

As Passed by the Senate

**124th General Assembly
Regular Session
2001-2002**

S. B. No. 32

SENATOR White

A B I L L

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.

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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:

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Sec. 1707.01. As used in this chapter:

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

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(B) "Security" means any certificate or instrument that

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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 53
connection with the sale of securities in this state exclusively 54
to the purchasers specified in division (D) of section 1707.03 of 55
the Revised Code is not a sale when the advertisements, circulars, 56
and pamphlets describing and offering those securities bear a 57
readily legible legend in substance as follows: "This offer is 58
made on behalf of dealers licensed under sections 1707.01 to 59
1707.45 of the Revised Code, and is confined in this state 60
exclusively to institutional investors and licensed dealers." 61

(4) The offering of securities by any person in conjunction 62
with a licensed dealer by use of advertisement, circular, or 63
pamphlet is not a sale if that person does not otherwise attempt 64
to sell securities in this state. 65

(5) Any security given with, or as a bonus on account of, any 66
purchase of securities is conclusively presumed to constitute a 67
part of the subject of that purchase and has been "sold." 68

(6) "Sale" by an owner, pledgee, or mortgagee, or by a person 69
acting in a representative capacity, includes sale on behalf of 70
such party by an agent, including a licensed dealer or 71
salesperson. 72

(D) "Person," except as otherwise provided in this chapter, 73
means a natural person, firm, partnership, limited partnership, 74
partnership association, syndicate, joint-stock company, 75
unincorporated association, trust or trustee except where the 76
trust was created or the trustee designated by law or judicial 77
authority or by a will, and a corporation or limited liability 78
company organized under the laws of any state, any foreign 79
government, or any political subdivision of a state or foreign 80
government. 81

(E)(1) "Dealer," except as otherwise provided in this 82
chapter, means every person, other than a salesperson, who engages 83

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~~ 115
~~state of the United States, provided that all transactions are~~ 116
~~consummated by or through a person licensed pursuant to section~~ 117
~~1707.14 of the Revised Code;~~ 118

(f) Any person that the division of securities by rule 119
exempts from the definition of "dealer" under division (E)(1) of 120
this section. 121

(2) "Licensed dealer" means a dealer licensed under this 122
chapter. 123

(F)(1) "Salesman" or "salesperson" means every natural 124
person, other than a dealer, who is employed, authorized, or 125
appointed by a dealer to sell securities within this state. 126

(2) The general partners of a partnership, and the executive 127
officers of a corporation or unincorporated association, licensed 128
as a dealer are not salespersons within the meaning of this 129
definition, nor are such clerical or other employees of an issuer 130
or dealer as are employed for work to which the sale of securities 131
is secondary and incidental; but the division of securities may 132
require a license from any such partner, executive officer, or 133
employee if it determines that protection of the public 134
necessitates the licensing. 135

(3) "Licensed salesperson" means a salesperson licensed under 136
this chapter. 137

(G) "Issuer" means every person who has issued, proposes to 138
issue, or issues any security. 139

(H) "Director" means each director or trustee of a 140
corporation, each trustee of a trust, each general partner of a 141
partnership, except a partnership association, each manager of a 142
partnership association, and any person vested with managerial or 143
directory power over an issuer not having a board of directors or 144
trustees. 145

(I) "Incorporator" means any incorporator of a corporation 146
and any organizer of, or any person participating, other than in a 147
representative or professional capacity, in the organization of an 148
unincorporated issuer. 149

(J) "Fraud," "fraudulent," "fraudulent acts," "fraudulent 150
practices," or "fraudulent transactions" means anything recognized 151
on or after July 22, 1929, as such in courts of law or equity; any 152
device, scheme, or artifice to defraud or to obtain money or 153
property by means of any false pretense, representation, or 154
promise; any fictitious or pretended purchase or sale of 155
securities; and any act, practice, transaction, or course of 156
business relating to the purchase or sale of securities that is 157
fraudulent or that has operated or would operate as a fraud upon 158
the seller or purchaser. 159

(K) Except as otherwise specifically provided, whenever any 160
classification or computation is based upon "par value," as 161
applied to securities without par value, the average of the 162
aggregate consideration received or to be received by the issuer 163
for each class of those securities shall be used as the basis for 164
that classification or computation. 165

(L)(1) "Intangible property" means patents, copyrights, 166
secret processes, formulas, services, good will, promotion and 167
organization fees and expenses, trademarks, trade brands, trade 168
names, licenses, franchises, any other assets treated as 169
intangible according to generally accepted accounting principles, 170
and securities, accounts receivable, or contract rights having no 171
readily determinable value. 172

(2) "Tangible property" means all property other than 173
intangible property and includes securities, accounts receivable, 174
and contract rights, when the securities, accounts receivable, or 175
contract rights have a readily determinable value. 176

(M) "Public utilities" means those utilities defined in 177
sections 4905.02, 4905.03, 4907.02, and 4907.03 of the Revised 178
Code; in the case of a foreign corporation, it means those 179
utilities defined as public utilities by the laws of its domicile; 180
and in the case of any other foreign issuer, it means those 181
utilities defined as public utilities by the laws of the situs of 182
its principal place of business. The term always includes 183
railroads whether or not they are so defined as public utilities. 184

(N) "State" means any state of the United States, any 185
territory or possession of the United States, the District of 186
Columbia, and any province of Canada. 187

(O) "Bank" means any bank, trust company, savings and loan 188
association, savings bank, or credit union that is incorporated or 189
organized under the laws of the United States, any state of the 190
United States, Canada, or any province of Canada and that is 191
subject to regulation or supervision by that country, state, or 192
province. 193

(P) "Include," when used in a definition, does not exclude 194
other things or persons otherwise within the meaning of the term 195
defined. 196

(Q)(1) "Registration by description" means that the 197
requirements of section 1707.08 of the Revised Code have been 198
complied with. 199

(2) "Registration by qualification" means that the 200
requirements of sections 1707.09 and 1707.11 of the Revised Code 201
have been complied with. 202

(3) "Registration by coordination" means that there has been 203
compliance with section 1707.091 of the Revised Code. Reference in 204
this chapter to registration by qualification also shall be deemed 205
to include registration by coordination unless the context 206
otherwise indicates. 207

(R) "Intoxicating liquor" includes all liquids and compounds 208
that contain more than three and two-tenths per cent of alcohol by 209
weight and are fit for use for beverage purposes. 210

(S) "Institutional investor" means any corporation, bank, 211
insurance company, pension fund or pension fund trust, employees' 212
profit-sharing fund or employees' profit-sharing trust, any 213
association engaged, as a substantial part of its business or 214
operations, in purchasing or holding securities, or any trust in 215
respect of which a bank is trustee or cotrustee. "Institutional 216
investor" does not include any business entity formed for the 217
primary purpose of evading sections 1707.01 to 1707.45 of the 218
Revised Code. 219

(T) "Securities Act of 1933," 48 Stat. 74, 15 U.S.C. 77a, 220
"Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78a, 221
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, 222
"Investment Advisers Act of 1940," 54 Stat. 847, 15 U.S.C. 80b, 223
and "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C. 80a 224
mean the federal statutes of those names as amended before or 225
after March 18, 1999. 226

(U) "Securities and exchange commission" means the securities 227
and exchange commission established by the Securities Exchange Act 228
of 1934. 229

(V)(1) "Control bid" means the purchase of or offer to 230
purchase any equity security of a subject company from a resident 231
of this state if either of the following applies: 232

(a) After the purchase of that security, the offeror would be 233
directly or indirectly the beneficial owner of more than ten per 234
cent of any class of the issued and outstanding equity securities 235
of the issuer. 236

(b) The offeror is the subject company, there is a pending 237
control bid by a person other than the issuer, and the number of 238

the issued and outstanding shares of the subject company would be 239
reduced by more than ten per cent. 240

(2) For purposes of division (V)(1) of this section, "control 241
bid" does not include any of the following: 242

(a) A bid made by a dealer for the dealer's own account in 243
the ordinary course of business of buying and selling securities; 244

(b) An offer to acquire any equity security solely in 245
exchange for any other security, or the acquisition of any equity 246
security pursuant to an offer, for the sole account of the 247
offeror, in good faith and not for the purpose of avoiding the 248
provisions of this chapter, and not involving any public offering 249
of the other security within the meaning of Section 4 of Title I 250
of the "Securities Act of 1933," 48 Stat. 77, 15 U.S.C.A. 77d(2), 251
as amended; 252

(c) Any other offer to acquire any equity security, or the 253
acquisition of any equity security pursuant to an offer, for the 254
sole account of the offeror, from not more than fifty persons, in 255
good faith and not for the purpose of avoiding the provisions of 256
this chapter. 257

(W) "Offeror" means a person who makes, or in any way 258
participates or aids in making, a control bid and includes persons 259
acting jointly or in concert, or who intend to exercise jointly or 260
in concert any voting rights attached to the securities for which 261
the control bid is made and also includes any subject company 262
making a control bid for its own securities. 263

(X)(1) "Investment adviser" means any person who, for 264
compensation, engages in the business of advising others, either 265
directly or through publications or writings, as to the value of 266
securities or as to the advisability of investing in, purchasing, 267
or selling securities, or who, for compensation and as a part of 268
regular business, issues or promulgates analyses or reports 269

concerning securities. 270

(2) "Investment adviser" does not mean any of the following: 271

(a) Any attorney, accountant, engineer, or teacher, whose 272
performance of investment advisory services described in division 273
(X)(1) of this section is solely incidental to the practice of the 274
attorney's, accountant's, engineer's, or teacher's profession; 275

(b) A publisher of any bona fide newspaper, news magazine, or 276
business or financial publication of general and regular 277
circulation; 278

(c) A person who acts solely as an investment adviser 279
representative; 280

(d) A bank holding company, as defined in the "Bank Holding 281
Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, that is not an 282
investment company; 283

(e) A bank, or any receiver, conservator, or other 284
liquidating agent of a bank; 285

(f) Any licensed dealer or licensed salesperson whose 286
performance of investment advisory services described in division 287
(X)(1) of this section is solely incidental to the conduct of the 288
dealer's or salesperson's business as a licensed dealer or 289
licensed salesperson and who receives no special compensation for 290
the services; 291

(g) Any person, the advice, analyses, or reports of which do 292
not relate to securities other than securities that are direct 293
obligations of, or obligations guaranteed as to principal or 294
interest by, the United States, or securities issued or guaranteed 295
by corporations in which the United States has a direct or 296
indirect interest, and that have been designated by the secretary 297
of the treasury as exempt securities as defined in the "Securities 298
Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78c; 299

(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. 363

(CC) "Investment company" has the same meaning as in section 364
3(A) of the "Investment Company Act of 1940," 54 Stat. 789, 15 365
U.S.C. 80a-1 to 80a-52. 366

(DD) "Penny stock" has the same meaning as in section 367
3(A)(51) of the "Securities Exchange Act of 1934," 48 Stat. 881, 368
15 U.S.C. 78a-78jj, and the rules, regulations, and orders issued 369
pursuant to that section. 370

(EE) "Going concern transaction" has the same meaning given 371
that term under the rules or regulations on the securities and 372
exchange commission issued pursuant to section 13(c) of the 373
"Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 374
78a-78jj. 375

(FF) "Person acting on behalf of an issuer" means an officer, 376
director, or employee of an issuer. 377

(GG) "Blank check company," "roll-up transaction," "executive 378
officer of an entity," and "direct participation program" have the 379
same meanings given those terms by rule or regulation of the 380
securities and exchange commission. 381

