date on which it is to expire or the length of time it is to continue in force. No proxy appointed for or in connection with the

der authorization of a control share acquisition pursuant to section 1701.831 of the Revised Code is valid if it provides that it is irrevocable or if it is sought, appointed, and received other than both:

(1) In accordance with all applicable requirements of the law of this state and the law of the United States;

(2) Separate and apart from the sale or purchase, contract or tender for sale or purchase, or request or invitation for tender for sale or purchase, of shares of the issuing public corporation.

(D) Every appointment of a proxy shall be revocable unless ~~such that~~ appointment is coupled with an interest, except that, as provided in division (C) of this section, proxies appointed for or in connection with the shareholder authorization of a control share acquisition pursuant to section 1701.831 of the Revised Code shall be revocable at all times prior to the obtaining of ~~such that~~ shareholder authorization, whether or not coupled with an interest. A revocation of a revocable appointment may be made only as provided in this section. Without affecting any vote previously taken, the person appointing a proxy may revoke a revocable appointment by a later appointment received by the corporation or by giving notice of revocation to the corporation in writing, in a verifiable communication, or in open meeting. The presence at a meeting of the person appointing a proxy does not revoke the appointment.

(E) A revocable appointment of a proxy is not revoked by the death or incompetency of the maker unless, before the vote is taken or the authority granted is otherwise exercised, written notice of ~~such the~~ death or incompetency of the maker is received by the corporation from the executor or administrator of the estate of ~~such the~~ maker or from the fiduciary having control of the shares in respect of which the proxy was appointed.

(F) Unless the writing or verifiable communication appointing a proxy otherwise provides:

(1) Each proxy has the power of substitution, and, ~~when if~~ three or more proxies are appointed, a majority of them or of their substitutes may appoint one or more substitutes to act for all;

(2) If more than one proxy is appointed, then (a) with respect to voting or executing consents, waivers, or releases, or objections to consents at a shareholders' meeting, a majority of ~~such the~~ proxies ~~as that~~ attend the meeting, or if only one attends then that one, may exercise all the voting and consenting authority ~~thereat at the meeting~~; and if one or more attend and a majority do not agree on any particular issue, each proxy so attending shall be entitled to exercise ~~such that~~ authority with respect to an equal number of shares; (b) with respect to exercising any other authority, a majority may act

for all.

Sec. 1707.01. As used in this chapter:

(A) Whenever the context requires it, "division" or "division of securities" may be read as "director of commerce" or as "commissioner of securities."

(B) "Security" means any certificate or instrument that represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property, or credit of any person or of any public or governmental body, subdivision, or agency. It includes shares of stock, certificates for shares of stock, membership interests in limited liability companies, voting-trust certificates, warrants and options to purchase securities, subscription rights, interim receipts, interim certificates, promissory notes, all forms of commercial paper, evidences of indebtedness, bonds, debentures, land trust certificates, fee certificates, leasehold certificates, syndicate certificates, endowment certificates, certificates or written instruments in or under profit-sharing or participation agreements or in or under oil, gas, or mining leases, or certificates or written instruments of any interest in or under the same, receipts evidencing preorganization or reorganization subscriptions, preorganization certificates, reorganization certificates, certificates evidencing an interest in any trust or pretended trust, any investment contract, any instrument evidencing a promise or an agreement to pay money, warehouse receipts for intoxicating liquor, and the currency of any government other than those of the United States and Canada, but sections 1707.01 to 1707.45 of the Revised Code do not apply to the sale of real estate.

(C)(1) "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 a security or of an interest in a security. "Sale" also includes a contract to sell, an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a solicitation of an offer to buy, a subscription, or an offer to sell, directly or indirectly, by agent, circular, pamphlet, advertisement, or otherwise.

(2) "Sell" means any act by which a sale is made.

(3) The use of advertisements, circulars, or pamphlets in connection with the sale of securities in this state exclusively to the purchasers specified in division (D) of section 1707.03 of the Revised Code is not a sale when the advertisements, circulars, and pamphlets describing and offering those securities bear a readily legible legend in substance as follows: "This offer is made on behalf of dealers licensed under sections 1707.01 to 1707.45 of the Revised Code, and is confined in this state exclusively to institutional

investors and licensed dealers."

(4) The offering of securities by any person in conjunction with a licensed dealer by use of advertisement, circular, or pamphlet is not a sale if that person does not otherwise attempt to sell securities in this state.

(5) Any security given with, or as a bonus on account of, any purchase of securities is conclusively presumed to constitute a part of the subject of that purchase and has been "sold."

(6) "Sale" by an owner, pledgee, or mortgagee, or by a person acting in a representative capacity, includes sale on behalf of such party by an agent, including a licensed dealer or salesperson.

(D) "Person," except as otherwise provided in this chapter, means a natural person, firm, partnership, limited partnership, partnership association, syndicate, joint-stock company, unincorporated association, trust or trustee except where the trust was created or the trustee designated by law or judicial authority or by a will, and a corporation or limited liability company organized under the laws of any state, any foreign government, or any political subdivision of a state or foreign government.

(E)(1) "Dealer," except as otherwise provided in this chapter, means every person, other than a salesperson, who engages or professes to engage, in this state, for either all or part of the person's time, directly or indirectly, either in the business of the sale of securities for the person's own account, or in the business of the purchase or sale of securities for the account of others in the reasonable expectation of receiving a commission, fee, or other remuneration as a result of engaging in the purchase and sale of securities. "Dealer" does not mean any of the following:

(a) Any issuer, including any officer, director, employee, or trustee of, or member or manager of, or partner in, or any general partner of, any issuer, that sells, offers for sale, or does any act in furtherance of the sale of a security that represents an economic interest in that issuer, provided no commission, fee, or other similar remuneration is paid to or received by the issuer for the sale;

(b) Any licensed attorney, public accountant, or firm of such attorneys or accountants, whose activities are incidental to the practice of the attorney's, accountant's, or firm's profession;

(c) Any person that, for the account of others, engages in the purchase or sale of securities that are issued and outstanding before such purchase and sale, if a majority or more of the equity interest of an issuer is sold in that transaction, and if, in the case of a corporation, the securities sold in that transaction represent a majority or more of the voting power of the corporation in the election of directors;

(d) Any person that brings an issuer together with a potential investor and whose compensation is not directly or indirectly based on the sale of any securities by the issuer to the investor;

(e) Any bank, savings and loan association, savings bank, or credit union chartered under the laws of the United States or any state ~~thereof~~ of the United States, provided that all transactions are consummated by or through a person licensed pursuant to section 1707.14 of the Revised Code;

(f) Any person that the division of securities by rule exempts from the definition of "dealer" under division (E)(1) of this section.

