

# AN ACT

To amend sections 1707.01, 1707.03, 1707.041, 1707.06, 1707.08, 1707.09, 1707.092, 1707.14, 1707.141, 1707.161, 1707.17, 1707.19, 1707.23, 1707.391, 1707.44, and 1707.45 and to repeal sections 1707.05 and 1707.07 of the Revised Code to make revisions in the Securities Law, and to maintain the provisions of this act on and after October 5, 2001, by amending the versions of sections 1707.01, 1707.17, 1707.23, and 1707.44 of the Revised Code that are scheduled to take effect on that date.

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

SECTION 1. That sections 1707.01, 1707.03, 1707.041, 1707.06, 1707.08, 1707.09, 1707.092, 1707.14, 1707.141, 1707.161, 1707.17, 1707.19, 1707.23, 1707.391, 1707.44, and 1707.45 of the Revised Code be amended to read as follows:

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 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 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 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

owing 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 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 March 18, 1999, amendments are enacted or adopted defining "qualified purchaser" for purposes of the Investment

visers 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

scription, 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 registered or 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)~~(d) 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 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 state 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

es 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 or a general announcement is made 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. 1707.041. (A)(1) No control bid for any securities of a subject company shall be made pursuant to a tender offer or request or invitation for tenders until the offeror files with the division of securities the information prescribed in division (A)(2) of this section. The offeror shall deliver a copy of the information specified in division (A)(2) of this section, by personal service, to the subject company at its principal office not later than the time of the filing with the division ~~of securities~~. The offeror shall send or deliver to all offerees in this state, as soon as practicable after the filing, the material terms of the proposed offer and the information specified in division (A)(2) of this section.

(2) The information to be filed with the division ~~of securities~~, with the subject company, and with any other offeror, pursuant to division (A)(1) of this section, shall include:

(a) Copies of all prospectuses, brochures, advertisements, circulars, letters, or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer;

(b) The identity and background of all persons on whose behalf the acquisition of any equity security of the subject company has been or is to be effected;

(c) The source and amount of funds or other consideration used or to be used in acquiring any equity security, including a statement describing any securities, other than the existing capital stock or long term debt of the offeror, which are being offered in exchange for the equity securities of the subject company;

(d) A statement of any plans or proposals that the offeror, upon gaining control, may have to liquidate the subject company, sell its assets, effect a merger or consolidation of it, establish, terminate, convert, or amend employee benefit plans, close any plant or facility of the subject company or of any of its subsidiaries or affiliates, change or reduce the work force of the subject company or any of its subsidiaries or affiliates, or make any other major change in its business, corporate structure, management personnel, or policies of employment;

(e) The number of shares of any equity security of the subject company of which each offeror is beneficial or record owner or has a right to acquire, directly or indirectly, together with the name and address of each person defined in this section as an offeror;

(f) Particulars as to any contracts, arrangements, or understandings to which an offeror is party with respect to any equity security of the subject company, including transfers of any equity security, joint ventures, loan or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into;

(g) Complete information on the organization and operations of the offeror, including the year of organization; the form of organization; the jurisdiction in which it is organized; a description of each class of the offeror's capital stock and of its long term debt; financial statements for the current period and for the three most recent annual accounting periods, unless the division by rule determines that the financial statements are not material or permits the filing of financial statements for less than the three most recent annual accounting periods; a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries; a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject; a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past three years; the names of all directors and executive officers together with biographical summaries of each for the preceding three years to date; and the approximate amount of any material interest, direct or indirect, of any of the directors or officers in any material transaction during the past three years, or in any proposed material transactions, to which the offeror or any of its subsidiaries was or is to be a party;

(h) Such other and further documents, exhibits, data, and information as may be required by regulations of the division ~~of securities~~, or as may be necessary to make fair, full, and effective disclosure to offerees of all information material to a decision to accept or reject the offer.

(3) Within five calendar days of the date of filing by an offeror of information specified in division (A)(2) of this section, the division ~~of securities~~ may by order summarily suspend the continuation of the control bid if the division determines that all of the information specified has not been provided by the offeror or that the control bid materials provided to

offerees do not provide full disclosure to offerees of all material information concerning the control bid. Such a suspension shall remain in effect only until the determination following a hearing held pursuant to division (A)(4) of this section.

(4) A hearing shall be scheduled and held by the division ~~of securities~~ with respect to each suspension imposed under division (A)(3) of this section. The hearing shall be held within ten calendar days of the date on which the suspension is imposed. Chapter 119. of the Revised Code does not apply to a hearing held under this division. The division ~~of securities~~ may allow any interested party to appear at and participate in the hearing in a manner considered appropriate by the division. The determination of the division ~~of securities~~ made following the hearing shall be made within three calendar days after the hearing has been completed, and no later than fourteen calendar days after the date on which the suspension is imposed. The division ~~of securities~~, by rule or order, may prescribe time limits for conducting the hearing and for the making of the determination that are shorter than those specified in this division. If, based upon the hearing, the division ~~of securities~~ determines that all of the information required to be provided by division (A)(2) of this section has not been provided by the offeror, that the control bid materials provided to offerees do not provide full disclosure to offerees of all material information concerning the control bid, or that the control bid is in material violation of any provision of this chapter, the division shall maintain the suspension of the continuation of the control bid, subject to the right of the offeror to correct disclosure and other deficiencies identified by the division and to reinstitute the control bid by filing new or amended information pursuant to this section.

(B)(1) No control bid shall be made pursuant to a tender offer or request or invitation for tenders unless division (A) of section 1707.14 of the Revised Code has been complied with, and no offeror shall make a control bid that is not made to all holders residing in this state of the equity security that is the subject of the control bid, or that is not made to such holders on the same terms as the control bid is made to holders of such equity security not residing in this state.

(2) No offeror may make a control bid pursuant to a tender offer or request or invitation for tenders or acquire any equity security in this state pursuant to a control bid at any time during which any proceeding by the division alleging a violation of any provision of this chapter is pending against the offeror.

(3) No offeror may acquire from any resident of this state in any manner any equity security of any class of a subject company at any time within two

years following the last acquisition of any security of the same class pursuant to a control bid pursuant to a tender offer or request or invitation for tenders by that offeror, whether the acquisition was made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the resident is afforded, at the time of the later acquisition, a reasonable opportunity to dispose of the security to the offeror upon substantially the same terms as those provided in the earlier control bid.

(4) If an offeror makes a tender offer or request or invitation for tenders not subject to Rule 14D-1 or Rule 14D-4 of the securities and exchange commission under the "Securities Exchange Act of 1934," for less than all the outstanding equity securities of a class, and if a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation for tenders are first published or sent or given to security holders than the offeror is bound or willing to take up and pay for, the securities shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each offeree. The preceding sentence applies to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in the next sentence, is first published or sent or given to security holders. If the terms of a control bid are changed before its expiration by increasing the consideration offered to offerees, the offeror shall pay the increased consideration for all equity securities taken up, whether the same are deposited or taken up before or after the change in the terms of the control bid.