(HH) "Forward-looking statement" means any of the following: 382

(1) A statement containing a projection of revenues, income 383
including income loss, earnings per share including earnings loss 384
per share, capital expenditures, dividends, capital structure, or 385
other financial items; 386

(2) A statement of the plans and objectives of the management 387
of the issuer for future operations, including plans or objectives 388
relating to the products or services of the issuer; 389

(3) A statement of future economic performance, including any 390
statement of that nature contained in a discussion and analysis of 391
financial conditions by the management or in the results of 392

operations included pursuant to the rules and regulations of the 393
securities and exchange commission; 394

(4) Any disclosed statement of the assumptions underlying or 395
relating to a statement described in division (B)(1), (2), or (3) 396
of section 1707.437 of the Revised Code; 397

(5) Any report issued by an outside reviewer retained by an 398
issuer to the extent that the report relates to a forward-looking 399
statement made by the issuer; 400

(6) A statement containing a projection or estimate of any 401
other items that may be specified by rule or regulation of the 402
securities and exchange commission. 403

(II)(1) "Investment adviser representative" means a 404
supervised person of an investment adviser, provided that the 405
supervised person has more than five clients who are natural 406
persons other than excepted persons defined in division (KK) of 407
this section, and that more than ten per cent of the supervised 408
person's clients are natural persons other than excepted persons 409
defined in division (KK) of this section. "Investment adviser 410
representative" does not mean any of the following: 411

(a) A supervised person that does not on a regular basis 412
solicit, meet with, or otherwise communicate with clients of the 413
investment adviser; 414

(b) A supervised person that provides only investment 415
advisory services described in division (X)(1) of this section by 416
means of written materials or oral statements that do not purport 417
to meet the objectives or needs of specific individuals or 418
accounts; 419

(c) Any other person that the division designates by rule, if 420
the division finds that the designation is necessary or 421
appropriate in the public interest or for the protection of 422
investors or clients and is consistent with the provisions fairly 423

intended by the policy and provisions of this chapter. 424

(2) For the purpose of the calculation of clients in division 425
(II)(1) of this section, a natural person and the following 426
persons are deemed a single client: Any minor child of the natural 427
person; any relative, spouse, or relative of the spouse of the 428
natural person who has the same principal residence as the natural 429
person; all accounts of which the natural person or the persons 430
referred to in division (II)(2) of this section are the only 431
primary beneficiaries; and all trusts of which the natural person 432
or persons referred to in division (II)(2) of this section are the 433
only primary beneficiaries. Persons who are not residents of the 434
United States need not be included in the calculation of clients 435
under division (II)(1) of this section. 436

(3) If subsequent to March 18, 1999, amendments are enacted 437
or adopted defining "investment adviser representative" for 438
purposes of the Investment Advisers Act of 1940 or additional 439
rules or regulations are promulgated by the securities and 440
exchange commission regarding the definition of "investment 441
adviser representative" for purposes of the Investment Advisers 442
Act of 1940, the division of securities shall, by rule, adopt the 443
substance of the amendments, rules, or regulations, unless the 444
division finds that the amendments, rules, or regulations are not 445
necessary for the protection of investors or in the public 446
interest. 447

(JJ) "Supervised person" means a natural person who is any of 448
the following: 449

(1) A partner, officer, or director of an investment adviser, 450
or other person occupying a similar status or performing similar 451
functions with respect to an investment adviser; 452

(2) An employee of an investment adviser; 453

(3) A person who provides investment advisory services 454

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 485
investment adviser or performing substantially similar functions 486
or duties for or on behalf of another company. 487

If subsequent to March 18, 1999, amendments are enacted or 488
adopted defining "excepted person" for purposes of the Investment 489
Advisers Act of 1940 or additional rules or regulations are 490
promulgated by the securities and exchange commission regarding 491
the definition of "excepted person" for purposes of the Investment 492
Advisers Act of 1940, the division of securities shall, by rule, 493
adopt the substance of the amendments, rules, or regulations, 494
unless the division finds that the amendments, rules, or 495
regulations are not necessary for the protection of investors or 496
in the public interest. 497

(LL)(1) "Qualified purchaser" means either of the following: 498

(a) A natural person who owns not less than five million 499
dollars in investments as defined by rule by the division of 500
securities; 501

(b) A natural person, acting for the person's own account or 502
accounts of other qualified purchasers, who in the aggregate owns 503
and invests on a discretionary basis, not less than twenty-five 504
million dollars in investments as defined by rule by the division 505
of securities. 506

(2) If subsequent to March 18, 1999, amendments are enacted 507
or adopted defining "qualified purchaser" for purposes of the 508
Investment Advisers Act of 1940 or additional rules or regulations 509
are promulgated by the securities and exchange commission 510
regarding the definition of "qualified purchaser" for purposes of 511
the Investment Advisers Act of 1940, the division of securities 512
shall, by rule, adopt the amendments, rules, or regulations, 513
unless the division finds that the amendments, rules, or 514
regulations are not necessary for the protection of investors or 515

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. 547

(C) The sale of securities by executors, administrators, 548
receivers, trustees, or anyone acting in a fiduciary capacity is 549
exempt, where such relationship was created by law, by a will, or 550
by judicial authority, and where such sales are subject to 551
approval by, or are made in pursuance to authority granted by, any 552
court of competent jurisdiction or are otherwise authorized and 553
lawfully made by such fiduciary. 554

(D) A sale to the issuer, to a dealer, or to an institutional 555
investor is exempt. 556

(E) A sale in good faith, and not for the purpose of avoiding 557
this chapter, by a pledgee of a security pledged for a bona fide 558
debt is exempt. 559

(F) The sale at public auction by a corporation of shares of 560
its stock because of delinquency in payment for the shares is 561
exempt. 562

(G)(1) The giving of any conversion right with, or on account 563
of the purchase of, any security that is exempt, is the subject 564
matter of an exempt transaction, has been registered by 565
description, by coordination, or by qualification, or is the 566
subject matter of a transaction that has been registered by 567
description is exempt. 568

(2) The giving of any subscription right, warrant, or option 569
to purchase a security or right to receive a security upon 570
exchange, which security is exempt at the time the right, warrant, 571
or option to purchase or right to receive is given, is the subject 572
matter of an exempt transaction, is registered by description, by 573
coordination, or by qualification, or is the subject matter of a 574
transaction that has been registered by description is exempt. 575

(3) The giving of any subscription right or any warrant or 576
option to purchase a security, which right, warrant, or option 577

expressly provides that it shall not be exercisable except for a security that at the time of the exercise is exempt, is the subject matter of an exempt transaction, is registered by description, by coordination, or by qualification, or at such time is the subject matter of a transaction that has been registered by description is exempt.

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

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

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

(K)(1) The distribution by a corporation of its securities to

its security holders as a share dividend or other distribution out
of earnings or surplus is exempt.

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

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

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

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

(1) Securities constituting the whole or a part of an unsold 641
allotment to or subscription by a dealer as an underwriter or 642
other participant in the distribution of those securities by the 643
issuer, whether that distribution is direct or through an 644
underwriter, provided that, if the issuer is such by reason of 645
owning one-fourth or more of those securities, the dealer has 646
knowledge of this fact or reasonable cause to believe this fact; 647

(2) Any class of shares issued by a corporation when the 648
number of beneficial owners of that class is less than 649
twenty-five, with the record owner of securities being deemed the 650
beneficial owner for this purpose, in the absence of actual 651
knowledge to the contrary; 652

(3) Securities that within one year were purchased outside 653
this state or within one year were transported into this state, if 654
the dealer has knowledge or reasonable cause to believe, before 655
the sale of those securities, that within one year they were 656
purchased outside this state or within one year were transported 657
into this state; but such a sale of those securities is exempt if 658
any of the following occurs: 659

(a) A recognized securities manual contains the names of the 660
issuer's officers and directors, a balance sheet of the issuer as 661
of a date within eighteen months, and a profit and loss statement 662
for either the fiscal year preceding that date or the most recent 663
year of operations; 664

(b) Those securities, or securities of the same class, ~~were~~ 665
~~registered within one year on the basis provided in section~~ 666
~~1707.05 of the Revised Code, or within one year were registered or~~ 667
qualified under section 1707.09 or 1707.091 of the Revised Code, 668
and that registration or qualification is in full force and 669
effect; 670

(c) ~~Those securities at the time of sale could be registered~~ 671

~~on the basis provided in section 1707.05 of the Revised Code;~~ 672

(d) The sale is made by a licensed dealer on behalf of the 673
bona fide owner of those securities in accordance with division 674
(B) of this section; 675

(e)(d) Those securities were transported into Ohio in a 676
transaction of the type described in division (L), (K), or (I) of 677
this section, or in a transaction registered under division (A) of 678
section 1707.06 of the Revised Code. 679

(N) For the purpose of this division and division (M) of this 680
section, "underwriter" means any person who has purchased from an 681
issuer with a view to, or sells for an issuer in connection with, 682
the distribution of any security, or who participates directly or 683
indirectly in any such undertaking or in the underwriting thereof, 684
but "underwriter" does not include a person whose interest is 685
limited to a discount, commission, or profit from the underwriter 686
or from a dealer that is not in excess of the customary 687
distributors' or sellers' discount, commission, or profit; and 688
"issuer" includes any person or any group of persons acting in 689
concert in the sale of such securities, owning beneficially 690
one-fourth or more of the outstanding securities of the class 691
involved in the transactions in question, with the record owner of 692
securities being deemed the beneficial owner for this purpose, in 693
the absence of actual knowledge to the contrary. 694

(O)(1) The sale of any equity security is exempt if all the 695
following conditions are satisfied: 696

(a) The sale is by the issuer of the security. 697

(b) The total number of purchasers in this state of all 698
securities issued or sold by the issuer in reliance upon this 699
exemption during the period of one year ending with the date of 700
the sale does not exceed ten. A sale of securities registered 701
under this chapter or sold pursuant to an exemption under this 702

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. 765

(Q) The sale of any security is exempt if all of the 766
following conditions are satisfied: 767

(1) The provisions of section 5 of the Securities Act of 1933 768
do not apply to the sale by reason of an exemption under section 4 769
(2) of that act. 770

(2) The aggregate commission, discount, and other 771
remuneration, excluding legal, accounting, and printing fees, paid 772
or given directly or indirectly does not exceed ten per cent of 773
the initial offering price. 774

(3) Any such commission, discount, or other remuneration for 775
sales in this state is paid or given only to dealers or 776
salespersons registered under this chapter. 777

(4) The issuer or dealer files with the division of 778
securities, not later than sixty days after the sale, a report 779
setting forth the name and address of the issuer, the total amount 780
of the securities sold under this division, the number of persons 781
to whom the securities were sold, the price at which the 782
securities were sold, and the commissions or discounts paid or 783
given. 784

(5) The issuer pays a filing fee of one hundred dollars for 785
the first filing and fifty dollars for every subsequent filing 786
during each calendar year. 787

(R) A sale of a money order, travelers' check, or other 788
instrument for the transmission of money by a person qualified to 789
engage in such business under section 1109.60 or Chapter 1315. of 790
the Revised Code is exempt. 791

(S) A sale by a licensed dealer of securities that are in the 792
process of registration under the Securities Act of 1933, unless 793
exempt under that act, and that are in the process of 794

registration, if registration is required under this chapter, is 795
exempt, provided that no sale of that nature shall be consummated 796
prior to the registration by description or qualification of the 797
securities. 798