(2) "Licensed dealer" means a dealer licensed under this chapter.

(F)(1) "Salesman" or "salesperson" means every natural person, other than a dealer, who is employed, authorized, or appointed by a dealer to sell securities within this state.

(2) The general partners of a partnership, and the executive officers of a corporation or unincorporated association, licensed as a dealer are not salespersons within the meaning of this definition, nor are such clerical or other employees of an issuer or dealer as are employed for work to which the sale of securities is secondary and incidental; but the division of securities may require a license from any such partner, executive officer, or employee if it determines that protection of the public necessitates the licensing.

(3) "Licensed salesperson" means a salesperson licensed under this chapter.

(G) "Issuer" means every person who has issued, proposes to issue, or issues any security.

(H) "Director" means each director or trustee of a corporation, each trustee of a trust, each general partner of a partnership, except a partnership association, each manager of a partnership association, and any person vested with managerial or directory power over an issuer not having a board of directors or trustees.

(I) "Incorporator" means any incorporator of a corporation and any organizer of, or any person participating, other than in a representative or professional capacity, in the organization of an unincorporated issuer.

(J) "Fraud," "fraudulent," "fraudulent acts," "fraudulent practices," or "fraudulent transactions" means anything recognized on or after July 22, 1929, as such in courts of law or equity; any device, scheme, or artifice to defraud or to obtain money or property by means of any false pretense, representation, or promise; any fictitious or pretended purchase or sale of securities; and any act, practice, transaction, or course of business relating to the purchase or sale of securities that is fraudulent or that has operated or

would operate as a fraud upon the seller or purchaser.

(K) Except as otherwise specifically provided, whenever any classification or computation is based upon "par value," as applied to securities without par value, the average of the aggregate consideration received or to be received by the issuer for each class of those securities shall be used as the basis for that classification or computation.

(L)(1) "Intangible property" means patents, copyrights, secret processes, formulas, services, good will, promotion and organization fees and expenses, trademarks, trade brands, trade names, licenses, franchises, any other assets treated as intangible according to generally accepted accounting principles, and securities, accounts receivable, or contract rights having no readily determinable value.

(2) "Tangible property" means all property other than intangible property and includes securities, accounts receivable, and contract rights, when the securities, accounts receivable, or contract rights have a readily determinable value.

(M) "Public utilities" means those utilities defined in sections 4905.02, 4905.03, 4907.02, and 4907.03 of the Revised Code; in the case of a foreign corporation, it means those utilities defined as public utilities by the laws of its domicile; and in the case of any other foreign issuer, it means those utilities defined as public utilities by the laws of the situs of its principal place of business. The term always includes railroads whether or not they are so defined as public utilities.

(N) "State" means any state of the United States, any territory or possession of the United States, the District of Columbia, and any province of Canada.

(O) "Bank" means any bank, trust company, savings and loan association, savings bank, or credit union that is incorporated or organized under the laws of the United States, any state of the United States, Canada, or any province of Canada and that is subject to regulation or supervision by that country, state, or province.

(P) "Include," when used in a definition, does not exclude other things or persons otherwise within the meaning of the term defined.

(Q)(1) "Registration by description" means that the requirements of section 1707.08 of the Revised Code have been complied with.

(2) "Registration by qualification" means that the requirements of sections 1707.09 and 1707.11 of the Revised Code have been complied with.

(3) "Registration by coordination" means that there has been compliance with section 1707.091 of the Revised Code. Reference in this chapter to

registration by qualification also shall be deemed to include registration by coordination unless the context otherwise indicates.

(R) "Intoxicating liquor" includes all liquids and compounds that contain more than three and two-tenths per cent of alcohol by weight and are fit for use for beverage purposes.

(S) "Institutional investor" means any corporation, bank, insurance company, pension fund or pension fund trust, employees' profit-sharing fund or employees' profit-sharing trust, any association engaged, as a substantial part of its business or operations, in purchasing or holding securities, or any trust in respect of which a bank is trustee or cotrustee. "Institutional investor" does not include any business entity formed for the primary purpose of evading sections 1707.01 to 1707.45 of the Revised Code.

(T) "Securities Act of 1933," 48 Stat. 74, 15 U.S.C. 77a, "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78a, "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, "Investment Advisers Act of 1940," 54 Stat. 847, 15 U.S.C. 80b, and "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C. 80a mean the federal statutes of those names as amended before or after ~~the effective date of this amendment~~ March 18, 1999.

(U) "Securities and exchange commission" means the securities and exchange commission established by the Securities Exchange Act of 1934.

(V)(1) "Control bid" means the purchase of or offer to purchase any equity security of a subject company from a resident of this state if either of the following applies:

(a) After the purchase of that security, the offeror would be directly or indirectly the beneficial owner of more than ten per cent of any class of the issued and outstanding equity securities of the issuer.

(b) The offeror is the subject company, there is a pending control bid by a person other than the issuer, and the number of the issued and outstanding shares of the subject company would be reduced by more than ten per cent.

(2) For purposes of division (V)(1) of this section, "control bid" does not include any of the following:

(a) A bid made by a dealer for the dealer's own account in the ordinary course of business of buying and selling securities;

(b) An offer to acquire any equity security solely in exchange for any other security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, in good faith and not for the purpose of avoiding the provisions of this chapter, and not involving any public offering of the other security within the meaning of Section 4 of Title I of the "Securities Act of 1933," 48 Stat. 77, 15 U.S.C.A. 77d(2), as amended;

(c) Any other offer to acquire any equity security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, from not more than fifty persons, in good faith and not for the purpose of avoiding the provisions of this chapter.

(W) "Offeror" means a person who makes, or in any way participates or aids in making, a control bid and includes persons acting jointly or in concert, or who intend to exercise jointly or in concert any voting rights attached to the securities for which the control bid is made and also includes any subject company making a control bid for its own securities.

(X)(1) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of regular business, issues or promulgates analyses or reports concerning securities.