(C) If the offeror or the subject company is a banking corporation ~~subject to regulation by the division of banks, a~~ or savings and loan association subject to regulation by the division of ~~savings and loan associations~~ financial institutions, or a public utility corporation subject to regulation by the public utilities commission, the division of securities shall ~~forthwith~~ immediately, upon receipt of the filing required under division (A) of this section, furnish a copy of the filing to the regulatory body having jurisdiction over the offeror or subject company.

(D) An offeror is subject to the liabilities and penalties applicable to a seller, and an offeree is entitled to the remedies applicable to a purchaser, as set forth in sections 1707.041 to 1707.44 of the Revised Code.

(E) The division of securities may, pursuant to Chapter 119. of the Revised Code, prescribe reasonable rules:

(1) Defining fraudulent, evasive, deceptive, or grossly unfair practices

in connection with control bids, and the terms used in this section;

(2) Exempting from this section control bids not made for the purpose of, and not having the effect of, changing or influencing the control of a subject company;

(3) Covering such other matters as are necessary to give effect to this section.

(F) If the offeror or a subject company is an insurance company subject to regulation under Title XXXIX of the Revised Code, the superintendent of insurance shall for all purposes of this section be substituted for the division of securities. This section shall not be construed to limit or modify in any way any responsibility, authority, power, or jurisdiction of the division of securities or the superintendent of insurance pursuant to any other section of the Revised Code.

(G) This section does not apply when:

(1) The offeror or the subject company is a public utility or a public utility holding company as defined in section 2 of the "Public Utility Holding Company Act of 1935," 49 Stat. 803, 15 U.S.C. 79, as amended, and the control bid is subject to approval by the appropriate federal agency as provided in such act;

(2) The offeror or the subject company is a bank or a bank holding company as subject to the "Bank Holding Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, and subsequent amendments thereto, and the control bid is subject to approval by the appropriate federal agency as provided in such act;

(3) The offeror or the subject company is a savings and loan holding company as defined in section 2 of the "Savings and Loan Holding Company Amendments of 1967," 82 Stat. 5, 12 U.S.C. 1730a, as amended, and the control bid is subject to approval by the appropriate federal agency as provided in such act;

(4) The offeror and the subject company are banks and the offer is part of a merger transaction subject to approval by appropriate federal supervisory authorities.

(H) If any application of any provision of this section is for any reason held to be illegal or invalid, the illegality or invalidity shall not affect any legal and valid provision or application of this section, and the parts and application of this section are severable.

Sec. 1707.06. (A) The following transactions in securities may be carried out upon compliance with ~~section 1707.07~~ sections 1707.08 and 1707.11 of the Revised Code:

(1) The sale of its securities by a corporation may be so carried out

when no part of the securities to be sold is issued directly or indirectly in payment or exchange for intangible property or for property not located in this state, and when the total commission, remuneration, expense, or discount, excluding legal, accounting, and printing fees of the corporation, in connection with the sale of those securities does not exceed three per cent of the initial offering price of those securities.

(2) The sale of its securities by any corporation may be so carried out when the securities are sold to not more than a maximum of thirty-five purchasers, the aggregate commission, discount, or other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly in connection with the sale of those securities does not exceed ten per cent of the initial offering price, and those securities are issued and disposed of for the sole account of the issuer in good faith and not for the purpose of avoiding this chapter. For the purposes of this division, neither of the following shall be included among the thirty-five purchaser maximum:

(a) Any purchaser of at least one hundred thousand dollars of the offered securities;

(b) Any director or executive officer of the issuing corporation.

(3) The sale of securities representing an interest in a partnership, limited liability company, limited partnership, partnership association, syndicate, pool, trust, trust fund, or other unincorporated association may be so carried out if the securities are sold to not more than a maximum of thirty-five purchasers, the aggregate commission, discount, or other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly in connection with the sale of those securities does not exceed ten per cent of the initial offering price, and the sale is made in good faith and not for the purpose of avoiding this chapter. For the purposes of this division, neither of the following shall be included among the thirty-five purchaser maximum:

(a) Any purchaser of at least one hundred thousand dollars of the offered securities;

(b) Any trustee, general partner, director, or executive officer of the issuer, or any member of a limited liability company, if the issuer is a limited liability company in which the management is reserved to its members, or manager of a limited liability company, if the issuer is a limited liability company in which the management is not reserved to its members.

(4) The offering and sale of additional securities of a corporation, made by it to its own security holders exclusively, may be so carried out where no commission or other remuneration is paid or given directly or indirectly in connection with the offering and sale, other than a commission in respect of

the securities purchased by such security holders or a discount in respect of the securities not purchased by the security holders, or both, paid by the corporation to a dealer who has agreed to purchase all of those securities not taken by the security holders.

(B) An issuer engaging in any transaction specified in this section shall not be deemed a dealer. Any commission, discount, or other remuneration for sales in this state of securities specified in this section shall be paid only to dealers or ~~salesmen~~ salespersons licensed pursuant to this chapter.

(C) For the purpose of this section, each of the following is deemed to be a single purchaser of a security:

(1) Husband and wife;

(2) A child and its parent or guardian when the parent or guardian holds the security for the benefit of the child;

(3) 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.

(D) A sale of securities registered under section 1707.09 or 1707.091 of the Revised Code or sold pursuant to an exemption under this chapter shall not be integrated with a sale pursuant to this section in computing the number of purchasers under this section.

Sec. 1707.08. ~~The securities specified in section 1707.05 of the Revised Code may be sold, and the~~ transactions enumerated in section 1707.06 of the Revised Code may be consummated on compliance with this section and section 1707.11 of the Revised Code.

A description, verified either by the oath of the person filing it or of any person having knowledge of the facts, shall be filed with the division of securities by the issuer, or by a majority of the incorporators of ~~such~~ the issuer prior to election of officers if it is an incorporated issuer, or by a licensed dealer, which description shall be on forms prescribed by the division and shall set forth:

(A) The name of the issuer;

(B) A brief description of the securities;

(C) The amount of ~~such~~ the securities to be offered after the filing of ~~such~~ the description for sale in this state and, if all the securities are not to be offered by the person filing the description, then the respective amounts to be offered by others, so far as ~~such~~ those amounts are known, and the names and addresses of ~~such~~ the other offerors;

(D) A brief statement of the facts which show that the securities ~~fall~~

~~within one of the classes specified in section 1707.05 of the Revised Code or that they are the subject matter of a transaction enumerated in section 1707.06 of the Revised Code;~~

(E) The price at which the securities are to be offered for sale.