(T) The execution by a licensed dealer of orders for the 799
purchase of any security is exempt, provided that the dealer acts 800
only as agent for the purchaser, has made no solicitation of the 801
order to purchase the security, has no interest in the 802
distribution of the security, and delivers to the purchaser 803
written confirmation of the transaction that clearly itemizes the 804
dealer's commission. "Solicitation," as used in this division, 805
means solicitation of the order for the specific security 806
purchased and does not include general solicitations or 807
advertisements of any kind. 808

(U) The sale insofar as the security holders of a person are 809
concerned, where, pursuant to statutory provisions of the 810
jurisdiction under which that person is organized or pursuant to 811
provisions contained in its articles of incorporation, certificate 812
of incorporation, partnership agreement, declaration of trust, 813
trust indenture, or similar controlling instrument, there is 814
submitted to the security holders, for their vote or consent, (1) 815
a plan or agreement for a reclassification of securities of that 816
person that involves the substitution of a security of that person 817
for another security of that person, (2) a plan or agreement of 818
merger or consolidation or a similar plan or agreement of 819
acquisition in which the securities of that person held by the 820
security holders will become or be exchanged for securities of any 821
other person, or (3) a plan or agreement for a combination as 822
defined in division (Q) of section 1701.01 of the Revised Code or 823
a similar plan or agreement for the transfer of assets of that 824
person to another person in consideration of the issuance of 825
securities of any person, is exempt if, with respect to any of the 826

foregoing transactions, either of the following conditions is 827
satisfied: 828

(a) The securities to be issued to the security holders are 829
effectively registered under sections 6 to 8 of the Securities Act 830
of 1933 and offered and sold in compliance with section 5 of that 831
act; 832

(b) At least twenty days prior to the date on which a meeting 833
of the security holders is held or the earliest date on which 834
corporate action may be taken when no meeting is held, there is 835
submitted to the security holders, by that person, or by the 836
person whose securities are to be issued in the transaction, 837
information substantially equivalent to the information that would 838
be required to be included in a proxy statement or information 839
statement prepared by or on behalf of the management of an issuer 840
subject to section 14(a) or 14(c) of the Securities Exchange Act 841
of 1934. 842

(V) The sale of any security is exempt if the division by 843
rule finds that registration is not necessary or appropriate in 844
the public interest or for the protection of investors. 845

(W) Any offer or sale of securities made in reliance on the 846
exemptions provided by Rule 505 of Regulation D made pursuant to 847
the Securities Act of 1933 and the conditions and definitions 848
provided by Rules 501 to 503 thereunder is exempt if the offer or 849
sale satisfies all of the following conditions: 850

(1) No commission or other remuneration is given, directly or 851
indirectly, to any person for soliciting or selling to any person 852
in this state in reliance on the exemption under this division, 853
except to dealers licensed in this state. 854

(2)(a) Unless the cause for disqualification is waived under 855
division (W)(2)(b) of this section, no exemption under this 856
section is available for the securities of an issuer unless the 857

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 890
dealer may be waived if the dealer is or continues to be licensed 891
in this state as a dealer after notifying the commissioner of the 892
act or event causing disqualification. 893

(ii) The commissioner may waive any disqualification under 894
this paragraph upon a showing of good cause that it is not 895
necessary under the circumstances that use of the exemption be 896
denied. 897

(3) Not later than five business days before the earlier of 898
the date on which the first use of an offering document or the 899
first sale is made in this state in reliance on the exemption 900
under this division, there is filed with the commissioner a notice 901
comprised of offering material in compliance with the requirements 902
of Rule 502 of Regulation D under the Securities Act of 1933 and a 903
fee of one hundred dollars. Material amendments to the offering 904
document shall be filed with the commissioner not later than the 905
date of their first use in this state. 906

(4) The aggregate commission, discount, and other 907
remuneration paid or given, directly or indirectly, does not 908
exceed twelve per cent of the initial offering price, excluding 909
legal, accounting, and printing fees. 910

(X) Any offer or sale of securities made in reliance on the 911
exemption provided in Rule 506 of Regulation D under the 912
Securities Act of 1933, and in accordance with Rules 501 to 503 of 913
Regulation D under the Securities Act of 1933, is exempt provided 914
that all of the following apply: 915

(1) The issuer makes a notice filing with the division on 916
form D of the securities and exchange commission within fifteen 917
days of the first sale in this state; 918

(2) Any commission, discount, or other remuneration for sales 919
of securities in this state is paid or given only to dealers or 920

salespersons licensed under this chapter; 921

(3) The issuer pays a filing fee of one hundred dollars to 922
the division; however, no filing fee shall be required to file 923
amendments to the form D of the securities and exchange 924
commission. 925

(Y) The offer or sale of securities by an issuer is exempt 926
provided that all of the following apply: 927

(1) The sale of securities is made only to persons who are, 928
or who the issuer reasonably believes are, accredited investors as 929
defined in Rule 501 of Regulation D under the Securities Act of 930
1933. 931

(2) The issuer reasonably believes that all purchasers are 932
purchasing for investment and not with a view to or for sale in 933
connection with a distribution of the security. Any resale of a 934
security sold in reliance on this exemption within twelve months 935
of sale shall be presumed to be with a view to distribution and 936
not for investment, except a resale to which any of the following 937
applies: 938

(a) The resale is pursuant to a registration statement 939
effective under section 1707.09 or 1707.091 of the Revised Code. 940

(b) The resale is to an accredited investor, as defined in 941
Rule 501 of Regulation D under the Securities Act of 1933. 942

(c) The resale is to an institutional investor pursuant to 943
the exemptions under division (B) or (D) of this section. 944

(3) The exemption under this division is not available to an 945
issuer that is in the development stage and that either has no 946
specific business plan or purpose or has indicated that its 947
business plan is to engage in a merger or acquisition with an 948
unidentified company or companies, or other entities or persons. 949

(4) The exemption under this division is not available to an 950

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 982
state securities administrator, or the court or regulatory 983
authority that entered the order, judgment, or decree, waives the 984
disqualification. 985

(c) The issuer did not know and, in the exercise of 986
reasonable care based on reasonable investigation, could not have 987
known that a disqualification from the exemption existed under 988
division (Y)(4) of this section. 989

(6) A general announcement of the proposed offering may be 990
made by any means; however, the general announcement shall include 991
only the following information, unless additional information is 992
specifically permitted by the division by rule: 993

(a) The name, address, and telephone number of the issuer of 994
the securities; 995

(b) The name, a brief description, and price of any security 996
to be issued; 997

(c) A brief description of the business of the issuer; 998

(d) The type, number, and aggregate amount of securities 999
being offered; 1000

(e) The name, address, and telephone number of the person to 1001
contact for additional information; and 1002

(f) A statement indicating all of the following: 1003

(i) Sales will only be made to accredited investors as 1004
defined in Rule 501 of Regulation D under the Securities Act of 1005
1933; 1006

(ii) No money or other consideration is being solicited or 1007
will be accepted by way of this general announcement; 1008

(iii) The securities have not been registered with or 1009
approved by any state securities administrator or the securities 1010

and exchange commission and are being offered and sold pursuant to 1011
an exemption from registration. 1012

(7) The issuer, in connection with an offer, may provide 1013
information in addition to the general announcement described in 1014
division (Y)(6) of this section, provided that either of the 1015
following applies: 1016

(a) The information is delivered through an electronic 1017
database that is restricted to persons that are accredited 1018
investors as defined in Rule 501 of Regulation D under the 1019
Securities Act of 1933. 1020

(b) The information is delivered after the issuer reasonably 1021
believes that the prospective purchaser is an accredited investor 1022
as defined in Rule 501 of Regulation D under the Securities Act of 1023
1933. 1024

(8) No telephone solicitation shall be done, unless prior to 1025
placing the telephone call, the issuer reasonably believes that 1026
the prospective purchaser to be solicited is an accredited 1027
investor as defined in Rule 501 of Regulation D under the 1028
Securities Act of 1933. 1029

(9) Dissemination of the general announcement described in 1030
division (Y)(6) of this section to persons that are not accredited 1031
investors, as defined in Rule 501 of Regulation D under the 1032
Securities Act of 1933, does not disqualify the issuer from 1033
claiming an exemption under this division. 1034

(10) The issuer shall file with the division notice of the 1035
offering of securities within fifteen days after notice of the 1036
offering is made or a general announcement is made in this state. 1037
The filing shall be on forms adopted by the division and shall 1038
include a copy of the general announcement, if one is made 1039
regarding the proposed offering, and copies of any offering 1040
materials, circulars, or prospectuses. A filing fee of one hundred 1041

dollars also shall be included.

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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.

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(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:

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(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;

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(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;

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(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;

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(d) A statement of any plans or proposals that the offeror,

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upon gaining control, may have to liquidate the subject company, 1072
sell its assets, effect a merger or consolidation of it, 1073
establish, terminate, convert, or amend employee benefit plans, 1074
close any plant or facility of the subject company or of any of 1075
its subsidiaries or affiliates, change or reduce the work force of 1076
the subject company or any of its subsidiaries or affiliates, or 1077
make any other major change in its business, corporate structure, 1078
management personnel, or policies of employment; 1079

(e) The number of shares of any equity security of the 1080
subject company of which each offeror is beneficial or record 1081
owner or has a right to acquire, directly or indirectly, together 1082
with the name and address of each person defined in this section 1083
as an offeror; 1084

(f) Particulars as to any contracts, arrangements, or 1085
understandings to which an offeror is party with respect to any 1086
equity security of the subject company, including transfers of any 1087
equity security, joint ventures, loan or option arrangements, puts 1088
and calls, guarantees of loan, guarantees against loss, guarantees 1089
of profits, division of losses or profits, or the giving or 1090
withholding of proxies, naming the persons with whom such 1091
contracts, arrangements, or understandings have been entered into; 1092

(g) Complete information on the organization and operations 1093
of the offeror, including the year of organization; i the form of 1094
organization; i the jurisdiction in which it is organized; i a 1095
description of each class of the offeror's capital stock and of 1096
its long term debt; i financial statements for the current period 1097
and for the three most recent annual accounting periods, unless 1098
the division by rule determines that the financial statements are 1099
not material or permits the filing of financial statements for 1100
less than the three most recent annual accounting periods; a brief 1101
description of the location and general character of the principal 1102
physical properties of the offeror and its subsidiaries; i a 1103

description of pending legal proceedings other than routine 1104
litigation to which the offeror or any of its subsidiaries is a 1105
party or of which any of their property is the subject; a brief 1106
description of the business done and projected by the offeror and 1107
its subsidiaries and the general development of such business over 1108
the past three years; the names of all directors and executive 1109
officers together with biographical summaries of each for the 1110
preceding three years to date; and the approximate amount of any 1111
material interest, direct or indirect, of any of the directors or 1112
officers in any material transaction during the past three years, 1113
or in any proposed material transactions, to which the offeror or 1114
any of its subsidiaries was or is to be a party; 1115

(h) Such other and further documents, exhibits, data, and 1116
information as may be required by regulations of the division of 1117
~~securities~~, or as may be necessary to make fair, full, and 1118
effective disclosure to offerees of all information material to a 1119
decision to accept or reject the offer. 1120