(2) "Investment adviser" does not mean any of the following:

(a) Any attorney, accountant, engineer, or teacher, whose performance of investment advisory services described in division (X)(1) of this section is solely incidental to the practice of the attorney's, accountant's, engineer's, or teacher's profession;

(b) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(c) A person who acts solely as an investment adviser representative;

(d) A bank holding company, as defined in the "Bank Holding Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, that is not an investment company;

(e) A bank, or any receiver, conservator, or other liquidating agent of a bank;

(f) Any licensed dealer or licensed salesperson whose performance of investment advisory services described in division (X)(1) of this section is solely incidental to the conduct of the dealer's or salesperson's business as a licensed dealer or licensed salesperson and who receives no special compensation for the services;

(g) Any person, the advice, analyses, or reports of which do not relate to securities other than securities that are direct obligations of, or obligations guaranteed as to principal or interest by, the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest, and that have been designated by the secretary of the treasury as exempt securities as defined in the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78c;

(h) Any person that is excluded from the definition of investment adviser pursuant to section 202(a)(11)(A) to (E) of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-2(a)(11), or that has received an order from the securities and exchange commission under section 202(a)(11)(F) of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-2(a)(11)(F), declaring that the person is not within the intent of section 202(a)(11) of the Investment Advisers Act of 1940.

(i) Any other person that the division designates by rule, if the division finds that the designation is necessary or appropriate in the public interest or for the protection of investors or clients and consistent with the purposes fairly intended by the policy and provisions of this chapter.

(Y)(1) "Subject company" means an issuer that satisfies both of the following:

(a) Its principal place of business or its principal executive office is located in this state, or it owns or controls assets located within this state that have a fair market value of at least one million dollars.

(b) More than ten per cent of its beneficial or record equity security holders are resident in this state, more than ten per cent of its equity securities are owned beneficially or of record by residents in this state, or more than one thousand of its beneficial or record equity security holders are resident in this state.

(2) The division of securities may adopt rules to establish more specific application of the provisions set forth in division (Y)(1) of this section. Notwithstanding the provisions set forth in division (Y)(1) of this section and any rules adopted under this division, the division, by rule or in an adjudicatory proceeding, may make a determination that an issuer does not constitute a "subject company" under division (Y)(1) of this section if appropriate review of control bids involving the issuer is to be made by any regulatory authority of another jurisdiction.

(Z) "Beneficial owner" includes any person who directly or indirectly through any contract, arrangement, understanding, or relationship has or shares, or otherwise has or shares, the power to vote or direct the voting of a security or the power to dispose of, or direct the disposition of, the security. "Beneficial ownership" includes the right, exercisable within sixty days, to acquire any security through the exercise of any option, warrant, or right, the conversion of any convertible security, or otherwise. Any security subject to any such option, warrant, right, or conversion privilege held by any person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by that person, but shall not be deemed to be outstanding for the purpose of computing the

percentage of the class owned by any other person. A person shall be deemed the beneficial owner of any security beneficially owned by any relative or spouse or relative of the spouse residing in the home of that person, any trust or estate in which that person owns ten per cent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which that person owns ten per cent or more of the equity, and any affiliate or associate of that person.

(AA) "Offeree" means the beneficial or record owner of any security that an offeror acquires or offers to acquire in connection with a control bid.

(BB) "Equity security" means any share or similar security, or any security convertible into any such security, or carrying any warrant or right to subscribe to or purchase any such security, or any such warrant or right, or any other security that, for the protection of security holders, is treated as an equity security pursuant to rules of the division of securities.

(CC) "Investment company" has the same meaning as in section 3(A) of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-52.

(DD) "Penny stock" has the same meaning as in section 3(A)(51) of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78a-78jj, and the rules, regulations, and orders issued pursuant to that section.

(EE) "Going concern transaction" has the same meaning given that term under the rules or regulations on the securities and exchange commission issued pursuant to section 13(c) of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78a-78jj.

(FF) "Person acting on behalf of an issuer" means an officer, director, or employee of an issuer.

(GG) "Blank check company," "roll-up transaction," "executive officer of an entity," and "direct participation program" have the same meanings given those terms by rule or regulation of the securities and exchange commission.

(HH) "Forward-looking statement" means any of the following:

(1) A statement containing a projection of revenues, income including income loss, earnings per share including earnings loss per share, capital expenditures, dividends, capital structure, or other financial items;

(2) A statement of the plans and objectives of the management of the issuer for future operations, including plans or objectives relating to the products or services of the issuer;

(3) A statement of future economic performance, including any statement of that nature contained in a discussion and analysis of financial conditions by the management or in the results of operations included

pursuant to the rules and regulations of the securities and exchange commission;

(4) Any disclosed statement of the assumptions underlying or relating to a statement described in division (B)(1), (2), or (3) of section 1707.437 of the Revised Code;

(5) Any report issued by an outside reviewer retained by an issuer to the extent that the report relates to a forward-looking statement made by the issuer;

(6) A statement containing a projection or estimate of any other items that may be specified by rule or regulation of the securities and exchange commission.

(II)(1) "Investment adviser representative" means a supervised person of an investment adviser, provided that the supervised person has more than five clients who are natural persons other than excepted persons defined in division (KK) of this section, and that more than ten per cent of the supervised person's clients are natural persons other than excepted persons defined in division (KK) of this section. "Investment adviser representative" does not mean any of the following:

(a) A supervised person that does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser;

(b) A supervised person that provides only investment advisory services described in division (X)(1) of this section by means of written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

(c) Any other person that the division designates by rule, if the division finds that the designation is necessary or appropriate in the public interest or for the protection of investors or clients and is consistent with the provisions fairly intended by the policy and provisions of this chapter.

(2) For the purpose of the calculation of clients in division (II)(1) of this section, a natural person and the following persons are deemed a single client: Any minor child of the natural person; any relative, spouse, or relative of the spouse of the natural person who has the same principal residence as the natural person; all accounts of which the natural person or the persons referred to in division (II)(2) of this section are the only primary beneficiaries; and all trusts of which the natural person or persons referred to in division (II)(2) of this section are the only primary beneficiaries. Persons who are not residents of the United States need not be included in the calculation of clients under division (II)(1) of this section.

(3) If subsequent to ~~the effective date of this amendment~~ March 18, 1999, amendments are enacted or adopted defining "investment adviser

representative" for purposes of the Investment Advisers Act of 1940 or additional rules or regulations are promulgated by the securities and exchange commission regarding the definition of "investment adviser representative" for purposes of the Investment Advisers Act of 1940, the division of securities shall, by rule, adopt the substance of the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest.

(JJ) "Supervised person" means a natural person who is any of the following:

(1) A partner, officer, or director of an investment adviser, or other person occupying a similar status or performing similar functions with respect to an investment adviser;

(2) An employee of an investment adviser;

(3) A person who provides investment advisory services described in division (X)(1) of this section on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(KK) "Excepted person" means a natural person to whom any of the following applies:

(1) Immediately after entering into the investment advisory contract with the investment adviser, the person has at least seven hundred fifty thousand dollars under the management of the investment adviser.