~~When qualification is sought under division (B)(1) of section 1707.05 of the Revised Code, there shall be filed with the description an appraisal signed by three disinterested persons having knowledge of the values described in such division.~~

Registration by description is completed when the description, together with ~~the a~~ a filing fee of fifty dollars, in the form of cash, check, or United States postal money order, ~~prescribed by this section~~, is delivered, or mailed by certified mail with postage prepaid, to the division. ~~At the time the description is filed, the person filing it shall pay to the division a fee of one-tenth of one per cent of the aggregate price at which the securities therein described are to be offered for sale to the public in this state, if they fall within one of the classes specified in section 1707.05 of the Revised Code; but in no case shall the fee be less than one hundred or more than one thousand dollars. If such securities are the subject matter of a transaction enumerated in section 1707.06 of the Revised Code, such fee shall be a flat fee of fifty dollars.~~

In order to correct errors or omissions, a registration by description may be amended by the person who originally filed it, by the filing, in the same manner as in the case of an original registration by description, of an amended registration by description or of an amendment of the original registration by description; ~~if a larger fee would have been payable upon the filing of the original registration by description had the amendment been incorporated therein, an additional fee in the amount of any such deficiency shall be paid at the time of filing such amendment.~~

~~When any securities enumerated under section 1707.05 of the Revised Code have been registered and the fees prescribed by this section have been paid, any licensed dealer may thereafter sell such securities under such registration so long as such registration remains in full force, and any such dealer who desires may file with the division a written notice of intention to sell such securities or any designated portion thereof. For such filing no fee need be paid.~~

When transactions in any securities enumerated in section 1707.06 of the Revised Code have been registered and the fees prescribed by this section have been paid, ~~such~~ the transactions may be consummated so long as ~~such~~ the registration remains in full force.

Sec. 1707.09. All securities, except those enumerated in section 1707.02

~~or 1707.05~~ of the Revised Code and those that are the subject matter of a transaction permitted by section 1707.03, 1707.04, or 1707.06 of the Revised Code, shall be qualified in the manner provided by this section before being sold in this state.

Applications for that qualification, on forms prescribed by the division of securities, shall be made in writing either by the issuer of the securities or by any licensed dealer desiring to sell them within this state and shall be signed by the applicant, sworn to by any person having knowledge of the facts stated in the application, and filed in the office of the division.

The division shall require the applicant to submit to it the following information:

(A) The names and addresses of the directors or trustees and of the officers of the issuer, if the issuer is a corporation or an unincorporated association; of all the members of the issuer, if the issuer is a limited liability company in which management is reserved to its members; of all the managers of the issuer, if the issuer is a limited liability company in which management is not reserved to its members; of all partners, if the issuer is a general or limited partnership or a partnership association; and the name and address of the issuer, if the issuer is an individual;

(B) The address of the issuer's principal place of business and principal office in this state, if any;

(C) The purposes and general character of the business actually being transacted, or to be transacted, by the issuer, and the purpose of issuing the securities named in the application;

(D) A statement of the capitalization of the issuer; a balance sheet made up as of the most recent practicable date, showing the amount and general character of its assets and liabilities; a description of the security for the qualification of which application is being made; and copies of all circulars, prospectuses, advertisements, or other descriptions of the securities, that are then prepared by or for the issuer, or by or for the applicant if the applicant is not the issuer, or by or for both, to be used for distribution or publication in this state;

(E) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year or, if the issuer has been in actual business less than one year, for the time that the issuer has been in actual business;

(F) A statement showing the price at which the security is to be offered for sale;

(G) A statement showing the considerations received or to be received by the issuer of the securities purchased or to be purchased from the issuer

and an itemized statement of all expenses of financing to be paid from those considerations so as to show the aggregate net amount actually received or to be received by the issuer;

(H) All other information, including an opinion of counsel as to the validity of the securities that are the subject matter of the application, that the division considers necessary to enable it to ascertain whether the securities are entitled to qualification;

(I) If the issuer is a corporation, there shall be filed with the application a certified copy of its articles of incorporation with all amendments to the articles, if the articles or amendments are not already on file in the office of the secretary of state; if the issuer is a limited liability company, there shall be filed with the application a certified copy of its articles of organization with all amendments to the articles, if the articles or amendments are not already on file in the office of the secretary of state; if the issuer is a trust or trustee, there shall be filed with the application a copy of all instruments by which the trust was created; and if the issuer is a partnership or an unincorporated association, or any other form of organization, there shall be filed with the application a copy of its articles of partnership or association and of all other papers pertaining to its organization, if the articles or other papers are not already on file in the office of the secretary of state;

(J) If the application is made with respect to securities to be sold or distributed by or on behalf of the issuer, or by or on behalf of an underwriter, as defined in division (N) of section 1707.03 of the Revised Code, a statement showing that the issuer has received, or will receive at or prior to the delivery of those securities, not less than eighty-five per cent of the aggregate price at which all those securities are sold by or on behalf of the issuer, without deduction for any additional commission, directly or indirectly, and without liability to pay any additional sum as commission;

(K) If the division so permits with respect to a security, an applicant may file with the division, in lieu of the division's prescribed forms, a copy of the registration statement relating to the security, with all amendments to that statement, previously filed with the securities and exchange commission of the United States under the "Securities Act of 1933," as amended, together with all additional data, information, and documents that the division requires.

If the division finds that it is not necessary in the public interest and for the protection of investors to require all the information specified in divisions (A) to (J) of this section, it may permit the filing of applications for qualification that contain the information that it considers necessary and appropriate in the public interest and for the protection of investors; but this

provision applies only in the case of applications for qualification of securities previously issued and outstanding that may not be made the subject matter of transactions exempt under division (M) of section 1707.03 of the Revised Code by reason of the fact that those securities within one year were purchased outside this state or within one year were transported into this state.

All the statements, exhibits, and documents required by the division under this section, except properly certified public documents, shall be verified by the oath of the applicant, of the issuer, or of any person having knowledge of the facts, and in the manner and form that may be required by the division. Failure or refusal to comply with the requests of the division shall be sufficient reason for a refusal by the division to register securities.

If it appears to the division that substantially the only consideration to be paid for any of the securities to be qualified is to be intangible property of doubtful value, the division may require that the securities be delivered in escrow to a bank in this state under the terms that the division may reasonably prescribe or require to prevent a deceitful misrepresentation or sale of the securities, that the securities be subordinated in favor of those sold for sound value until they have a value bearing a reasonable relation to the value of those sold for sound value, or that a legend of warning specifying the considerations paid or to be paid for the securities be stamped or printed on all advertisements, circulars, pamphlets, or subscription blanks used in connection with the sale of any securities of the same issuer, or it may impose a combination of any two or more of these requirements.

At the time of filing the information prescribed in this section, the applicant shall pay to the division a filing fee of one hundred dollars.

The division, at any time, as a prerequisite to qualification, may make an examination of the issuer of securities sought to be qualified. The applicant for qualification of any securities may be required by the division to advance sufficient funds to pay all or any part of the actual expenses of that examination, an itemized statement of which shall be furnished the applicant. If the division finds that the business of the issuer is not fraudulently conducted, that the proposed offer or disposal of securities is not on grossly unfair terms, that the plan of issuance and sale of the securities referred to in the proposed offer or disposal would not defraud or deceive, or tend to defraud or deceive, purchasers, and that division (J) of this section applies and has been complied with, the division shall notify the applicant of its findings; and, upon payment of a registration fee of one-tenth of one per cent of the aggregate price at which the securities are to be sold to the public in this state, which fee, however, shall in no case be

less than one hundred or more than one thousand dollars, the division shall register the qualification of the securities.