(3) Within five calendar days of the date of filing by an 1121
offeror of information specified in division (A)(2) of this 1122
section, the division of ~~securities~~ may by order summarily suspend 1123
the continuation of the control bid if the division determines 1124
that all of the information specified has not been provided by the 1125
offeror or that the control bid materials provided to offerees do 1126
not provide full disclosure to offerees of all material 1127
information concerning the control bid. Such a suspension shall 1128
remain in effect only until the determination following a hearing 1129
held pursuant to division (A)(4) of this section. 1130

(4) A hearing shall be scheduled and held by the division of 1131
~~securities~~ with respect to each suspension imposed under division 1132
(A)(3) of this section. The hearing shall be held within ten 1133
calendar days of the date on which the suspension is imposed. 1134
Chapter 119. of the Revised Code does not apply to a hearing held 1135

under this division. The division ~~of securities~~ may allow any 1136
interested party to appear at and participate in the hearing in a 1137
manner considered appropriate by the division. The determination 1138
of the division ~~of securities~~ made following the hearing shall be 1139
made within three calendar days after the hearing has been 1140
completed, and no later than fourteen calendar days after the date 1141
on which the suspension is imposed. The division ~~of securities~~, by 1142
rule or order, may prescribe time limits for conducting the 1143
hearing and for the making of the determination that are shorter 1144
than those specified in this division. If, based upon the hearing, 1145
the division ~~of securities~~ determines that all of the information 1146
required to be provided by division (A)(2) of this section has not 1147
been provided by the offeror, that the control bid materials 1148
provided to offerees do not provide full disclosure to offerees of 1149
all material information concerning the control bid, or that the 1150
control bid is in material violation of any provision of this 1151
chapter, the division shall maintain the suspension of the 1152
continuation of the control bid, subject to the right of the 1153
offeror to correct disclosure and other deficiencies identified by 1154
the division and to reinstitute the control bid by filing new or 1155
amended information pursuant to this section. 1156

(B)(1) No control bid shall be made pursuant to a tender 1157
offer or request or invitation for tenders unless division (A) of 1158
section 1707.14 of the Revised Code has been complied with, and no 1159
offeror shall make a control bid that is not made to all holders 1160
residing in this state of the equity security that is the subject 1161
of the control bid, or that is not made to such holders on the 1162
same terms as the control bid is made to holders of such equity 1163
security not residing in this state. 1164

(2) No offeror may make a control bid pursuant to a tender 1165
offer or request or invitation for tenders or acquire any equity 1166
security in this state pursuant to a control bid at any time 1167

during which any proceeding by the division alleging a violation 1168
of any provision of this chapter is pending against the offeror. 1169

(3) No offeror may acquire from any resident of this state in 1170
any manner any equity security of any class of a subject company 1171
at any time within two years following the last acquisition of any 1172
security of the same class pursuant to a control bid pursuant to a 1173
tender offer or request or invitation for tenders by that offeror, 1174
whether the acquisition was made by purchase, exchange, merger, 1175
consolidation, partial or complete liquidation, redemption, 1176
reverse stock split, recapitalization, reorganization, or any 1177
other similar transaction, unless the resident is afforded, at the 1178
time of the later acquisition, a reasonable opportunity to dispose 1179
of the security to the offeror upon substantially the same terms 1180
as those provided in the earlier control bid. 1181

(4) If an offeror makes a tender offer or request or 1183
invitation for tenders not subject to Rule 14D-1 or Rule 14D-4 of 1184
the securities and exchange commission under the "Securities 1185
Exchange Act of 1934," for less than all the outstanding equity 1186
securities of a class, and if a greater number of securities is 1187
deposited pursuant thereto within ten days after copies of the 1188
offer or request or invitation for tenders are first published or 1189
sent or given to security holders than the offeror is bound or 1190
willing to take up and pay for, the securities shall be taken up 1191
as nearly as may be pro rata, disregarding fractions, according to 1192
the number of securities deposited by each offeree. The preceding 1193
sentence applies to securities deposited within ten days after 1194
notice of an increase in the consideration offered to security 1195
holders, as described in the next sentence, is first published or 1196
sent or given to security holders. If the terms of a control bid 1197
are changed before its expiration by increasing the consideration 1198
offered to offerees, the offeror shall pay the increased 1199

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: 1261

(1) The sale of its securities by a corporation may be so 1262
carried out when no part of the securities to be sold is issued 1263
directly or indirectly in payment or exchange for intangible 1264
property or for property not located in this state, and when the 1265
total commission, remuneration, expense, or discount, excluding 1266
legal, accounting, and printing fees of the corporation, in 1267
connection with the sale of those securities does not exceed three 1268
per cent of the initial offering price of those securities. 1269

(2) The sale of its securities by any corporation may be so 1270
carried out when the securities are sold to not more than a 1271
maximum of thirty-five purchasers, the aggregate commission, 1272
discount, or other remuneration, excluding legal, accounting, and 1273
printing fees, paid or given directly or indirectly in connection 1274
with the sale of those securities does not exceed ten per cent of 1275
the initial offering price, and those securities are issued and 1276
disposed of for the sole account of the issuer in good faith and 1277
not for the purpose of avoiding this chapter. For the purposes of 1278
this division, neither of the following shall be included among 1279
the thirty-five purchaser maximum: 1280

(a) Any purchaser of at least one hundred thousand dollars of 1281
the offered securities; 1282

(b) Any director or executive officer of the issuing 1283
corporation. 1284

(3) The sale of securities representing an interest in a 1285
partnership, limited liability company, limited partnership, 1286
partnership association, syndicate, pool, trust, trust fund, or 1287
other unincorporated association may be so carried out if the 1288
securities are sold to not more than a maximum of thirty-five 1289
purchasers, the aggregate commission, discount, or other 1290
remuneration, excluding legal, accounting, and printing fees, paid 1291
or given directly or indirectly in connection with the sale of 1292

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~~ 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, 1354
so far as ~~such~~ those amounts are known, and the names and 1355
addresses of ~~such~~ the other offerors; 1356

(D) A brief statement of the facts which show that the 1357
~~securities fall within one of the classes specified in section~~ 1358
~~1707.05 of the Revised Code or that they~~ are the subject matter of 1359
a transaction enumerated in section 1707.06 of the Revised Code; 1360

(E) The price at which the securities are to be offered for 1361
sale. 1362

~~When qualification is sought under division (B)(1) of section~~ 1363
~~1707.05 of the Revised Code, there shall be filed with the~~ 1364
~~description an appraisal signed by three disinterested persons~~ 1365
~~having knowledge of the values described in such division.~~ 1366

Registration by description is completed when the 1367
description, together with ~~the~~ a filing fee of fifty dollars, in 1368
the form of cash, check, or United States postal money order, 1369
~~prescribed by this section,~~ is delivered, or mailed by certified 1370
mail with postage prepaid, to the division. ~~At the time the~~ 1371
~~description is filed, the person filing it shall pay to the~~ 1372
~~division a fee of one-tenth of one per cent of the aggregate price~~ 1373
~~at which the securities therein described are to be offered for~~ 1374
~~sale to the public in this state, if they fall within one of the~~ 1375
~~classes specified in section 1707.05 of the Revised Code; but in~~ 1376
~~no case shall the fee be less than one hundred or more than one~~ 1377
~~thousand dollars. If such securities are the subject matter of a~~ 1378
~~transaction enumerated in section 1707.06 of the Revised Code,~~ 1379
~~such fee shall be a flat fee of fifty dollars.~~ 1380

In order to correct errors or omissions, a registration by 1381
description may be amended by the person who originally filed it, 1382
by the filing, in the same manner as in the case of an original 1383
registration by description, of an amended registration by 1384
description or of an amendment of the original registration by 1385

~~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 1417
of the officers of the issuer, if the issuer is a corporation or 1418
an unincorporated association; of all the members of the issuer, 1419
if the issuer is a limited liability company in which management 1420
is reserved to its members; of all the managers of the issuer, if 1421
the issuer is a limited liability company in which management is 1422
not reserved to its members; of all partners, if the issuer is a 1423
general or limited partnership or a partnership association; and 1424
the name and address of the issuer, if the issuer is an 1425
individual; 1426

(B) The address of the issuer's principal place of business 1427
and principal office in this state, if any; 1428

(C) The purposes and general character of the business 1429
actually being transacted, or to be transacted, by the issuer, and 1430
the purpose of issuing the securities named in the application; 1431

(D) A statement of the capitalization of the issuer; a 1432
balance sheet made up as of the most recent practicable date, 1433
showing the amount and general character of its assets and 1434
liabilities; a description of the security for the qualification 1435
of which application is being made; and copies of all circulars, 1436
prospectuses, advertisements, or other descriptions of the 1437
securities, that are then prepared by or for the issuer, or by or 1438
for the applicant if the applicant is not the issuer, or by or for 1439
both, to be used for distribution or publication in this state; 1440

(E) A statement of the amount of the issuer's income, 1441
expenses, and fixed charges during the last fiscal year or, if the 1442
issuer has been in actual business less than one year, for the 1443
time that the issuer has been in actual business; 1444

(F) A statement showing the price at which the security is to 1445
be offered for sale; 1446

(G) A statement showing the considerations received or to be 1447

received by the issuer of the securities purchased or to be 1448
purchased from the issuer and an itemized statement of all 1449
expenses of financing to be paid from those considerations so as 1450
to show the aggregate net amount actually received or to be 1451
received by the issuer; 1452

(H) All other information, including an opinion of counsel as 1453
to the validity of the securities that are the subject matter of 1454
the application, that the division considers necessary to enable 1455
it to ascertain whether the securities are entitled to 1456
qualification; 1457

(I) If the issuer is a corporation, there shall be filed with 1458
the application a certified copy of its articles of incorporation 1459
with all amendments to the articles, if the articles or amendments 1460
are not already on file in the office of the secretary of state; 1461
if the issuer is a limited liability company, there shall be filed 1462
with the application a certified copy of its articles of 1463
organization with all amendments to the articles, if the articles 1464
or amendments are not already on file in the office of the 1465
secretary of state; if the issuer is a trust or trustee, there 1466
shall be filed with the application a copy of all instruments by 1467
which the trust was created; and if the issuer is a partnership or 1468
an unincorporated association, or any other form of organization, 1469
there shall be filed with the application a copy of its articles 1470
of partnership or association and of all other papers pertaining 1471
to its organization, if the articles or other papers are not 1472
already on file in the office of the secretary of state; 1473

(J) If the application is made with respect to securities to 1474
be sold or distributed by or on behalf of the issuer, or by or on 1475
behalf of an underwriter, as defined in division (N) of section 1476
1707.03 of the Revised Code, a statement showing that the issuer 1477
has received, or will receive at or prior to the delivery of those 1478
securities, not less than eighty-five per cent of the aggregate 1479

price at which all those securities are sold by or on behalf of 1480
the issuer, without deduction for any additional commission, 1481
directly or indirectly, and without liability to pay any 1482
additional sum as commission; 1483

(K) If the division so permits with respect to a security, an 1484
applicant may file with the division, in lieu of the division's 1485
prescribed forms, a copy of the registration statement relating to 1486
the security, with all amendments to that statement, previously 1487
filed with the securities and exchange commission of the United 1488
States under the "Securities Act of 1933," as amended, together 1489
with all additional data, information, and documents that the 1490
division requires. 1491