(2) The investment adviser reasonably believes either of the following at the time the investment advisory contract is entered into with the person:

(a) The person has a net worth, together with assets held jointly with a spouse, of more than one million five hundred thousand dollars.

(b) The person is a qualified purchaser as defined in division (LL) of this section.

(3) Immediately prior to entering into an investment advisory contract with the investment adviser, the person is either of the following:

(a) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser;

(b) An employee of the investment adviser, other than an employee performing solely clerical, secretarial, or administrative functions or duties for the investment adviser, which employee, in connection with the employee's regular functions or duties, participates in the investment activities of the investment adviser, provided that, for at least twelve months, the employee has been performing such nonclerical, nonsecretarial, or nonadministrative functions or duties for or on behalf of the investment adviser or performing substantially similar functions or duties for or on

behalf of another company.

If subsequent to ~~the effective date of this amendment~~ March 18, 1999, amendments are enacted or adopted defining "excepted person" for purposes of the Investment Advisers Act of 1940 or additional rules or regulations are promulgated by the securities and exchange commission regarding the definition of "excepted person" for purposes of the Investment Advisers Act of 1940, the division of securities shall, by rule, adopt the substance of the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest.

(LL)(1) "Qualified purchaser" means either of the following:

(a) A natural person who owns not less than five million dollars in investments as defined by rule by the division of securities;

(b) A natural person, acting for the person's own account or accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than twenty-five million dollars in investments as defined by rule by the division of securities.

(2) If subsequent to ~~the effective date of this amendment~~ March 18, 1999, amendments are enacted or adopted defining "qualified purchaser" for purposes of the Investment Advisers Act of 1940 or additional rules or regulations are promulgated by the securities and exchange commission regarding the definition of "qualified purchaser" for purposes of the Investment Advisers Act of 1940, the division of securities shall, by rule, adopt the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest.

(MM)(1) "Purchase" has the full meaning of "purchase" as applied by or accepted in courts of law or equity and includes every acquisition of, or attempt to acquire, a security or an interest in a security. "Purchase" also includes a contract to purchase, an exchange, an attempt to purchase, an option to purchase, a solicitation of a purchase, a solicitation of an offer to sell, a subscription, or an offer to purchase, directly or indirectly, by agent, circular, pamphlet, advertisement, or otherwise.

(2) "Purchase" means any act by which a purchase is made.

(3) Any security given with, or as a bonus on account of, any purchase of securities is conclusively presumed to constitute a part of the subject of that purchase.

Sec. 1707.03. (A) As used in this section, "exempt" means that, except in the case of securities the right to buy, sell, or deal in which has been suspended or revoked under an existing order of the division of securities

under section 1707.13 of the Revised Code or under a cease and desist order under division (H) of section 1707.23 of the Revised Code, transactions in securities may be carried on and completed without compliance with sections 1707.08 to 1707.11 of the Revised Code.

(B) A sale of securities made by or on behalf of a bona fide owner, neither the issuer nor a dealer, is exempt if the sale is made in good faith and not for the purpose of avoiding this chapter and is not made in the course of repeated and successive transactions of a similar character. Any sale of securities over a stock exchange that is lawfully conducted in this state and regularly open for public patronage and that has been established and operated for a period of at least five years prior to the sale at a commission not exceeding the commission regularly charged in such transactions also is exempt.

(C) The sale of securities by executors, administrators, receivers, trustees, or anyone acting in a fiduciary capacity is exempt, where such relationship was created by law, by a will, or by judicial authority, and where such sales are subject to approval by, or are made in pursuance to authority granted by, any court of competent jurisdiction or are otherwise authorized and lawfully made by such fiduciary.

(D) A sale to the issuer, to a dealer, or to an institutional investor is exempt.

(E) A sale in good faith, and not for the purpose of avoiding this chapter, by a pledgee of a security pledged for a bona fide debt is exempt.

(F) The sale at public auction by a corporation of shares of its stock because of delinquency in payment for the shares is exempt.

(G)(1) The giving of any conversion right with, or on account of the purchase of, any security that is exempt, is the subject matter of an exempt transaction, has been registered by description, by coordination, or by qualification, or is the subject matter of a transaction that has been registered by description is exempt.

(2) The giving of any subscription right, warrant, or option to purchase a security or right to receive a security upon exchange, which security is exempt at the time the right, warrant, or option to purchase or right to receive is given, is the subject matter of an exempt transaction, is registered by description, by coordination, or by qualification, or is the subject matter of a transaction that has been registered by description is exempt.

(3) The giving of any subscription right or any warrant or option to purchase a security, which right, warrant, or option expressly provides that it shall not be exercisable except for a security that at the time of the exercise is exempt, is the subject matter of an exempt transaction, is registered by

description, by coordination, or by qualification, or at such time is the subject matter of a transaction that has been registered by description is exempt.

(H) The sale of notes, bonds, or other evidences of indebtedness that are secured by a mortgage lien upon real estate, leasehold estate other than oil, gas, or mining leasehold, or tangible personal property, or which evidence of indebtedness is due under or based upon a conditional-sale contract, if all such notes, bonds, or other evidences of indebtedness are sold to a single purchaser at a single sale, is exempt.

(I) The delivery of securities by the issuer on the exercise of conversion rights, the sale of securities by the issuer on exercise of subscription rights or of warrants or options to purchase securities, the delivery of voting-trust certificates for securities deposited under a voting-trust agreement, the delivery of deposited securities on surrender of voting-trust certificates, and the delivery of final certificates on surrender of interim certificates are exempt; but the sale of securities on exercise of subscription rights, warrants, or options is not an exempt transaction unless those rights, warrants, or options when granted were the subject matter of an exempt transaction under division (G) of this section or were registered by description, by coordination, or by qualification.

(J) The sale of securities by a bank, savings and loan association, savings bank, or credit union organized under the laws of the United States or of this state is exempt if at a profit to that seller of not more than two per cent of the total sale price of the securities.

(K)(1) The distribution by a corporation of its securities to its security holders as a share dividend or other distribution out of earnings or surplus is exempt.

(2) The exchange or distribution by the issuer of any of its securities or of the securities of any of the issuer's wholly owned subsidiaries exclusively with or to its existing security holders, if no commission or other remuneration is given directly or indirectly for soliciting the exchange, is exempt.