An application may be amended by the person filing it at any time prior to the division's action on it either in registering the securities for qualification or in refusing to do so. Subsequent to any such action by the division, the person who filed the application may file with the consent of the division one or more amendments to it that shall become effective upon the making by the division of the findings enumerated in the next preceding paragraph of this section, the giving of notice of those findings to the applicant by the division, and the payment by the applicant of the additional fee that would have been payable had the application as it previously became effective contained the amendment.

When any securities have been qualified and the fees for the qualification have been paid as provided in this section, any licensed dealer subsequently may sell the securities under the qualification, so long as the qualification remains in full force, and any dealer of that nature who desires may file with the division a written notice of intention to sell the securities or any designated portion of them. For that filing, no fee need be paid.

Sec. 1707.092. (A) For the purposes of selling securities in this state, except securities that are the subject matter of transactions enumerated in section 1707.03 of the Revised Code, an investment company, as defined by the Investment Company Act of 1940, that is registered or has filed a registration statement with the securities and exchange commission under the Investment Company Act of 1940, shall file the following with the division of securities:

(1) For the purposes of the sale of securities by a managed investment company, as defined in the Investment Company Act of 1940:

(a) A notice filing consisting of either of the following:

(i) A copy of the investment company's federal registration statement as filed with the securities and exchange commission;

(ii) A form U-1 or form NF of the North American securities administrators association and a copy of the investment company's prospectus and statement of additional information.

(b) Appropriate filing fees consisting of both of the following:

(i) A flat fee of one hundred dollars;

(ii) A fee calculated at one-tenth of one per cent of the aggregate price at which the securities are to be sold to the public in this state, which calculated fee, however, shall in no case be less than one hundred or more than one thousand dollars.

(c) Upon the registration of the securities with the securities and

exchange commission, a managed investment company with an initial notice filing on file with the division shall submit to the division a copy of its final prospectus.

(2) For the purposes of the sale of securities by a non-managed investment company, as defined in the Investment Company Act of 1940:

(a) A notice filing consisting of either a copy of the investment company's federal registration statement as filed with the securities and exchange commission or a form U-1 or form NF of the North American securities administrators association;

(b) Appropriate filing fees, as provided in division (A)(1)(b) of this section;

(c) Upon the effectiveness of the registration of the securities with the securities and exchange commission, a non-managed investment company shall submit to the division a copy of its final prospectus.

(B)(1) Upon payment of the maximum filing fees as provided in division (A)(1)(b) or (2)(b) of this section, a managed or non-managed investment company may sell an indefinite amount of securities in this state.

(2) A managed or non-managed investment company making a notice filing as provided in this section shall comply with section 1707.11 of the Revised Code. An investment company that previously filed with the division a valid consent to service of process pursuant to section 1707.11 of the Revised Code may incorporate that consent by reference.

(C)(1) For offerings involving covered securities, as defined in section 18 of the "Securities act of 1933," 15 U.S.C. 77r, that are not subject to section 1707.02, 1707.03, 1707.04, ~~1707.05~~, 1707.06, ~~1707.07~~, 1707.08, 1707.09, or 1707.091 of the Revised Code, or division (A) of this section, a notice filing shall be submitted to the division together with a consent to service of process pursuant to section 1707.11 of the Revised Code and a filing fee as provided in division (A)(1)(b) of this section.

(2) The notice filing described in division (C)(1) of this section shall consist of any document filed with the securities and exchange commission pursuant to the Securities Act of 1933, together with annual or periodic reports of the value of the securities sold or offered to be sold to persons located in this state.

(D) A notice filing submitted under this section shall be effective for thirteen months.

Sec. 1707.14. (A)(1) No person shall act as a dealer, unless the person is licensed as a dealer by the division of securities, except in the following cases:

(a) When the person is transacting business through or with a licensed

dealer;

(b) When the securities are the subject matter of one or more transactions enumerated in divisions (B) to (L), (O) to (R), and (U) to (Y) of section 1707.03, or in section 1707.06 of the Revised Code, except when a commission, discount, or other remuneration is paid or given in consideration with transactions enumerated in divisions (O), (Q), (W), (X), and (Y) of section 1707.03, or in section 1707.06 of the Revised Code;

(c) When the person is an issuer selling securities issued by it or by its subsidiary, if such securities are specified under division (G) or (I) of section 1707.02, or under section 1707.04 of the Revised Code;

(d) When the person is participating in transactions exempt, under section 1707.34 of the Revised Code, from this chapter.

(2) Notwithstanding the exceptions to licensure set forth in divisions (A)(1)(a) to (d) of this section, no person other than an issuer selling its own securities shall engage in the business of selling securities to an institutional investor unless the person is licensed as a dealer or the division, by rule, finds that such licensure is not necessary for the protection of investors or in the public interest.

(B) Each dealer that in any twelve-month or shorter period, alone or with any other dealer with which it is affiliated, has total revenues of one hundred fifty thousand dollars or more derived from the business of buying, selling, or otherwise dealing in securities, and that at any time during such period has one hundred or more retail securities customers, shall be registered as a broker or dealer with the securities and exchange commission under the Securities Exchange Act of 1934, except the following entities:

(1) A bank, ~~savings and loan association, savings bank, or credit union chartered under the laws of the United States or any state thereof;~~

(2) A dealer that enters into and is in compliance with an undertaking accepted by the division, in which the dealer agrees that it will not engage in any transaction involving the buying, selling, or otherwise dealing in securities with any natural person in this state, except for transactions involving either of the following:

(a) Securities of corporations or associations that have qualified for treatment as nonprofit organizations pursuant to section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended;

(b) Securities or transactions that are described in divisions (A)(1)(a) to (d) of this section.

(C) Every dealer that must be registered as a broker or dealer with the securities and exchange commission pursuant to division (B) of this section

shall become so registered no later than ninety days after the date on which the dealer meets the requirements for such registration.

(D) The division by rule may exempt any dealer from complying with the licensing or registration requirements of this section, if the division finds that such licensing or registration is not necessary for the protection of investors or in the public interest.

(E) As used in division (B) of this section, "retail securities customer" means a person that purchases from or through or sells securities to or through a dealer, and that is not an officer, a director, a principal, a general partner, or an employee of, the dealer. Each of the following is deemed to be a single retail securities customer:

- (1) A husband and wife;
- (2) A minor child and the minor child's parent or legal guardian;
- (3) A corporation, a partnership, an association or other unincorporated entity, a joint stock company, or a trust.

Sec. 1707.141. (A) ~~Subject to division (C)(1) of this section, no~~ No person shall act as an investment adviser, unless one of the following applies:

(1) The person is licensed as an investment adviser by the division of securities; however, nothing in this section shall be construed to prohibit a person from being licensed by the division as both an investment adviser and a dealer or salesperson.