If the division finds that it is not necessary in the public 1492
interest and for the protection of investors to require all the 1493
information specified in divisions (A) to (J) of this section, it 1494
may permit the filing of applications for qualification that 1495
contain the information that it considers necessary and 1496
appropriate in the public interest and for the protection of 1497
investors; but this provision applies only in the case of 1498
applications for qualification of securities previously issued and 1499
outstanding that may not be made the subject matter of 1500
transactions exempt under division (M) of section 1707.03 of the 1501
Revised Code by reason of the fact that those securities within 1502
one year were purchased outside this state or within one year were 1503
transported into this state. 1504

All the statements, exhibits, and documents required by the 1505
division under this section, except properly certified public 1506
documents, shall be verified by the oath of the applicant, of the 1507
issuer, or of any person having knowledge of the facts, and in the 1508
manner and form that may be required by the division. Failure or 1509
refusal to comply with the requests of the division shall be 1510
sufficient reason for a refusal by the division to register 1511

securities. 1512

If it appears to the division that substantially the only 1513
consideration to be paid for any of the securities to be qualified 1514
is to be intangible property of doubtful value, the division may 1515
require that the securities be delivered in escrow to a bank in 1516
this state under the terms that the division may reasonably 1517
prescribe or require to prevent a deceitful misrepresentation or 1518
sale of the securities, that the securities be subordinated in 1519
favor of those sold for sound value until they have a value 1520
bearing a reasonable relation to the value of those sold for sound 1521
value, or that a legend of warning specifying the considerations 1522
paid or to be paid for the securities be stamped or printed on all 1523
advertisements, circulars, pamphlets, or subscription blanks used 1524
in connection with the sale of any securities of the same issuer, 1525
or it may impose a combination of any two or more of these 1526
requirements. 1527

At the time of filing the information prescribed in this 1528
section, the applicant shall pay to the division a filing fee of 1529
one hundred dollars. 1530

The division, at any time, as a prerequisite to 1531
qualification, may make an examination of the issuer of securities 1532
sought to be qualified. The applicant for qualification of any 1533
securities may be required by the division to advance sufficient 1534
funds to pay all or any part of the actual expenses of that 1535
examination, an itemized statement of which shall be furnished the 1536
applicant. If the division finds that the business of the issuer 1537
is not fraudulently conducted, that the proposed offer or disposal 1538
of securities is not on grossly unfair terms, that the plan of 1539
issuance and sale of the securities referred to in the proposed 1540
offer or disposal would not defraud or deceive, or tend to defraud 1541
or deceive, purchasers, and that division (J) of this section 1542
applies and has been complied with, the division shall notify the 1543

applicant of its findings; and, upon payment of a registration fee 1544
of one-tenth of one per cent of the aggregate price at which the 1545
securities are to be sold to the public in this state, which fee, 1546
however, shall in no case be less than one hundred or more than 1547
one thousand dollars, the division shall register the 1548
qualification of the securities. 1549

An application may be amended by the person filing it at any 1550
time prior to the division's action on it either in registering 1551
the securities for qualification or in refusing to do so. 1552
Subsequent to any such action by the division, the person who 1553
filed the application may file with the consent of the division 1554
one or more amendments to it that shall become effective upon the 1555
making by the division of the findings enumerated in the next 1556
preceding paragraph of this section, the giving of notice of those 1557
findings to the applicant by the division, and the payment by the 1558
applicant of the additional fee that would have been payable had 1559
the application as it previously became effective contained the 1560
amendment. 1561

When any securities have been qualified and the fees for the 1562
qualification have been paid as provided in this section, any 1563
licensed dealer subsequently may sell the securities under the 1564
qualification, so long as the qualification remains in full force, 1565
and any dealer of that nature who desires may file with the 1566
division a written notice of intention to sell the securities or 1567
any designated portion of them. For that filing, no fee need be 1568
paid. 1569

Sec. 1707.092. (A) For the purposes of selling securities in 1570
this state, except securities that are the subject matter of 1571
transactions enumerated in section 1707.03 of the Revised Code, an 1572
investment company, as defined by the Investment Company Act of 1573
1940, that is registered or has filed a registration statement 1574

with the securities and exchange commission under the Investment 1575
Company Act of 1940, shall file the following with the division of 1576
securities: 1577

(1) For the purposes of the sale of securities by a managed 1578
investment company, as defined in the Investment Company Act of 1579
1940: 1580

(a) A notice filing consisting of either of the following: 1581

(i) A copy of the investment company's federal registration 1582
statement as filed with the securities and exchange commission; 1583

(ii) A form U-1 or form NF of the North American securities 1584
administrators association and a copy of the investment company's 1585
prospectus and statement of additional information. 1586

(b) Appropriate filing fees consisting of both of the 1587
following: 1588

(i) A flat fee of one hundred dollars; 1589

(ii) A fee calculated at one-tenth of one per cent of the 1590
aggregate price at which the securities are to be sold to the 1591
public in this state, which calculated fee, however, shall in no 1592
case be less than one hundred or more than one thousand dollars. 1593

(c) Upon the registration of the securities with the 1594
securities and exchange commission, a managed investment company 1595
with an initial notice filing on file with the division shall 1596
submit to the division a copy of its final prospectus. 1597

(2) For the purposes of the sale of securities by a 1598
non-managed investment company, as defined in the Investment 1599
Company Act of 1940: 1600

(a) A notice filing consisting of either a copy of the 1601
investment company's federal registration statement as filed with 1602
the securities and exchange commission or a form U-1 or form NF of 1603
the North American securities administrators association; 1604

(b) Appropriate filing fees, as provided in division 1605
(A)(1)(b) of this section; 1606

(c) Upon the effectiveness of the registration of the 1607
securities with the securities and exchange commission, a 1608
non-managed investment company shall submit to the division a copy 1609
of its final prospectus. 1610

(B)(1) Upon payment of the maximum filing fees as provided in 1611
division (A)(1)(b) or (2)(b) of this section, a managed or 1612
non-managed investment company may sell an indefinite amount of 1613
securities in this state. 1614

(2) A managed or non-managed investment company making a 1615
notice filing as provided in this section shall comply with 1616
section 1707.11 of the Revised Code. An investment company that 1617
previously filed with the division a valid consent to service of 1618
process pursuant to section 1707.11 of the Revised Code may 1619
incorporate that consent by reference. 1620

(C)(1) For offerings involving covered securities, as defined 1621
in section 18 of the "Securities act of 1933," 15 U.S.C. 77r, that 1622
are not subject to section 1707.02, 1707.03, 1707.04, ~~1707.05,~~ 1623
1707.06, ~~1707.07,~~ 1707.08, 1707.09, or 1707.091 of the Revised 1624
Code, or division (A) of this section, a notice filing shall be 1625
submitted to the division together with a consent to service of 1626
process pursuant to section 1707.11 of the Revised Code and a 1627
filing fee as provided in division (A)(1)(b) of this section. 1628
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(2) The notice filing described in division (C)(1) of this 1630
section shall consist of any document filed with the securities 1631
and exchange commission pursuant to the Securities Act of 1933, 1632
together with annual or periodic reports of the value of the 1633
securities sold or offered to be sold to persons located in this 1634
state. 1635

(D) A notice filing submitted under this section shall be 1636
effective for thirteen months. 1637

Sec. 1707.14. (A)(1) No person shall act as a dealer, unless 1638
the person is licensed as a dealer by the division of securities, 1639
except in the following cases: 1640

(a) When the person is transacting business through or with a 1641
licensed dealer; 1642

(b) When the securities are the subject matter of one or more 1643
transactions enumerated in divisions (B) to (L), (O) to (R), and 1644
(U) to (Y) of section 1707.03, or in section 1707.06 of the 1645
Revised Code, except when a commission, discount, or other 1646
remuneration is paid or given in consideration with transactions 1647
enumerated in divisions (O), (Q), (W), (X), and (Y) of section 1648
1707.03, or in section 1707.06 of the Revised Code; 1649

(c) When the person is an issuer selling securities issued by 1650
it or by its subsidiary, if such securities are specified under 1651
division (G) or (I) of section 1707.02, or under section 1707.04 1652
of the Revised Code; 1653

(d) When the person is participating in transactions exempt, 1654
under section 1707.34 of the Revised Code, from this chapter. 1655

(2) Notwithstanding the exceptions to licensure set forth in 1656
divisions (A)(1)(a) to (d) of this section, no person other than 1657
an issuer selling its own securities shall engage in the business 1658
of selling securities to an institutional investor unless the 1659
person is licensed as a dealer or the division, by rule, finds 1660
that such licensure is not necessary for the protection of 1661
investors or in the public interest. 1662

(B) Each dealer that in any twelve-month or shorter period, 1663
alone or with any other dealer with which it is affiliated, has 1664
total revenues of one hundred fifty thousand dollars or more 1665

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 1726
XXXIX of the Revised Code and health insuring corporations 1727
regulated under Chapter 1751. of the Revised Code; 1728

(f) Employee benefit plans with assets of not less than one 1729
million dollars; 1730

(g) Government agencies or instrumentalities, whether acting 1731
for themselves or trustees with investment control; 1732

(h) Other institutional investors as the division may 1733
designate by rule. 1734

(4) The person has no place of business in this state, and 1735
during the preceding twelve-month period, the person has had not 1736
more than five clients, other than those described in division 1737
(A)(3) of this section, that are residents of this state. 1738

(B)(1) ~~Subject to division (C)(2) of this section, no~~ No 1739
person who is registered under section 203 of the "Investment 1740
Advisers Act of 1940," 15 U.S.C. 80b-3, as an investment adviser 1741
shall act as an investment adviser, unless the person has done 1742
both of the following: 1743

(a) Filed with the division a consent to service of process 1744
pursuant to section 1707.11 of the Revised Code, together with 1745
either a notice filing form as specified in rules adopted by the 1746
division or a copy of those documents that have been filed by the 1747
investment adviser with the securities and exchange commission as 1748
specified in rules adopted by the division; 1749

(b) Paid the notice filing fee specified in division (B) of 1750
section 1707.17 of the Revised Code. 1751

(2) Upon compliance with division (B)(1) of this section, the 1752
division shall issue to the person an acknowledgment of notice 1753
filing. 1754

(3) The notice filing and fee requirements of division (B)(1) 1755

of this section do not apply to a person described in division
(A)(3) or (4) of this section.