(3) The sale of preorganization subscriptions for shares of stock of a corporation prior to the incorporation of the corporation is exempt, when the sale is evidenced by a written agreement, no remuneration is given, or promised, directly or indirectly, for or in connection with the sale of those securities, and no consideration is received, directly or indirectly, by any person from the purchasers of those securities until registration by qualification, by coordination, or by description of those securities is made under this chapter.

(L) The issuance of securities in exchange for one or more bona fide outstanding securities, claims, or property interests, not including securities sold for a consideration payable in whole or in part in cash, under a plan of reorganization, recapitalization, or refinancing approved by a court pursuant to the Bankruptcy Act of the United States or to any other federal act giving any federal court jurisdiction over such plan of reorganization, or under a plan of reorganization approved by a court of competent jurisdiction of any state of the United States is exempt. As used in this division, "reorganization," "recapitalization," and "refinancing" have the same meanings as in section 1707.04 of the Revised Code.

(M) A sale by a licensed dealer, acting either as principal or as agent, of securities issued and outstanding before the sale is exempt, unless the sale is of one or more of the following:

(1) Securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as an underwriter or other participant in the distribution of those securities by the issuer, whether that distribution is direct or through an underwriter, provided that, if the issuer is such by reason of owning one-fourth or more of those securities, the dealer has knowledge of this fact or reasonable cause to believe this fact;

(2) Any class of shares issued by a corporation when the number of beneficial owners of that class is less than twenty-five, with the record owner of securities being deemed the beneficial owner for this purpose, in the absence of actual knowledge to the contrary;

(3) Securities that within one year were purchased outside this state or within one year were transported into this state, if the dealer has knowledge or reasonable cause to believe, before the sale of those securities, that within one year they were purchased outside this state or within one year were transported into this state; but such a sale of those securities is exempt if any of the following occurs:

(a) A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;

(b) Those securities, or securities of the same class, were registered within one year on the basis provided in section 1707.05 of the Revised Code, or within one year were qualified under section 1707.09 or 1707.091 of the Revised Code, and that registration or qualification is in full force and effect;

(c) Those securities at the time of sale could be registered on the basis provided in section 1707.05 of the Revised Code;

(d) The sale is made by a licensed dealer on behalf of the bona fide owner of those securities in accordance with division (B) of this section;

(e) Those securities were transported into Ohio in a transaction of the type described in division (L), (K), or (I) of this section, or in a transaction registered under division (A) of section 1707.06 of the Revised Code.

(N) For the purpose of this division and division (M) of this section, "underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or who participates directly or indirectly in any such undertaking or in the underwriting thereof, but "underwriter" does not include a person whose interest is limited to a discount, commission, or profit from the underwriter or from a dealer that is not in excess of the customary distributors' or sellers' discount, commission, or profit; and "issuer" includes any person or any group of persons acting in concert in the sale of such securities, owning beneficially one-fourth or more of the outstanding securities of the class involved in the transactions in question, with the record owner of securities being deemed the beneficial owner for this purpose, in the absence of actual knowledge to the contrary.

(O)(1) The sale of any equity security is exempt if all the following conditions are satisfied:

(a) The sale is by the issuer of the security.

(b) The total number of purchasers in this state of all securities issued or sold by the issuer in reliance upon this exemption during the period of one year ending with the date of the sale does not exceed ten. A sale of securities registered under this chapter or sold pursuant to an exemption under this chapter other than this exemption shall not be integrated with a sale pursuant to this exemption in computing the number of purchasers under this exemption.

(c) No advertisement, article, notice, or other communication published in any newspaper, magazine, or similar medium or broadcast over television or radio is used in connection with the sale, but the use of an offering circular or other communication delivered by the issuer to selected individuals does not destroy this exemption.

(d) The issuer reasonably believes after reasonable investigation that the purchaser is purchasing for investment.

(e) The aggregate commission, discount, and other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly does not exceed ten per cent of the initial offering price.

(f) Any such commission, discount, or other remuneration for sales in this state is paid or given only to dealers or salespersons registered pursuant

to this chapter.

(2) For the purposes of division (O)(1) of this section, each of the following is deemed to be a single purchaser of a security: husband and wife, a child and its parent or guardian when the parent or guardian holds the security for the benefit of the child, a corporation, a limited liability company, a partnership, an association or other unincorporated entity, a joint-stock company, or a trust, but only if the corporation, limited liability company, partnership, association, entity, joint-stock company, or trust was not formed for the purpose of purchasing the security.

(3) As used in division (O)(1) of this section, "equity security" means any stock or similar security of a corporation or any membership interest in a limited liability company; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security that the division considers necessary or appropriate, by such rules as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(P) The sale of securities representing interests in or under profit-sharing or participation agreements relating to oil or gas wells located in this state, or representing interests in or under oil or gas leases of real estate situated in this state, is exempt if the securities are issued by an individual, partnership, limited partnership, partnership association, syndicate, pool, trust or trust fund, or other unincorporated association and if each of the following conditions is complied with:

(1) The beneficial owners of the securities do not, and will not after the sale, exceed five natural persons;

(2) The securities constitute or represent interests in not more than one oil or gas well;

(3) A certificate or other instrument in writing is furnished to each purchaser of the securities at or before the consummation of the sale, disclosing the maximum commission, compensation for services, cost of lease, and expenses with respect to the sale of such interests and with respect to the promotion, development, and management of the oil or gas well, and the total of that commission, compensation, costs, and expenses does not exceed twenty-five per cent of the aggregate interests in the oil or gas well, exclusive of any landowner's rental or royalty;

(4) The sale is made in good faith and not for the purpose of avoiding this chapter.

(Q) The sale of any security is exempt if all of the following conditions are satisfied:

(1) The provisions of section 5 of the Securities Act of 1933 do not apply to the sale by reason of an exemption under section 4 (2) of that act.

(2) The aggregate commission, discount, and other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly does not exceed ten per cent of the initial offering price.

(3) Any such commission, discount, or other remuneration for sales in this state is paid or given only to dealers or salespersons registered under this chapter.

(4) The issuer or dealer files with the division of securities, not later than sixty days after the sale, a report setting forth the name and address of the issuer, the total amount of the securities sold under this division, the number of persons to whom the securities were sold, the price at which the securities were sold, and the commissions or discounts paid or given.

(5) The issuer pays a filing fee of one hundred dollars for the first filing and fifty dollars for every subsequent filing during each calendar year.

(R) A sale of a money order, travelers' check, or other instrument for the transmission of money by a person qualified to engage in such business under section 1109.60 or Chapter 1315. of the Revised Code is exempt.