(2) The person is registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, as an investment adviser and is in compliance with the notice filing requirements of division (B) of this section.

(3) The person has no place of business in this state, and the person's only clients in this state are any of the following:

(a) Investment companies as defined in the Investment Company Acts Act of 1940;

(b) Other investment advisers;

(c) Licensed dealers;

(d) Banks;

(e) Insurance companies subject to regulation under Title XXXIX of the Revised Code and health insuring corporations regulated under Chapter 1751. of the Revised Code;

(f) Employee benefit plans with assets of not less than one million dollars;

(g) Government agencies or instrumentalities, whether acting for themselves or trustees with investment control;

(h) Other institutional investors as the division may designate by rule.

(4) The person has no place of business in this state, and during the preceding twelve-month period, the person has had not more than five clients, other than those described in division (A)(3) of this section, that are residents of this state.

(B)(1) ~~Subject to division (C)(2) of this section, no~~ No person who is registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, as an investment adviser shall act as an investment adviser, unless the person has done both of the following:

(a) Filed with the division a consent to service of process pursuant to section 1707.11 of the Revised Code, together with either a notice filing form as specified in rules adopted by the division or a copy of those documents that have been filed by the investment adviser with the securities and exchange commission as specified in rules adopted by the division;

(b) Paid the notice filing fee specified in division (B) of section 1707.17 of the Revised Code.

(2) Upon compliance with division (B)(1) of this section, the division shall issue to the person an acknowledgment of notice filing.

(3) The notice filing and fee requirements of division (B)(1) of this section do not apply to a person described in division (A)(3) or (4) of this section.

~~(C)(1) On the effective date of this section, if a person is registered as an investment adviser with the securities and exchange commission pursuant to section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, and is required to be licensed as an investment adviser by the division of securities, that person has until no later than December 31, 1999, to be licensed as an investment adviser by the division of securities. However, a person required to be licensed by the division as an investment adviser by no later than December 31, 1999, may be licensed as an investment adviser by the division on the effective date of this section and prior to December 31, 1999.~~

~~(2) On the effective date of this section, if a person is registered as an investment adviser with the securities and exchange commission pursuant to section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, and is subject to the notice filing requirements of division (B) of this section, that person has until no later than December 31, 1999, to comply with the notice filing requirements of division (B) of this section. However, a person required to comply with the notice filing requirements of division (B) of this section by no later than December 31, 1999, may comply with those notice filing requirements on the effective date of this section and prior to~~

~~December 31, 1999.~~

Sec. 1707.161. (A) ~~Subject to division (F) of this section, no~~ 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 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 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 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 March 18, 1999, and prior to December 31, 1999.~~

Sec. 1707.17. (A)(1) The license of every dealer in and salesperson of securities shall expire on the thirty-first day of December of each year, and may be renewed upon the filing with the division of securities of an application for renewal, and the payment of the fee prescribed in this section, between the first day of November and the fifteenth day of December of each year. The division may accept an application for renewal filed between the fifteenth and the thirty-first day of December of each year. The division also may accept an application for renewal received by the division not later than the tenth day of January of the subsequent calendar year, provided that the application for renewal is accompanied by the license renewal fee and the additional fee prescribed in division (B) of this section. The division shall give notice, without unreasonable delay, of its action on any application for renewal of a dealer's or salesperson's license.

(2) The license of every investment adviser and investment adviser representative licensed under section 1707.141 or 1707.161 of the Revised Code shall expire on the thirty-first day of December of each year. The licenses may be renewed upon the filing with the division of an application for renewal, and the payment of the fee prescribed in division (B) of this section, between the fifteenth day of October and the thirtieth day of November of each year. The division may accept an application for renewal filed between the first and thirty-first day of December of each year. The division also may accept an application for renewal received by the division not later than the tenth day of January of the subsequent ~~calendar~~ calendar year, provided that the application for renewal is accompanied by the license renewal fee and the additional fee prescribed in division (B) of this section. The division shall give notice, without unreasonable delay, of its action on any application for renewal.

(3) An investment adviser required to make a notice filing under division (B) of section 1707.141 of the Revised Code annually shall file with the division the notice filing and the fee prescribed in division (B) of this section, no later than the thirty-first day of December of each year. The division may accept a notice filing received by the division not later than the tenth day of January of the subsequent calendar year, provided that the notice filing is accompanied by the notice filing fee and the additional fee

prescribed in division (B) of this section.

(B)(1) The fee for each dealer's license, and for each annual renewal thereof that is received by the division not later than the thirty-first day of December of each year, shall be ~~thirty dollars per salesperson, but not less than one hundred fifty nor more than five thousand~~ dollars. Upon payment of an additional fee of one-half of the license renewal fee, the division may accept an application for renewal received by the division between the first and tenth day of January of the subsequent calendar year. The fee for the examination of applicant dealers, when administered by the division, shall be seventy-five dollars.

(2) The fee for each salesperson's license, and for each annual renewal thereof, shall be fifty dollars. The fee for the examination of an applicant salesperson, when administered by the division, shall be fifty dollars.

(3) The fee for each investment adviser's license, and for each annual renewal thereof that is received by the division not later than the thirty-first day of December of each year, shall be ~~two hundred~~ fifty dollars. Upon the payment of an additional fee of one-half of the license fee, the division may accept a license renewal application received by the division between the first and tenth day of January of the subsequent calendar year. ~~If the fee for an investment adviser license is paid to the division on or before October 1, 1999, that fee shall cover the issuance of the initial license and also shall cover any fee for renewal of the license for the period ending December 31, 2000.~~

(4) The fee for each investment adviser notice filing required by division (B) of section 1707.141 of the Revised Code and received by the division not later than the thirty-first day of December of each year shall be ~~one hundred~~ fifty dollars. Upon the payment of an additional fee of one-half of the notice filing fee, the division may accept a notice filing received by the division between the first and tenth day of January of the subsequent calendar year. A notice filing may be made at any time during the calendar year. In that event, the notice filing fee shall not be reduced. ~~If the fee for an investment adviser notice filing is paid to the division on or before October 1, 1999, that fee shall cover the initial notice filing and also shall cover any fee for the notice filing for the period ending December 31, 2000.~~

(5) The fee for each investment adviser representative's license, and for each annual renewal thereof that is received by the division not later than the thirty-first day of December of each year, shall be thirty-five dollars; however, the fee shall be waived for the investment adviser representative designated the principal of the investment adviser pursuant to division (E) of section 1707.151 of the Revised Code. Upon the payment of an additional

fee of one-half of the license fee, the division may accept a license renewal application received by the division between the first and tenth day of January of the subsequent calendar year. ~~If the fee for an investment adviser representative's license is paid to the division on or before October 1, 1999, that fee shall cover the issuance of the initial license and also shall cover any fee for renewal of the license for the period ending December 31, 2000.~~

(C) A dealer's, salesperson's, investment adviser's, or investment adviser representative's license may be issued at any time for the remainder of the calendar year. In that event, the annual fee shall not be reduced.