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~~(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.~~

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~~(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.~~

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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:

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

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(2) The person is a natural person who is licensed as an

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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. 1818

(3) Nothing in this section shall be construed to prohibit a 1819
natural person from being licensed by the division as both a 1820
salesperson and an investment adviser representative. 1821

(4) Nothing in this section shall be construed to prohibit a 1822
natural person from being licensed by the division as both a 1823
dealer and an investment adviser representative. 1824

(C) An investment adviser representative's license issued 1825
under this section shall not be effective during any period when 1826
the investment adviser representative is not employed by or 1827
associated with an investment adviser that is licensed by the 1828
division or that is in compliance with the notice filing 1829
requirements of division (B) of section 1707.141 of the Revised 1830
Code. Notice of the commencement and termination of the employment 1831
or association of an investment adviser representative licensed 1832
under this section shall be given to the division within thirty 1833
days after the commencement or termination by either of the 1834
following: 1835

(1) The investment adviser, in the case of an investment 1836
adviser representative licensed under this section and employed by 1837
or associated with, or formerly employed by or associated with, an 1838
investment adviser licensed under section 1707.141 of the Revised 1839
Code; 1840

(2) The investment adviser representative, in the case of an 1841
investment adviser representative licensed under this section and 1842
employed by or associated with, or formerly employed by or 1843
associated with, an investment adviser that is subject to the 1844
notice filings requirements of division (B) of section 1707.141 of 1845
the Revised Code. 1846

(D)(1) Application for an investment adviser representative 1847
license shall be made in accordance with this section and by 1848

filing with the division the information, materials, and forms 1849
specified in rules adopted by the division. 1850

(2) The division shall by rule require an applicant to pass 1851
an examination designated by the division or achieve a specified 1852
professional designation. 1853

(3) Prior to issuing the investment adviser representative 1854
license, the division may require the applicant to reimburse the 1855
division for the actual expenses incurred in investigating the 1856
applicant. An itemized statement of any such expenses that the 1857
applicant is required to pay shall be furnished to the applicant 1858
by the division. 1859

(E) If the division finds that the applicant is of good 1860
business repute, appears to be qualified to act as an investment 1861
adviser representative, and has complied with sections 1707.01 to 1862
1707.45 of the Revised Code and the rules adopted under those 1863
sections by the division, the division, upon payment of the fees 1864
prescribed by division (B) of section 1707.17 of the Revised Code, 1865
shall issue to the applicant a license authorizing the applicant 1866
to act as an investment adviser representative for the investment 1867
adviser, or investment advisers that are under common ownership or 1868
control, named in the application. 1869

~~(F) On March 18, 1999, a person required to be licensed as an 1870
investment adviser representative pursuant to this section has 1871
until no later than December 31, 1999, to be licensed as an 1872
investment adviser representative by the division of securities. 1873
However, a person required to be licensed by the division as an 1874
investment adviser representative by no later than December 31, 1875
1999, may be licensed as an investment adviser representative by 1876
the division on March 18, 1999, and prior to December 31, 1999. 1877~~

Sec. 1707.17. (A)(1) The license of every dealer in and 1878
salesperson of securities shall expire on the thirty-first day of 1879

December of each year, and may be renewed upon the filing with the 1880
division of securities of an application for renewal, and the 1881
payment of the fee prescribed in this section, between the first 1882
day of November and the fifteenth day of December of each year. 1883
The division may accept an application for renewal filed between 1884
the fifteenth and the thirty-first day of December of each year. 1885
The division also may accept an application for renewal received 1886
by the division not later than the tenth day of January of the 1887
subsequent calendar year, provided that the application for 1888
renewal is accompanied by the license renewal fee and the 1889
additional fee prescribed in division (B) of this section. The 1890
division shall give notice, without unreasonable delay, of its 1891
action on any application for renewal of a dealer's or 1892
salesperson's license. 1893

(2) The license of every investment adviser and investment 1894
adviser representative licensed under section 1707.141 or 1707.161 1895
of the Revised Code shall expire on the thirty-first day of 1896
December of each year. The licenses may be renewed upon the filing 1897
with the division of an application for renewal, and the payment 1898
of the fee prescribed in division (B) of this section, between the 1899
fifteenth day of October and the thirtieth day of November of each 1900
year. The division may accept an application for renewal filed 1901
between the first and thirty-first day of December of each year. 1902
The division also may accept an application for renewal received 1903
by the division not later than the tenth day of January of the 1904
subsequent ~~calenar~~ calendar year, provided that the application 1905
for renewal is accompanied by the license renewal fee and the 1906
additional fee prescribed in division (B) of this section. The 1907
division shall give notice, without unreasonable delay, of its 1908
action on any application for renewal. 1909

(3) An investment adviser required to make a notice filing 1910
under division (B) of section 1707.141 of the Revised Code 1911

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.~~ 1944

(4) The fee for each investment adviser notice filing 1945
required by division (B) of section 1707.141 of the Revised Code 1946
and received by the division not later than the thirty-first day 1947
of December of each year shall be ~~one hundred~~ fifty dollars. Upon 1948
the payment of an additional fee of one-half of the notice filing 1949
fee, the division may accept a notice filing received by the 1950
division between the first and tenth day of January of the 1951
subsequent calendar year. A notice filing may be made at any time 1952
during the calendar year. In that event, the notice filing fee 1953
shall not be reduced. ~~If the fee for an investment adviser notice~~ 1954
~~filing is paid to the division on or before October 1, 1999, that~~ 1955
~~fee shall cover the initial notice filing and also shall cover any~~ 1956
~~fee for the notice filing for the period ending December 31, 2000.~~ 1957

(5) The fee for each investment adviser representative's 1958
license, and for each annual renewal thereof that is received by 1959
the division not later than the thirty-first day of December of 1960
each year, shall be thirty-five dollars; however, the fee shall be 1961
waived for the investment adviser representative designated the 1962
principal of the investment adviser pursuant to division (E) of 1963
section 1707.151 of the Revised Code. Upon the payment of an 1964
additional fee of one-half of the license fee, the division may 1965
accept a license renewal application received by the division 1966
between the first and tenth day of January of the subsequent 1967
calendar year. ~~If the fee for an investment adviser~~ 1968
~~representative's license is paid to the division on or before~~ 1969
~~October 1, 1999, that fee shall cover the issuance of the initial~~ 1970
~~license and also shall cover any fee for renewal of the license~~ 1971
~~for the period ending December 31, 2000.~~ 1972

(C) A dealer's, salesperson's, investment adviser's, or 1973
investment adviser representative's license may be issued at any 1974
time for the remainder of the calendar year. In that event, the 1975

annual fee shall not be reduced. 1976

Sec. 1707.19. (A) An original license, or a renewal thereof, 1977
applied for by a dealer or salesperson of securities, or by an 1978
investment adviser or an investment adviser representative, may be 1979
refused, and any such license granted may be suspended and, after 1980
notice and hearing in accordance with Chapter 119. of the Revised 1981
Code, may be revoked, by the division of securities, if the 1982
division determines that the applicant or the licensed dealer, 1983
salesperson, investment adviser, or investment adviser 1984
representative: 1985

(1) Is not of good business repute; 1986

(2) Is conducting an illegitimate or fraudulent business; 1987

(3) Is, in the case of a dealer or investment adviser, 1988
insolvent; 1989

(4) Has ~~intentionally~~ knowingly violated any provision of 1990
sections 1707.01 to 1707.45 of the Revised Code, or any regulation 1991
or order made thereunder; 1992

(5) Has knowingly ~~and intentionally~~ made a false statement of 1993
a material fact or an omission of a material fact in an 1994
application for a license, in a description or application that 1995
has been filed, or in any statement made to the division under 1996
such sections; 1997

(6) Has refused to comply with any lawful order or 1998
requirement of the division under section 1707.23 of the Revised 1999
Code; 2000

(7) Has been guilty of any fraudulent act in connection with 2001
the sale of any securities or in connection with acting as an 2002
investment adviser or investment adviser representative; 2003

(8) Conducts business in purchasing or selling securities at 2004

such variations from the existing market as in the light of all 2005
the circumstances are unconscionable; 2006

(9) Conducts business in violation of such rules and 2007
regulations as the division prescribes for the protection of 2008
investors, clients, or prospective clients; 2009

(10)(a) Has failed to furnish to the division any information 2010
with respect to the purchases or sales of securities within this 2011
state that may be reasonably requested by the division as 2012
pertinent to the protection of investors in this state. 2013

(b) Has failed to furnish to the division any information 2014
with respect to acting as an investment adviser or an investment 2015
adviser representative within this state that may be reasonably 2016
requested by the division. 2017

(B) For the protection of investors the division may 2018
prescribe reasonable rules defining fraudulent, evasive, 2019
deceptive, or grossly unfair practices or devices in the purchase 2020
or sale of securities. 2021

(C) For the protection of investors, clients, or prospective 2022
clients, the division may prescribe reasonable rules regarding the 2023
acts and practices of an investment adviser or an investment 2024
adviser representative. 2025

(D) Pending any investigation or hearing provided for in 2026
sections 1707.01 to 1707.45 of the Revised Code, the division may 2027
order the suspension of any dealer's, salesperson's, investment 2028
adviser's, or investment adviser representative's license by 2029
notifying the party concerned of such suspension and the cause for 2030
it. If it is a salesperson whose license is suspended, the 2031
division shall also notify the dealer employing the salesperson. 2032
If it is an investment adviser representative whose license is 2033
suspended, the division also shall notify the investment adviser 2034
with whom the investment adviser representative is employed or 2035

associated. 2036

(E)(1) The suspension or revocation of the dealer's license 2037
suspends the licenses of all the dealer's salespersons. 2038

(2) The suspension or revocation of the investment adviser's 2039
license suspends the licenses of all the investment adviser's 2040
investment adviser representatives. The suspension or revocation 2041
of an investment adviser's registration under section 203 of the 2042
"Investment Advisers Act of 1940," 15 U.S.C. 80b-3, suspends the 2043
licenses of all the investment adviser's investment adviser 2044
representatives. 2045

(F) It is sufficient cause for refusal, revocation, or 2046
suspension of the license in case of a partnership, partnership 2047
association, corporation, or unincorporated association if any 2048
general partner of the partnership, manager of the partnership 2049
association, or executive officer of the corporation or 2050
unincorporated association is not of good business repute or has 2051
been guilty of any act or omission which would be cause for 2052
refusing or revoking the license of an individual dealer, 2053
salesperson, investment adviser, or investment adviser 2054
representative. 2055

Sec. 1707.23. Whenever it appears to the division of 2056
securities, from its files, upon complaint, or otherwise, that any 2057
person has engaged in, is engaged in, or is about to engage in any 2058
practice declared to be illegal or prohibited by ~~Chapter 1707. of~~ 2059
~~the Revised Code~~ this chapter or rules adopted under ~~that~~ this 2060
chapter by the division, or defined as fraudulent in ~~that~~ this 2061
chapter or rules adopted under ~~that~~ this chapter by the division, 2062
or any other deceptive scheme or practice in connection with the 2063
sale of securities, or acting as an investment adviser or 2064
investment adviser representative, or when the division believes 2065
it to be in the best interests of the public and necessary for the 2066

protection of investors, the division may do any of the following: 2067

(A) Require any person to file with it, on such forms as it 2068
prescribes, an original or additional statement or report in 2069
writing, under oath or otherwise, as to any facts or circumstances 2070
concerning the issuance, sale, or offer for sale of securities 2071
within this state by the person, as to the person's acts or 2072
practices as an investment adviser or investment adviser 2073
representative within this state, and as to other information as 2074
it deems material or relevant thereto; 2075

(B) Examine any investment adviser, investment adviser 2076
representative, or any seller, dealer, salesperson, or issuer of 2077
any securities, and any of their agents, employees, partners, 2078
officers, directors, members, or shareholders, wherever located, 2079
under oath; and examine records, books, documents, accounts, and 2080
papers as the division deems material or relevant to the inquiry; 2081

(C) Require the attendance of witnesses, and the production 2082
of books, records, and papers, as are required either by the 2083
division or by any party to a hearing before the division, and for 2084
that purpose issue a subpoena for any witness, or a subpoena duces 2085
tecum to compel the production of any books, records, or papers. 2086
The subpoena shall be served by certified mail, return receipt 2087
requested. If the subpoena is returned because of inability to 2088
deliver, or if no return is received within thirty days of the 2089
date of mailing, the subpoena may be served by ordinary mail. If 2090
no return of ordinary mail is received within thirty days after 2091
the date of mailing, service shall be deemed to have been made. If 2092
the subpoena is returned because of inability to deliver, the 2093
division may designate a person or persons to effect either 2094
personal or residence service upon the witness. The person may be 2095
the sheriff of the county in which the witness resides or may be 2096
found or any other duly designated person. The fees and mileage of 2097
the person serving the subpoena shall be the same as those allowed 2098

by the courts of common pleas in criminal cases, and shall be paid 2099
from the funds of the division. Fees and mileage for the witness 2100
shall be the same as those allowed for witnesses by the courts of 2101
common pleas in criminal cases, and shall be paid from the funds 2102
of the division upon request of the witness following the hearing. 2103
2104