(S) A sale by a licensed dealer of securities that are in the process of registration under the Securities Act of 1933, unless exempt under that act, and that are in the process of registration, if registration is required under this chapter, is exempt, provided that no sale of that nature shall be consummated prior to the registration by description or qualification of the securities.

(T) The execution by a licensed dealer of orders for the purchase of any security is exempt, provided that the dealer acts only as agent for the purchaser, has made no solicitation of the order to purchase the security, has no interest in the distribution of the security, and delivers to the purchaser written confirmation of the transaction that clearly itemizes ~~his~~ the dealer's commission. "Solicitation," as used in this division, means solicitation of the order for the specific security purchased and does not include general solicitations or advertisements of any kind.

(U) The sale insofar as the security holders of a person are concerned, where, pursuant to statutory provisions of the jurisdiction under which that person is organized or pursuant to provisions contained in its articles of incorporation, certificate of incorporation, partnership agreement, declaration of trust, trust indenture, or similar controlling instrument, there is submitted to the security holders, for their vote or consent, (1) a plan or agreement for a reclassification of securities of that person that involves the substitution of a security of that person for another security of that person,

(2) a plan or agreement of merger or consolidation or a similar plan or agreement of acquisition in which the securities of that person held by the security holders will become or be exchanged for securities of any other person, or (3) a plan or agreement for a combination as defined in division (Q) of section 1701.01 of the Revised Code or a similar plan or agreement for the transfer of assets of that person to another person in consideration of the issuance of securities of any person, is exempt if, with respect to any of the foregoing transactions, either of the following conditions is satisfied:

(a) The securities to be issued to the security holders are effectively registered under sections 6 to 8 of the Securities Act of 1933 and offered and sold in compliance with section 5 of that act;

(b) At least twenty days prior to the date on which a meeting of the security holders is held or the earliest date on which corporate action may be taken when no meeting is held, there is submitted to the security holders, by that person, or by the person whose securities are to be issued in the transaction, information substantially equivalent to the information that would be required to be included in a proxy statement or information statement prepared by or on behalf of the management of an issuer subject to section 14(a) or 14(c) of the Securities Exchange Act of 1934.

(V) The sale of any security is exempt if the division by rule finds that registration is not necessary or appropriate in the public interest or for the protection of investors.

(W) Any offer or sale of securities made in reliance on the exemptions provided by Rule 505 of Regulation D made pursuant to the Securities Act of 1933 and the conditions and definitions provided by Rules 501 to 503 thereunder is exempt if the offer or sale satisfies all of the following conditions:

(1) No commission or other remuneration is given, directly or indirectly, to any person for soliciting or selling to any person in this state in reliance on the exemption under this division, except to dealers licensed in this state.

(2)(a) Unless the cause for disqualification is waived under division (W)(2)(b) of this section, no exemption under this section is available for the securities of an issuer unless the issuer did not know and in the exercise of reasonable care could not have known that any of the following applies to any of the persons described in Rule 262(a) to (c) of Regulation A under the Securities Act of 1933:

(i) The person has filed an application for registration or qualification that is the subject of an effective order entered against the issuer, its officers, directors, general partners, controlling persons or affiliates thereof, pursuant to the law of any state within five years before the filing of a notice required

under division (W)(3) of this section denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement.

(ii) The person has been convicted of any offense in connection with the offer, sale, or purchase of any security or franchise, or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, fraud, theft, or conspiracy to defraud.

(iii) The person is subject to an effective administrative order or judgment that was entered by a state securities administrator within five years before the filing of a notice required under division (W)(3) of this section and that prohibits, denies, or revokes the use of any exemption from securities registration, prohibits the transaction of business by the person as a dealer, or is based on fraud, deceit, an untrue statement of a material fact, or an omission to state a material fact.

(iv) The person is subject to any order, judgment, or decree of any court entered within five years before the filing of a notice required under division (W)(3) of this section, temporarily, preliminarily, or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale, or purchase of any security, or the making of any false filing with any state.

(b)(i) Any disqualification under this division involving a dealer may be waived if the dealer is or continues to be licensed in this state as a dealer after notifying the commissioner of the act or event causing disqualification.

(ii) The commissioner may waive any disqualification under this paragraph upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

(3) Not later than five business days before the earlier of the date on which the first use of an offering document or the first sale is made in this state in reliance on the exemption under this division, there is filed with the commissioner a notice comprised of offering material in compliance with the requirements of Rule 502 of Regulation D under the Securities Act of 1933 and a fee of one hundred dollars. Material amendments to the offering document shall be filed with the commissioner not later than the date of their first use in this state.

(4) The aggregate commission, discount, and other remuneration paid or given, directly or indirectly, does not exceed twelve per cent of the initial offering price, excluding legal, accounting, and printing fees.

(X) Any offer or sale of securities made in reliance on the exemption provided in Rule 506 of Regulation D under the Securities Act of 1933, and in accordance with Rules 501 to 503 of Regulation D under the Securities Act of 1933, is exempt provided that all of the following apply:

(1) The issuer makes a notice filing with the division on form D of the securities and exchange commission within fifteen days of the first sale in this state;

(2) Any commission, discount, or other remuneration for sales of securities in this state is paid or given only to dealers or salespersons licensed under this chapter;

(3) The issuer pays a filing fee of one hundred dollars to the division; however, no filing fee shall be required to file amendments to the form D of the securities and exchange commission.

(Y) The offer or sale of securities by an issuer is exempt provided that all of the following apply:

(1) The sale of securities is made only to persons who are, or who the issuer reasonably believes are, accredited investors as defined in Rule 501 of Regulation D under the Securities Act of 1933.

(2) The issuer reasonably believes that all purchasers are purchasing for investment and not with a view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve months of sale shall be presumed to be with a view to distribution and not for investment, except a resale to which any of the following applies:

(a) The resale is pursuant to a registration statement effective under section 1707.09 or 1707.091 of the Revised Code.

(b) The resale is to an accredited investor, as defined in Rule 501 of Regulation D under the Securities Act of 1933.

(c) The resale is to an institutional investor pursuant to the exemptions under division (B) or (D) of this section.

(3) The exemption under this division is not available to an issuer that is in the development stage and that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entities or persons.

(4) The exemption under this division is not available to an issuer, if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, or beneficial owners of ten per cent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

(a) Within the past five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any

tate securities administrator or the securities and exchange commission;

(b) Within the past five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the past five years, finding fraud or deceit in connection with the purchase or sale of any security;

(d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past five years, that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(5) Division (Y)(4) of this section is inapplicable if any of the following applies:

(a) The party subject to the disqualification is licensed or registered to conduct securities business in the state in which the order, judgment, or decree creating the disqualification was entered against the party described in division (Y)(4) of this section.