Sec. 1707.19. (A) An original license, or a renewal thereof, applied for by a dealer or salesperson of securities, or by an investment adviser or an investment adviser representative, may be refused, and any such license granted may be suspended and, after notice and hearing in accordance with Chapter 119. of the Revised Code, may be revoked, by the division of securities, if the division determines that the applicant or the licensed dealer, salesperson, investment adviser, or investment adviser representative:

- (1) Is not of good business repute;
- (2) Is conducting an illegitimate or fraudulent business;
- (3) Is, in the case of a dealer or investment adviser, insolvent;
- (4) Has ~~intentionally~~ knowingly violated any provision of sections 1707.01 to 1707.45 of the Revised Code, or any regulation or order made thereunder;
- (5) Has knowingly ~~and intentionally~~ made a false statement of a material fact or an omission of a material fact in an application for a license, in a description or application that has been filed, or in any statement made to the division under such sections;
- (6) Has refused to comply with any lawful order or requirement of the division under section 1707.23 of the Revised Code;
- (7) Has been guilty of any fraudulent act in connection with the sale of any securities or in connection with acting as an investment adviser or investment adviser representative;
- (8) Conducts business in purchasing or selling securities at such variations from the existing market as in the light of all the circumstances are unconscionable;
- (9) Conducts business in violation of such rules and regulations as the division prescribes for the protection of investors, clients, or prospective clients;
- (10)(a) Has failed to furnish to the division any information with respect to the purchases or sales of securities within this state that may be reasonably requested by the division as pertinent to the protection of

investors in this state.

(b) Has failed to furnish to the division any information with respect to acting as an investment adviser or an investment adviser representative within this state that may be reasonably requested by the division.

(B) For the protection of investors the division may prescribe reasonable rules defining fraudulent, evasive, deceptive, or grossly unfair practices or devices in the purchase or sale of securities.

(C) For the protection of investors, clients, or prospective clients, the division may prescribe reasonable rules regarding the acts and practices of an investment adviser or an investment adviser representative.

(D) Pending any investigation or hearing provided for in sections 1707.01 to 1707.45 of the Revised Code, the division may order the suspension of any dealer's, salesperson's, investment adviser's, or investment adviser representative's license by notifying the party concerned of such suspension and the cause for it. If it is a salesperson whose license is suspended, the division shall also notify the dealer employing the salesperson. If it is an investment adviser representative whose license is suspended, the division also shall notify the investment adviser with whom the investment adviser representative is employed or associated.

(E)(1) The suspension or revocation of the dealer's license suspends the licenses of all the dealer's salespersons.

(2) The suspension or revocation of the investment adviser's license suspends the licenses of all the investment adviser's investment adviser representatives. The suspension or revocation of an investment adviser's registration under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, suspends the licenses of all the investment adviser's investment adviser representatives.

(F) It is sufficient cause for refusal, revocation, or suspension of the license in case of a partnership, partnership association, corporation, or unincorporated association if any general partner of the partnership, manager of the partnership association, or executive officer of the corporation or unincorporated association is not of good business repute or has been guilty of any act or omission which would be cause for refusing or revoking the license of an individual dealer, salesperson, investment adviser, or investment adviser representative.

Sec. 1707.23. Whenever it appears to the division of securities, from its files, upon complaint, or otherwise, that any person has engaged in, is engaged in, or is about to engage in any practice declared to be illegal or prohibited by ~~Chapter 1707. of the Revised Code~~ this chapter or rules adopted under ~~that~~ this chapter by the division, or defined as fraudulent in

~~that~~ this chapter or rules adopted under ~~that~~ this chapter by the division, or any other deceptive scheme or practice in connection with the sale of securities, or acting as an investment adviser or investment adviser representative, or when the division believes it to be in the best interests of the public and necessary for the protection of investors, the division may do any of the following:

(A) Require any person to file with it, on such forms as it prescribes, an original or additional statement or report in writing, under oath or otherwise, as to any facts or circumstances concerning the issuance, sale, or offer for sale of securities within this state by the person, as to the person's acts or practices as an investment adviser or investment adviser representative within this state, and as to other information as it deems material or relevant thereto;

(B) Examine any investment adviser, investment adviser representative, or any seller, dealer, salesperson, or issuer of any securities, and any of their agents, employees, partners, officers, directors, members, or shareholders, wherever located, under oath; and examine records, books, documents, accounts, and papers as the division deems material or relevant to the inquiry;

(C) Require the attendance of witnesses, and the production of books, records, and papers, as are required either by the division or by any party to a hearing before the division, and for that purpose issue a subpoena for any witness, or a subpoena duces tecum to compel the production of any books, records, or papers. The subpoena shall be served by certified mail, return receipt requested. If the subpoena is returned because of inability to deliver, or if no return is received within thirty days of the date of mailing, the subpoena may be served by ordinary mail. If no return of ordinary mail is received within thirty days after the date of mailing, service shall be deemed to have been made. If the subpoena is returned because of inability to deliver, the division may designate a person or persons to effect either personal or residence service upon the witness. The person may be the sheriff of the county in which the witness resides or may be found or any other duly designated person. The fees and mileage of the person serving the subpoena shall be the same as those allowed by the courts of common pleas in criminal cases, and shall be paid from the funds of the division. Fees and mileage for the witness shall be the same as those allowed for witnesses by the courts of common pleas in criminal cases, and shall be paid from the funds of the division upon request of the witness following the hearing.

(D) Proceed under section 1707.19 of the Revised Code to refuse a license applied for by a dealer, salesperson, investment adviser, or

investment adviser representative or to suspend the license of any licensed dealer, licensed salesperson, licensed investment adviser, or licensed investment adviser representative and ultimately, if the division determines, revoke such license under ~~such sections~~ that section;

(E) Initiate criminal proceedings under section 1707.042 or 1707.44 of the Revised Code or rules adopted under those sections by the division by laying before the prosecuting attorney of the proper county any evidence of criminality which comes to its knowledge; and in the event of the neglect or refusal of the prosecuting attorney to prosecute such violations, or at the request of the prosecuting attorney, the division shall submit the evidence to the attorney general, who may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before such grand juries.

(F) Require any dealers ~~forthwith~~ immediately to furnish to the division copies of prospectuses, circulars, or advertisements respecting securities that they publish or generally distribute, or require any investment advisers immediately to furnish to the division copies of brochures, advertisements, publications, analyses, reports, or other writings that they publish or distribute;

(G) Require any dealers to mail to the division, prior to sale, notices of intention to sell, in respect to all securities which are not exempt under section 1707.02 of the Revised Code, or which are sold in transactions not exempt under section 1707.03 or 1707.04 of the Revised Code;

(H) Issue and cause to be served by certified mail upon all persons affected an order requiring the person or persons to cease and desist from the acts or practices appearing to the division to constitute violations of ~~Chapter 1707. of the Revised Code~~ this chapter or rules adopted under ~~that~~ this chapter by the division. The order shall state specifically the section or sections of ~~Chapter 1707. of the Revised Code~~ this chapter or the rule or rules adopted under ~~that~~ this chapter by the division that appear to the division to have been violated and the facts constituting the violation. If after the issuance of the order it appears to the division that any person or persons affected by the order have engaged in any act or practice from which the person or persons shall have been required, by the order, to cease and desist, the director of commerce may apply to the court of common pleas of any county for, and upon proof of the validity of the order of the division, the delivery of the order to the person or persons affected, and of the illegality and the continuation of the acts or practices that are the subject of the order, the court may grant an injunction implementing the order of the

division.