(D) Proceed under section 1707.19 of the Revised Code to 2105
refuse a license applied for by a dealer, salesperson, investment 2106
adviser, or investment adviser representative or to suspend the 2107
license of any licensed dealer, licensed salesperson, licensed 2108
investment adviser, or licensed investment adviser representative 2109
and ultimately, if the division determines, revoke such license 2110
under ~~such sections~~ that section; 2111

(E) Initiate criminal proceedings under section 1707.042 or 2112
1707.44 of the Revised Code or rules adopted under those sections 2113
by the division by laying before the prosecuting attorney of the 2114
proper county any evidence of criminality which comes to its 2115
knowledge; and in the event of the neglect or refusal of the 2116
prosecuting attorney to prosecute such violations, or at the 2117
request of the prosecuting attorney, the division shall submit the 2118
evidence to the attorney general, who may proceed in the 2119
prosecution with all the rights, privileges, and powers conferred 2120
by law on prosecuting attorneys, including the power to appear 2121
before grand juries and to interrogate witnesses before such grand 2122
juries. 2123

(F) Require any dealers ~~forthwith~~ immediately to furnish to 2124
the division copies of prospectuses, circulars, or advertisements 2125
respecting securities that they publish or generally distribute, 2126
or require any investment advisers immediately to furnish to the 2127
division copies of brochures, advertisements, publications, 2128
analyses, reports, or other writings that they publish or 2129
distribute; 2130

(G) Require any dealers to mail to the division, prior to 2131
sale, notices of intention to sell, in respect to all securities 2132
which are not exempt under section 1707.02 of the Revised Code, or 2133
which are sold in transactions not exempt under section 1707.03 or 2134
1707.04 of the Revised Code; 2135

(H) Issue and cause to be served by certified mail upon all 2136
persons affected an order requiring the person or persons to cease 2137
and desist from the acts or practices appearing to the division to 2138
constitute violations of ~~Chapter 1707. of the Revised Code~~ this 2139
chapter or rules adopted under ~~that~~ this chapter by the division. 2140
The order shall state specifically the section or sections of 2141
~~Chapter 1707. of the Revised Code~~ this chapter or the rule or 2142
rules adopted under ~~that~~ this chapter by the division that appear 2143
to the division to have been violated and the facts constituting 2144
the violation. If after the issuance of the order it appears to 2145
the division that any person or persons affected by the order have 2146
engaged in any act or practice from which the person or persons 2147
shall have been required, by the order, to cease and desist, the 2148
director of commerce may apply to the court of common pleas of any 2149
county for, and upon proof of the validity of the order of the 2150
division, the delivery of the order to the person or persons 2151
affected, and of the illegality and the continuation of the acts 2152
or practices that are the subject of the order, the court may 2153
grant an injunction implementing the order of the division. 2154

(I) Issue and initiate contempt proceedings in this state 2155
regarding subpoenas and subpoenas duces tecum at the request of 2156
the securities administrator of another state, if it appears to 2157
the division that the activities for which the information is 2158
sought would violate ~~Chapter 1707. of the Revised Code~~ this 2159
chapter if the activities had occurred in this state. 2160

Sec. 1707.391. When any securities have been sold in reliance 2161

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~~7~~, 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; 2223

(3) Such person has been notified by the division, or has 2224
knowledge of the notice, that the right to buy, sell, or deal in 2225
such security has been suspended or revoked, or that the 2226
registration by description, by coordination, or by qualification 2227
under which it may be sold has been suspended or revoked; 2228

(4) The offer or sale is accompanied by a statement that the 2229
security offered or sold has been or is to be in any manner 2230
indorsed by the division. 2231

(D) No person who is an officer, director, or trustee of, or 2232
a dealer for, any issuer, and who knows such issuer to be 2233
insolvent in that the liabilities of the issuer exceed its assets, 2234
shall sell any securities of or for any such issuer, without 2235
disclosing the fact of the insolvency to the purchaser. 2236

(E) No person with intent to aid in the sale of any 2237
securities on behalf of the issuer, shall knowingly make any 2238
representation not authorized by such issuer or at material 2239
variance with statements and documents filed with the division by 2240
such issuer. 2241

(F) No person, with intent to deceive, shall sell, cause to 2242
be sold, offer for sale, or cause to be offered for sale, any 2243
securities of an insolvent issuer, with knowledge that such issuer 2244
is insolvent in that the liabilities of the issuer exceed its 2245
assets, taken at their fair market value. 2246

(G) No person in purchasing or selling securities shall 2247
knowingly engage in any act or practice that is, in this chapter, 2248
declared illegal, defined as fraudulent, or prohibited. 2249

(H) No licensed dealer shall refuse to buy from, sell to, or 2250
trade with any person because the person appears on a blacklist 2251
issued by, or is being boycotted by, any foreign corporate or 2252
governmental entity, nor sell any securities of or for any issuer 2253

who is known in relation to the issuance or sale of such 2254
securities to have engaged in such practices. 2255

(I) No dealer in securities, knowing that the dealer's 2256
liabilities exceed the reasonable value of the dealer's assets, 2257
shall accept money or securities, except in payment of or as 2258
security for an existing debt, from a customer who is ignorant of 2259
the dealer's insolvency, and thereby cause the customer to lose 2260
any part of the customer's securities or the value of those 2261
securities, by doing either of the following without the 2262
customer's consent: 2263

(1) Pledging, selling, or otherwise disposing of such 2264
securities, when the dealer has no lien on or any special property 2265
in such securities; 2266

(2) Pledging such securities for more than the amount due, or 2267
otherwise disposing of such securities for the dealer's own 2268
benefit, when the dealer has a lien or indebtedness on such 2269
securities. 2270

It is an affirmative defense to a charge under this division 2271
that, at the time the securities involved were pledged, sold, or 2272
disposed of, the dealer had in the dealer's possession or control, 2273
and available for delivery, securities of the same kinds and in 2274
amounts sufficient to satisfy all customers entitled to the 2275
securities, upon demand and tender of any amount due on the 2276
securities. 2277

(J) No person, with purpose to deceive, shall make, issue, 2278
publish, or cause to be made, issued, or published any statement 2279
or advertisement as to the value of securities, or as to alleged 2280
facts affecting the value of securities, or as to the financial 2281
condition of any issuer of securities, when the person knows that 2282
such statement or advertisement is false in any material respect. 2283

(K) No person, with purpose to deceive, shall make, record, 2284

or publish or cause to be made, recorded, or published, a report 2285
of any transaction in securities which is false in any material 2286
respect. 2287

(L) No dealer shall engage in any act that violates the 2288
provisions of section 15(c) or 15(g) of the "Securities Exchange 2289
Act of 1934," 48 Stat. 881, 15 U.S.C.A. 78o(c) or (g), or any rule 2290
or regulation promulgated by the securities and exchange 2291
commission thereunder. If, subsequent to October 11, 1994, 2292
additional amendments to section 15(c) or 15(g) are adopted, or 2293
additional rules or regulations are promulgated pursuant to such 2294
sections, the division of securities shall, by rule, adopt the 2295
amendments, rules, or regulations, unless the division finds that 2296
the amendments, rules, or regulations are not necessary for the 2297
protection of investors or in the public interest. 2298

(M)(1) No investment adviser or investment adviser 2299
representative shall do any of the following: 2300

(a) Employ any device, scheme, or artifice to defraud any 2301
person; 2302

(b) Engage in any act, practice, or course of business that 2303
operates or would operate as a fraud or deceit upon any person; 2304

(c) In acting as principal for the investment adviser's or 2305
investment adviser representative's own account, knowingly sell 2306
any security to or purchase any security from a client, or in 2307
acting as salesperson for a person other than such client, 2308
knowingly effect any sale or purchase of any security for the 2309
account of such client, without disclosing to the client in 2310
writing before the completion of the transaction the capacity in 2311
which the investment adviser or investment adviser representative 2312
is acting and obtaining the consent of the client to the 2313
transaction. Division (M)(1)(c) of this section does not apply to 2314
any investment adviser registered with the securities and exchange 2315

commission under section 203 of the "Investment Advisers Act of 2316
1940," 15 U.S.C. 80b-3, or to any transaction with a customer of a 2317
licensed dealer or salesperson if the licensed dealer or 2318
salesperson is not acting as an investment adviser or investment 2319
adviser representative in relation to the transaction. 2320

(d) Engage in any act, practice, or course of business that 2321
is fraudulent, deceptive, or manipulative. The division of 2322
securities may adopt rules reasonably designed to prevent such 2323
acts, practices, or courses of business as are fraudulent, 2324
deceptive, or manipulative. 2325

(2) No investment adviser or investment adviser 2326
representative licensed or required to be licensed under this 2327
chapter shall take or have custody of any securities or funds of 2328
any person, except as provided in rules adopted by the division. 2329

(3) In the solicitation of clients or prospective clients, no 2330
person shall make any untrue statement of a material fact or omit 2331
to state a material fact necessary in order to make the statements 2332
made not misleading in light of the circumstances under which the 2333
statements were made. 2334

Sec. 1707.45. In any indictment, complaint, or information 2335
under section 1707.44 of the Revised Code, it shall not be 2336
necessary to negative the existence of facts which would bring a 2337
security within section 1707.02 ~~or 1707.05~~ of the Revised Code, or 2338
would bring a transaction within section 1707.03, 1707.04, or 2339
1707.06 of the Revised Code, or to negative the existence of facts 2340
which would bring a transaction within the exceptions of section 2341
1707.34 of the Revised Code. The burden of proof shall be upon the 2342
party claiming the benefits of any of such sections. 2343

Section 2. That existing sections 1707.01, 1707.03, 1707.041, 2344
1707.06, 1707.08, 1707.09, 1707.092, 1707.14, 1707.141, 1707.161, 2345

1707.17, 1707.19, 1707.23, 1707.391, 1707.44, and 1707.45 and 2346
sections 1707.05 and 1707.07 of the Revised Code are hereby 2347
repealed. 2348

Section 3. That the versions of sections 1707.01, 1707.17, 2349
1707.23, and 1707.44 of the Revised Code that are scheduled to 2350
take effect October 5, 2001, be amended to read as follows: 2351

Sec. 1707.01. As used in this chapter: 2352

(A) Whenever the context requires it, "division" or "division 2353
of securities" may be read as "director of commerce" or as 2354
"commissioner of securities." 2355