(b) Before the first offer is made under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification.

(c) The issuer did not know and, in the exercise of reasonable care based on reasonable investigation, could not have known that a disqualification from the exemption existed under division (Y)(4) of this section.

(6) A general announcement of the proposed offering may be made by any means; however, the general announcement shall include only the following information, unless additional information is specifically permitted by the division by rule:

(a) The name, address, and telephone number of the issuer of the securities;

(b) The name, a brief description, and price of any security to be issued;

(c) A brief description of the business of the issuer;

(d) The type, number, and aggregate amount of securities being offered;

(e) The name, address, and telephone number of the person to contact for additional information; and

(f) A statement indicating all of the following:

(i) Sales will only be made to accredited investors as defined in Rule 501 of Regulation D under the Securities Act of 1933;

(ii) No money or other consideration is being solicited or will be accepted by way of this general announcement;

(iii) The securities have not been registered with or approved by any state securities administrator or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.

(7) The issuer, in connection with an offer, may provide information in addition to the general announcement described in division (Y)(6) of this section, provided that either of the following applies:

(a) The information is delivered through an electronic database that is restricted to persons that are accredited investors as defined in Rule 501 of Regulation D under the Securities Act of 1933.

(b) The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor as defined in Rule 501 of Regulation D under the Securities Act of 1933.

(8) No telephone solicitation shall be done, unless prior to placing the telephone call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor as defined in Rule 501 of Regulation D under the Securities Act of 1933.

(9) Dissemination of the general announcement described in division (Y)(6) of this section to persons that are not accredited investors, as defined in Rule 501 of Regulation D under the Securities Act of 1933, does not disqualify the issuer from claiming an exemption under this division.

(10) The issuer shall file with the division notice of the offering of securities within fifteen days after notice of the offering is made ~~to the public~~ or a general announcement is made ~~to the public~~ in this state. The filing shall be on forms adopted by the division and shall include a copy of the general announcement, if one is made regarding the proposed offering, and copies of any offering materials, circulars, or prospectuses. A filing fee of one hundred dollars also shall be included.

Sec. 1707.161. (A) Subject to division (F) of this section, no person shall act as an investment adviser representative, unless one of the following applies:

(1) The person is licensed as an investment adviser representative by the division of securities.

(2) The person is a natural person who is licensed as an investment adviser by the division, and does not act as an investment adviser representative for another investment adviser; however, a natural person who is licensed as an investment adviser by the division may act as an investment adviser representative for another investment adviser if the natural person also is licensed by the division, or is properly excepted from licensure, as an investment adviser representative of the other investment adviser.

(3) The person is employed by or associated with an investment adviser registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, and does not have a place of business in this state.

(4) The person is employed by or associated with an investment adviser that is ~~exempted~~ excepted from licensure pursuant to division (A)(3) or (4) of section 1707.141 of the Revised Code or excepted from notice filing pursuant to division (B)(3) of section 1707.141 of the Revised Code.

(B)(1) No investment adviser representative required to be licensed under this section shall act as an investment adviser representative for more than two investment advisers. An investment adviser representative that acts as an investment adviser representative for two investment advisers shall do so only after the occurrence of both of the following:

(a) Being properly licensed, or properly excepted from licensure under this section, as an investment adviser representative for both investment advisers;

(b) Complying with the requirements set forth in rules adopted by the division regarding consent of both investment advisers and notice.

(2) Nothing in this section shall be construed to prohibit a natural person from being licensed by the division as both an investment adviser and an investment adviser representative.

(3) Nothing ~~is~~ in this section shall be construed to prohibit a natural person from being licensed by the division as both a salesperson and an investment adviser representative.

(4) Nothing in this section shall be construed to prohibit a natural person from being licensed by the division as both a dealer and an investment adviser representative.

(C) An investment adviser representative's license issued under this section shall not be effective during any period when the investment adviser representative is not employed by or associated with an investment adviser that is licensed by the division or that is in compliance with the notice filing requirements of division (B) of section 1707.141 of the Revised Code. Notice of the commencement and termination of the employment or association of an investment adviser representative licensed under this section shall be given to the division within thirty days after the commencement or termination by either of the following:

(1) The investment adviser, in the case of an investment adviser representative licensed under this section and employed by or associated with, or formerly employed by or associated with, an investment adviser licensed under section 1707.141 of the Revised Code;

(2) The investment adviser representative, in the case of an investment

adviser representative licensed under this section and employed by or associated with, or formerly employed by or associated with, an investment adviser that is subject to the notice filings requirements of division (B) of section 1707.141 of the Revised Code.

(D)(1) Application for an investment adviser representative license shall be made in accordance with this section and by filing with the division the information, materials, and forms specified in rules adopted by the division.

(2) The division shall by rule require an applicant to pass an examination designated by the division or achieve a specified professional designation.

(3) Prior to issuing the investment adviser representative license, the division may require the applicant to reimburse the division for the actual expenses incurred in investigating the applicant. An itemized statement of any such expenses that the applicant is required to pay shall be furnished to the applicant by the division.

(E) If the division finds that the applicant is of good business repute, appears to be qualified to act as an investment adviser representative, and has complied with sections 1707.01 to 1707.45 of the Revised Code and the rules adopted under those sections by the division, the division, upon payment of the fees prescribed by division (B) of section 1707.17 of the Revised Code, shall issue to the applicant a license authorizing the applicant to act as an investment adviser representative for the investment adviser, or investment advisers that are under common ownership or control, named in the application.

(F) ~~On the effective date of this section~~ March 18, 1999, a person required to be licensed as an investment adviser representative pursuant to this section has until no later than December 31, 1999, to be licensed as an investment adviser representative by the division of securities. However, a person required to be licensed by the division as an investment adviser representative by no later than December 31, 1999, may be licensed as an investment adviser representative by the division ~~on the effective date of this section~~ March 18, 1999, and prior to December 31, 1999.

Sec. 1707.36. (A) There is hereby created in the division of securities a position to be known as attorney-inspector, which shall be held only by an attorney at law. The duties of this position are to investigate and report upon all complaints and alleged violations of this chapter or rules adopted under this chapter by the division and to represent the division in prosecutions and other matters arising from such complaints and alleged violations.