(I) Issue and initiate contempt proceedings in this state regarding subpoenas and subpoenas duces tecum at the request of the securities administrator of another state, if it appears to the division that the activities for which the information is sought would violate ~~Chapter 1707. of the Revised Code~~ this chapter if the activities had occurred in this state.

Sec. 1707.391. When any securities have been sold in reliance upon division ~~(O), (Q), (W), (X), or (Y)~~ of section 1707.03 of the Revised Code, section 1707.08 of the Revised Code, or any other section of ~~Chapter 1707. of the Revised Code~~ this chapter that the division of securities may specify by rule, but such reliance was improper because the required filings were not timely or properly made due to excusable neglect, upon the effective date of an application; made to the division and payment of the required fee, if not already paid, plus a penalty fee equal to the required fee, the sale of the securities shall be deemed exempt, qualified, or registered, as though timely and properly filed. ~~Such~~ The application shall become effective upon the expiration of fourteen days after the date of the filing in question if prior thereto the division did not give notice to the applicant that the application was denied based on a finding of lack of excusable neglect. The division shall promptly adopt and promulgate rules establishing provisions defining excusable neglect and otherwise establishing reasonable standards for determining excusable neglect.

The effectiveness of an application under this section does not relieve anyone who has, other than for excusable neglect, violated sections 1707.01 to 1707.45 of the Revised Code, or any previous law in force at the time of sale, from prosecution thereunder.

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~~ Registering securities or transactions, or exempting securities or transactions from registration, under 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;

(6) Submitting a notice filing to the division under section 1707.092 or 1707.141 of the Revised Code.

(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 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 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 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 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 to the securities, upon demand and tender of any amount due 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.

Sec. 1707.45. In any indictment, complaint, or information under section 1707.44 of the Revised Code, it shall not be necessary to negative the existence of facts which would bring a security within section 1707.02 ~~or 1707.05~~ of the Revised Code, or would bring a transaction within section 1707.03, 1707.04, or 1707.06 of the Revised Code, or to negative the existence of facts which would bring a transaction within the exceptions of section 1707.34 of the Revised Code. The burden of proof shall be upon the party claiming the benefits of any of such sections.

SECTION 2. That existing sections 1707.01, 1707.03, 1707.041, 1707.06,

1707.08, 1707.09, 1707.092, 1707.14, 1707.141, 1707.161, 1707.17, 1707.19, 1707.23, 1707.391, 1707.44, and 1707.45 and sections 1707.05 and 1707.07 of the Revised Code are hereby repealed.

SECTION 3. That the versions of sections 1707.01, 1707.17, 1707.23, and 1707.44 of the Revised Code that are scheduled to take effect October 5, 2001, be amended to read as follows:

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 life settlement interest, 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 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 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 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 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 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.

(NN) "Life settlement interest" means the entire interest or any fractional interest in an insurance policy or certificate of insurance, or in an insurance benefit under such a policy or certificate, that is the subject of a life settlement contract.

For purposes of this division, "life settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of any life insurance policy or contract, in return for consideration or any other thing of value that is less than the expected death benefit of the life insurance policy or contract. "Life settlement contract" includes a viatical settlement contract as defined in section 3916.01 of the Revised Code, but does not include any of the following:

(1) A loan by an insurer under the terms of a life insurance policy, including, but not limited to, a loan secured by the cash value of the policy;

(2) An agreement with a bank that takes an assignment of a life insurance policy as collateral for a loan;

(3) The provision of accelerated benefits as defined in section 3915.21 of the Revised Code;

(4) Any agreement between an insurer and a reinsurer;

(5) An agreement by an individual to purchase an existing life insurance policy or contract from the original owner of the policy or contract, if the individual does not enter into more than one life settlement contract per calendar year;

(6) The initial purchase of an insurance policy or certificate of insurance from its owner by a viatical settlement provider, as defined in section 3916.01 of the Revised Code, that is licensed under Chapter 3916. of the Revised Code.

Sec. 1707.17. (A)(1) The license of every dealer in and salesperson of securities shall expire on the thirty-first day of December of each year, and may be renewed upon the filing with the division of securities of an application for renewal, and the payment of the fee prescribed in this section, between the first day of November and the fifteenth day of December of each year. The division may accept an application for renewal filed between the fifteenth and the thirty-first day of December of each year. The division also may accept an application for renewal received by the division not later than the tenth day of January of the subsequent calendar year, provided that the application for renewal is accompanied by the license renewal fee and the additional fee prescribed in division (B) of this section. The division shall give notice, without unreasonable delay, of its action on any application for renewal of a dealer's or salesperson's license.

(2) The license of every investment adviser and investment adviser representative licensed under section 1707.141 or 1707.161 of the Revised Code shall expire on the thirty-first day of December of each year. The licenses may be renewed upon the filing with the division of an application for renewal, and the payment of the fee prescribed in division (B) of this section, between the fifteenth day of October and the thirtieth day of November of each year. The division may accept an application for renewal filed between the first and thirty-first day of December of each year. The division also may accept an application for renewal received by the division not later than the tenth day of January of the subsequent calendar year, provided that the application for renewal is accompanied by the license renewal fee and the additional fee prescribed in division (B) of this section. The division shall give notice, without unreasonable delay, of its action on any application for renewal.

(3) An investment adviser required to make a notice filing under division (B) of section 1707.141 of the Revised Code annually shall file with the division the notice filing and the fee prescribed in division (B) of this section, no later than the thirty-first day of December of each year. The division may accept a notice filing received by the division not later than the tenth day of January of the subsequent calendar year, provided that the notice filing is accompanied by the notice filing fee and the additional fee prescribed in division (B) of this section.

(B)(1) The fee for each dealer's license, and for each annual renewal thereof that is received by the division not later than the thirty-first day of December of each year, shall be ~~thirty dollars per salesperson, but not less than one hundred fifty nor more than five thousand~~ dollars. Upon payment of an additional fee of one-half of the license renewal fee, the division may accept an application for renewal received by the division between the first and tenth day of January of the subsequent calendar year. The fee for the examination of applicant dealers, when administered by the division, shall be seventy-five dollars.

(2) The fee for each salesperson's license, and for each annual renewal thereof, shall be fifty dollars. The fee for the examination of an applicant salesperson, when administered by the division, shall be fifty dollars.

(3) The fee for each investment adviser's license, and for each annual renewal thereof that is received by the division not later than the thirty-first day of December of each year, shall be ~~two hundred~~ fifty dollars. Upon the payment of an additional fee of one-half of the license fee, the division may accept a license renewal application received by the division between the first and tenth day of January of the subsequent calendar year. ~~If the fee for~~

~~an investment adviser license is paid to the division on or before October 1, 1999, that fee shall cover the issuance of the initial license and also shall cover any fee for renewal of the license for the period ending December 31, 2000.~~

(4) The fee for each investment adviser notice filing required by division (B) of section 1707.141 of the Revised Code and received by the division not later than the thirty-first day of December of each year shall be ~~one hundred~~ fifty dollars. Upon the payment of an additional fee of one-half of the notice filing fee, the division may accept a notice filing received by the division between the first and tenth day of January of the subsequent calendar year. A notice filing may be made at any time during the calendar year. In that event, the notice filing fee shall not be reduced. ~~If the fee for an investment adviser notice filing is paid to the division on or before October 1, 1999, that fee shall cover the initial notice filing and also shall cover any fee for the notice filing for the period ending December 31, 2000.~~

(5) The fee for each investment adviser representative's license, and for each annual renewal thereof that is received by the division not later than the thirty-first day of December of each year, shall be thirty-five dollars; however, the fee shall be waived for the investment adviser representative designated the principal of the investment adviser pursuant to division (D) of section 1707.151 of the Revised Code. Upon the payment of an additional fee of one-half of the license fee, the division may accept a license renewal application received by the division between the first and tenth day of January of the subsequent calendar year. ~~If the fee for an investment adviser representative's license is paid to the division on or before October 1, 1999, that fee shall cover the issuance of the initial license and also shall cover any fee for renewal of the license for the period ending December 31, 2000.~~

(C) A dealer's, salesperson's, investment adviser's, or investment adviser representative's license may be issued at any time for the remainder of the calendar year. In that event, the annual fee shall not be reduced.

Sec. 1707.23. Whenever it appears to the division of securities, from its files, upon complaint, or otherwise, that any person has engaged in, is engaged in, or is about to engage in any practice declared to be illegal or prohibited by this chapter or rules adopted under this chapter by the division, or defined as fraudulent in this chapter or rules adopted under this chapter by the division, or any other deceptive scheme or practice in connection with the sale of securities, or acting as an investment adviser or investment adviser representative, or when the division believes it to be in the best interests of the public and necessary for the protection of investors, the division may do any of the following:

(A) Require any person to file with it, on such forms as it prescribes, an original or additional statement or report in writing, under oath or otherwise, as to any facts or circumstances concerning the issuance, sale, or offer for sale of securities within this state by the person, as to the person's acts or practices as an investment adviser or investment adviser representative within this state, and as to other information as it deems material or relevant thereto;

(B) Examine any investment adviser, investment adviser representative, or any seller, dealer, salesperson, or issuer of any securities, and any of their agents, employees, partners, officers, directors, members, or shareholders, wherever located, under oath; and examine records, books, documents, accounts, and papers as the division deems material or relevant to the inquiry;

(C) Require the attendance of witnesses, and the production of books, records, and papers, as are required either by the division or by any party to a hearing before the division, and for that purpose issue a subpoena for any witness, or a subpoena duces tecum to compel the production of any books, records, or papers. The subpoena shall be served by personal service or by certified mail, return receipt requested. If the subpoena is returned because of inability to deliver, or if no return is received within thirty days of the date of mailing, the subpoena may be served by ordinary mail. If no return of ordinary mail is received within thirty days after the date of mailing, service shall be deemed to have been made. If the subpoena is returned because of inability to deliver, the division may designate a person or persons to effect either personal or residence service upon the witness. The person designated to effect personal or residence service under this division may be the sheriff of the county in which the witness resides or may be found or any other duly designated person. The fees and mileage of the person serving the subpoena shall be the same as those allowed by the courts of common pleas in criminal cases, and shall be paid from the funds of the division. Fees and mileage for the witness shall be the same as those allowed for witnesses by the courts of common pleas in criminal cases, and shall be paid from the funds of the division upon request of the witness following the hearing.

(D) Proceed under section 1707.19 of the Revised Code to refuse a license applied for by a dealer, salesperson, investment adviser, or investment adviser representative or to suspend the license of any licensed dealer, licensed salesperson, licensed investment adviser, or licensed investment adviser representative and ultimately, if the division determines, revoke such license under such sections that section;

(E) Initiate criminal proceedings under section 1707.042 or 1707.44 of the Revised Code or rules adopted under those sections by the division by laying before the prosecuting attorney of the proper county any evidence of criminality which comes to its knowledge; and in the event of the neglect or refusal of the prosecuting attorney to prosecute such violations, or at the request of the prosecuting attorney, the division shall submit the evidence to the attorney general, who may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before such grand juries.

(F) Require any dealers ~~forthwith~~ immediately to furnish to the division copies of prospectuses, circulars, or advertisements respecting securities that they publish or generally distribute, or require any investment advisers immediately to furnish to the division copies of brochures, advertisements, publications, analyses, reports, or other writings that they publish or distribute;

(G) Require any dealers to mail to the division, prior to sale, notices of intention to sell, in respect to all securities which are not exempt under section 1707.02 of the Revised Code, or which are sold in transactions not exempt under section 1707.03 or 1707.04 of the Revised Code;

(H) Issue and cause to be served by certified mail upon all persons affected an order requiring the person or persons to cease and desist from the acts or practices appearing to the division to constitute violations of this chapter or rules adopted under this chapter by the division. The order shall state specifically the section or sections of this chapter or the rule or rules adopted under this chapter by the division that appear to the division to have been violated and the facts constituting the violation. If after the issuance of the order it appears to the division that any person or persons affected by the order have engaged in any act or practice from which the person or persons shall have been required, by the order, to cease and desist, the director of commerce may apply to the court of common pleas of any county for, and upon proof of the validity of the order of the division, the delivery of the order to the person or persons affected, and of the illegality and the continuation of the acts or practices that are the subject of the order, the court may grant an injunction implementing the order of the division.

(I) Issue and initiate contempt proceedings in this state regarding subpoenas and subpoenas duces tecum at the request of the securities administrator of another state, if it appears to the division that the activities for which the information is sought would violate this chapter if the activities had occurred in this state.

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~~ Registering securities or transactions, or exempting securities or transactions from registration, under 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;

(6) Submitting a notice filing to the division under section 1707.092 or 1707.141 of the Revised Code.

(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 section 1707.03, 1707.04, or 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 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 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 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 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 to the securities, upon demand and tender of any amount due 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 4. That the existing versions of sections 1707.01, 1707.17, 1707.23, and 1707.44 of the Revised Code that are scheduled to take effect October 5, 2001, are hereby repealed.

SECTION 5. Sections 3 and 4 of this act shall take effect October 5, 2001.

SECTION 6. Section 1707.06 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 488 and Sub. S.B. 74 of the 120th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

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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.*

S. B. No. 32

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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 \_\_\_\_\_