The office of the attorney-inspector is hereby designated a criminal justice agency in investigating reported violations of law relating to

securities and investment advice, and as such is authorized by this state to apply for access to the computerized databases administered by the national crime information center or the law enforcement automated data system in Ohio, and to other computerized databases administered for the purpose of making criminal justice information accessible to state criminal justice agencies.

(B) There is hereby created in the division of securities two positions to be known as control-bid attorneys, which shall be held only by attorneys at law. The duties of these positions are to investigate and report upon all matters relating to control-bids and related matters and to represent the division in the regulatory matters arising under the Ohio control-bid law.

(C) The attorney-inspector and each control-bid attorney shall be paid at a rate not less than pay range 47 set out in schedule E-2 of section 124.152 of the Revised Code, to be paid as other operating expenses of the division.

Sec. 1707.439. As used in sections 1707.432 through 1707.439 of the Revised Code, "private civil action" shall not include an action for rescission pursuant to section 1707.43 of the Revised Code.

Sec. 1707.44. (A)(1) No person shall engage in any act or practice that violates division (A), (B), or (C) of section 1707.14 of the Revised Code, and no salesperson shall sell securities in this state without being licensed pursuant to section 1707.16 of the Revised Code.

(2) No person shall engage in any act or practice that violates division (A) of section 1707.141 or section 1707.161 of the Revised Code.

(B) No person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the following purposes:

(1) Complying with this chapter, in regard to registering securities by description;

(2) Securing the qualification of any securities under this chapter;

(3) Procuring the licensing of any dealer, salesperson, investment adviser, or investment adviser representative under this chapter;

(4) Selling any securities in this state;

(5) Advising for compensation, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

(C) No person shall knowingly and intentionally sell, cause to be sold, offer for sale, or cause to be offered for sale, any security which comes under any of the following descriptions:

(1) Is not exempt under section 1707.02 of the Revised Code, nor the subject matter of one of the transactions exempted in sections 1707.03,

1707.04, and 1707.34 of the Revised Code, has not been registered by description, coordination, or qualification, and is not the subject matter of a transaction that has been registered by description;

(2) The prescribed fees for registering by description, by coordination, or by qualification have not been paid in respect to such security;

(3) Such person has been notified by the division, or has knowledge of the notice, that the right to buy, sell, or deal in such security has been suspended or revoked, or that the registration by description, by coordination, or by qualification under which it may be sold has been suspended or revoked;

(4) The offer or sale is accompanied by a statement that the security offered or sold has been or is to be in any manner indorsed by the division.

(D) No person who is an officer, director, or trustee of, or a dealer for, any issuer, and who knows such issuer to be insolvent in that the liabilities of ~~such~~ the issuer exceed its assets, shall sell any securities of or for any such issuer, without disclosing the fact of the insolvency to the purchaser.

(E) No person with intent to aid in the sale of any securities on behalf of the issuer, shall knowingly make any representation not authorized by such issuer or at material variance with statements and documents filed with the division by such issuer.

(F) No person, with intent to deceive, shall sell, cause to be sold, offer for sale, or cause to be offered for sale, any securities of an insolvent issuer, with knowledge that such issuer is insolvent in that the liabilities of ~~such~~ the issuer exceed its assets, taken at their fair market value.

(G) No person in purchasing or selling securities shall knowingly engage in any act or practice ~~which~~ that is, in this chapter, declared illegal, defined as fraudulent, or prohibited.

(H) No licensed dealer shall refuse to buy from, sell to, or trade with any person because the person appears on a blacklist issued by, or is being boycotted by, any foreign corporate or governmental entity, nor sell any securities of or for any issuer who is known in relation to the issuance or sale of such securities to have engaged in such practices.

(I) No dealer in securities, knowing that the dealer's liabilities exceed the reasonable value of the dealer's assets, shall accept money or securities, except in payment of or as security for an existing debt, from a customer who is ignorant of the dealer's insolvency, and thereby cause the customer to lose any part of the customer's securities or the value ~~thereof~~ of those securities, by doing either of the following without the customer's consent:

(1) Pledging, selling, or otherwise disposing of such securities, when the dealer has no lien on or any special property in such securities;

(2) Pledging such securities for more than the amount due, or otherwise disposing of such securities for the dealer's own benefit, when the dealer has a lien or indebtedness on such securities.

It is an affirmative defense to a charge under this division that, at the time the securities involved were pledged, sold, or disposed of, the dealer had in the dealer's possession or control, and available for delivery, securities of the same kinds and in amounts sufficient to satisfy all customers entitled ~~thereto~~ to the securities, upon demand and tender of any amount due ~~thereon~~ on the securities.

(J) No person, with purpose to deceive, shall make, issue, publish, or cause to be made, issued, or published any statement or advertisement as to the value of securities, or as to alleged facts affecting the value of securities, or as to the financial condition of any issuer of securities, when the person knows that such statement or advertisement is false in any material respect.

(K) No person, with purpose to deceive, shall make, record, or publish or cause to be made, recorded, or published, a report of any transaction in securities which is false in any material respect.

(L) No dealer shall engage in any act that violates the provisions of section 15(c) or 15(g) of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C.A. 78o(c) or (g), or any rule or regulation promulgated by the securities and exchange commission thereunder. If, subsequent to October 11, 1994, additional amendments to section 15(c) or 15(g) are adopted, or additional rules or regulations are promulgated pursuant to such sections, the division of securities shall, by rule, adopt the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest.

(M)(1) No investment adviser or investment adviser representative shall do any of the following:

(a) Employ any device, scheme, or artifice to defraud any person;

(b) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(c) In acting as principal for the investment adviser's or investment adviser representative's own account, knowingly sell any security to or purchase any security from a client, or in acting as salesperson for a person other than such client, knowingly effect any sale or purchase of any security for the account of such client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser or investment adviser representative is acting and obtaining the consent of the client to the transaction. Division (M)(1)(c) of

this section does not apply to any investment adviser registered with the securities and exchange commission under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, or to any transaction with a customer of a licensed dealer or salesperson if the licensed dealer or salesperson is not acting as an investment adviser or investment adviser representative in relation to the transaction.

(d) Engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative. The division of securities may adopt rules reasonably designed to prevent such acts, practices, or courses of business as are fraudulent, deceptive, or manipulative.

(2) No investment adviser or investment adviser representative licensed or required to be licensed under this chapter shall take or have custody of any securities or funds of any person, except as provided in rules adopted by the division.

(3) In the solicitation of clients or prospective clients, no person shall make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which the statements were made.

SECTION 2. That existing sections 1701.48, 1707.01, 1707.03, 1707.161, 1707.36, and 1707.44 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_