(B) "Security" means any certificate or instrument that 2356
represents title to or interest in, or is secured by any lien or 2357
charge upon, the capital, assets, profits, property, or credit of 2358
any person or of any public or governmental body, subdivision, or 2359
agency. It includes shares of stock, certificates for shares of 2360
stock, membership interests in limited liability companies, 2361
voting-trust certificates, warrants and options to purchase 2362
securities, subscription rights, interim receipts, interim 2363
certificates, promissory notes, all forms of commercial paper, 2364
evidences of indebtedness, bonds, debentures, land trust 2365
certificates, fee certificates, leasehold certificates, syndicate 2366
certificates, endowment certificates, certificates or written 2367
instruments in or under profit-sharing or participation agreements 2368
or in or under oil, gas, or mining leases, or certificates or 2369
written instruments of any interest in or under the same, receipts 2370
evidencing preorganization or reorganization subscriptions, 2371
preorganization certificates, reorganization certificates, 2372
certificates evidencing an interest in any trust or pretended 2373
trust, any investment contract, any life settlement interest, any 2374
instrument evidencing a promise or an agreement to pay money, 2375
warehouse receipts for intoxicating liquor, and the currency of 2376

any government other than those of the United States and Canada, 2377
but sections 1707.01 to 1707.45 of the Revised Code do not apply 2378
to the sale of real estate. 2379

(C)(1) "Sale" has the full meaning of "sale" as applied by or 2380
accepted in courts of law or equity, and includes every 2381
disposition, or attempt to dispose, of a security or of an 2382
interest in a security. "Sale" also includes a contract to sell, 2383
an exchange, an attempt to sell, an option of sale, a solicitation 2384
of a sale, a solicitation of an offer to buy, a subscription, or 2385
an offer to sell, directly or indirectly, by agent, circular, 2386
pamphlet, advertisement, or otherwise. 2387

(2) "Sell" means any act by which a sale is made. 2388

(3) The use of advertisements, circulars, or pamphlets in 2389
connection with the sale of securities in this state exclusively 2390
to the purchasers specified in division (D) of section 1707.03 of 2391
the Revised Code is not a sale when the advertisements, circulars, 2392
and pamphlets describing and offering those securities bear a 2393
readily legible legend in substance as follows: "This offer is 2394
made on behalf of dealers licensed under sections 1707.01 to 2395
1707.45 of the Revised Code, and is confined in this state 2396
exclusively to institutional investors and licensed dealers." 2397

(4) The offering of securities by any person in conjunction 2398
with a licensed dealer by use of advertisement, circular, or 2399
pamphlet is not a sale if that person does not otherwise attempt 2400
to sell securities in this state. 2401

(5) Any security given with, or as a bonus on account of, any 2402
purchase of securities is conclusively presumed to constitute a 2403
part of the subject of that purchase and has been "sold." 2404

(6) "Sale" by an owner, pledgee, or mortgagee, or by a person 2405
acting in a representative capacity, includes sale on behalf of 2406
such party by an agent, including a licensed dealer or 2407

salesperson. 2408

(D) "Person," except as otherwise provided in this chapter, 2409
means a natural person, firm, partnership, limited partnership, 2410
partnership association, syndicate, joint-stock company, 2411
unincorporated association, trust or trustee except where the 2412
trust was created or the trustee designated by law or judicial 2413
authority or by a will, and a corporation or limited liability 2414
company organized under the laws of any state, any foreign 2415
government, or any political subdivision of a state or foreign 2416
government. 2417

(E)(1) "Dealer," except as otherwise provided in this 2418
chapter, means every person, other than a salesperson, who engages 2419
or professes to engage, in this state, for either all or part of 2420
the person's time, directly or indirectly, either in the business 2421
of the sale of securities for the person's own account, or in the 2422
business of the purchase or sale of securities for the account of 2423
others in the reasonable expectation of receiving a commission, 2424
fee, or other remuneration as a result of engaging in the purchase 2425
and sale of securities. "Dealer" does not mean any of the 2426
following: 2427

(a) Any issuer, including any officer, director, employee, or 2428
trustee of, or member or manager of, or partner in, or any general 2429
partner of, any issuer, that sells, offers for sale, or does any 2430
act in furtherance of the sale of a security that represents an 2431
economic interest in that issuer, provided no commission, fee, or 2432
other similar remuneration is paid to or received by the issuer 2433
for the sale; 2434

(b) Any licensed attorney, public accountant, or firm of such 2435
attorneys or accountants, whose activities are incidental to the 2436
practice of the attorney's, accountant's, or firm's profession; 2437
2438

(c) Any person that, for the account of others, engages in 2439
the purchase or sale of securities that are issued and outstanding 2440
before such purchase and sale, if a majority or more of the equity 2441
interest of an issuer is sold in that transaction, and if, in the 2442
case of a corporation, the securities sold in that transaction 2443
represent a majority or more of the voting power of the 2444
corporation in the election of directors; 2445

(d) Any person that brings an issuer together with a 2446
potential investor and whose compensation is not directly or 2447
indirectly based on the sale of any securities by the issuer to 2448
the investor; 2449

~~(e) Any bank, savings and loan association, savings bank, or 2450
credit union chartered under the laws of the United States or any 2451
state of the United States, provided that all transactions are 2452
consummated by or through a person licensed pursuant to section 2453
1707.14 of the Revised Code; 2454~~

(f) Any person that the division of securities by rule 2455
exempts from the definition of "dealer" under division (E)(1) of 2456
this section. 2457

(2) "Licensed dealer" means a dealer licensed under this 2458
chapter. 2459

(F)(1) "Salesman" or "salesperson" means every natural 2460
person, other than a dealer, who is employed, authorized, or 2461
appointed by a dealer to sell securities within this state. 2462

(2) The general partners of a partnership, and the executive 2463
officers of a corporation or unincorporated association, licensed 2464
as a dealer are not salespersons within the meaning of this 2465
definition, nor are such clerical or other employees of an issuer 2466
or dealer as are employed for work to which the sale of securities 2467
is secondary and incidental; but the division of securities may 2468
require a license from any such partner, executive officer, or 2469

employee if it determines that protection of the public 2470
necessitates the licensing. 2471

(3) "Licensed salesperson" means a salesperson licensed under 2472
this chapter. 2473

(G) "Issuer" means every person who has issued, proposes to 2474
issue, or issues any security. 2475

(H) "Director" means each director or trustee of a 2476
corporation, each trustee of a trust, each general partner of a 2477
partnership, except a partnership association, each manager of a 2478
partnership association, and any person vested with managerial or 2479
directory power over an issuer not having a board of directors or 2480
trustees. 2481

(I) "Incorporator" means any incorporator of a corporation 2482
and any organizer of, or any person participating, other than in a 2483
representative or professional capacity, in the organization of an 2484
unincorporated issuer. 2485

(J) "Fraud," "fraudulent," "fraudulent acts," "fraudulent 2486
practices," or "fraudulent transactions" means anything recognized 2487
on or after July 22, 1929, as such in courts of law or equity; any 2488
device, scheme, or artifice to defraud or to obtain money or 2489
property by means of any false pretense, representation, or 2490
promise; any fictitious or pretended purchase or sale of 2491
securities; and any act, practice, transaction, or course of 2492
business relating to the purchase or sale of securities that is 2493
fraudulent or that has operated or would operate as a fraud upon 2494
the seller or purchaser. 2495

(K) Except as otherwise specifically provided, whenever any 2496
classification or computation is based upon "par value," as 2497
applied to securities without par value, the average of the 2498
aggregate consideration received or to be received by the issuer 2499
for each class of those securities shall be used as the basis for 2500

that classification or computation. 2501

(L)(1) "Intangible property" means patents, copyrights, 2502
secret processes, formulas, services, good will, promotion and 2503
organization fees and expenses, trademarks, trade brands, trade 2504
names, licenses, franchises, any other assets treated as 2505
intangible according to generally accepted accounting principles, 2506
and securities, accounts receivable, or contract rights having no 2507
readily determinable value. 2508

(2) "Tangible property" means all property other than 2509
intangible property and includes securities, accounts receivable, 2510
and contract rights, when the securities, accounts receivable, or 2511
contract rights have a readily determinable value. 2512

(M) "Public utilities" means those utilities defined in 2513
sections 4905.02, 4905.03, 4907.02, and 4907.03 of the Revised 2514
Code; in the case of a foreign corporation, it means those 2515
utilities defined as public utilities by the laws of its domicile; 2516
and in the case of any other foreign issuer, it means those 2517
utilities defined as public utilities by the laws of the situs of 2518
its principal place of business. The term always includes 2519
railroads whether or not they are so defined as public utilities. 2520

(N) "State" means any state of the United States, any 2521
territory or possession of the United States, the District of 2522
Columbia, and any province of Canada. 2523

(O) "Bank" means any bank, trust company, savings and loan 2524
association, savings bank, or credit union that is incorporated or 2525
organized under the laws of the United States, any state of the 2526
United States, Canada, or any province of Canada and that is 2527
subject to regulation or supervision by that country, state, or 2528
province. 2529

(P) "Include," when used in a definition, does not exclude 2530
other things or persons otherwise within the meaning of the term 2531

defined. 2532

(Q)(1) "Registration by description" means that the 2533
requirements of section 1707.08 of the Revised Code have been 2534
complied with. 2535

(2) "Registration by qualification" means that the 2536
requirements of sections 1707.09 and 1707.11 of the Revised Code 2537
have been complied with. 2538

(3) "Registration by coordination" means that there has been 2539
compliance with section 1707.091 of the Revised Code. Reference in 2540
this chapter to registration by qualification also shall be deemed 2541
to include registration by coordination unless the context 2542
otherwise indicates. 2543

(R) "Intoxicating liquor" includes all liquids and compounds 2544
that contain more than three and two-tenths per cent of alcohol by 2545
weight and are fit for use for beverage purposes. 2546

(S) "Institutional investor" means any corporation, bank, 2547
insurance company, pension fund or pension fund trust, employees' 2548
profit-sharing fund or employees' profit-sharing trust, any 2549
association engaged, as a substantial part of its business or 2550
operations, in purchasing or holding securities, or any trust in 2551
respect of which a bank is trustee or cotrustee. "Institutional 2552
investor" does not include any business entity formed for the 2553
primary purpose of evading sections 1707.01 to 1707.45 of the 2554
Revised Code. 2555

(T) "Securities Act of 1933," 48 Stat. 74, 15 U.S.C. 77a, 2556
"Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78a, 2557
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, 2558
"Investment Advisers Act of 1940," 54 Stat. 847, 15 U.S.C. 80b, 2559
and "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C. 80a 2560
mean the federal statutes of those names as amended before or 2561
after March 18, 1999. 2562

(U) "Securities and exchange commission" means the securities 2563
and exchange commission established by the Securities Exchange Act 2564
of 1934. 2565

(V)(1) "Control bid" means the purchase of or offer to 2566
purchase any equity security of a subject company from a resident 2567
of this state if either of the following applies: 2568

(a) After the purchase of that security, the offeror would be 2569
directly or indirectly the beneficial owner of more than ten per 2570
cent of any class of the issued and outstanding equity securities 2571
of the issuer. 2572

(b) The offeror is the subject company, there is a pending 2573
control bid by a person other than the issuer, and the number of 2574
the issued and outstanding shares of the subject company would be 2575
reduced by more than ten per cent. 2576

(2) For purposes of division (V)(1) of this section, "control 2577
bid" does not include any of the following: 2578

(a) A bid made by a dealer for the dealer's own account in 2579
the ordinary course of business of buying and selling securities; 2580

(b) An offer to acquire any equity security solely in 2581
exchange for any other security, or the acquisition of any equity 2582
security pursuant to an offer, for the sole account of the 2583
offeror, in good faith and not for the purpose of avoiding the 2584
provisions of this chapter, and not involving any public offering 2585
of the other security within the meaning of Section 4 of Title I 2586
of the "Securities Act of 1933," 48 Stat. 77, 15 U.S.C.A. 77d(2), 2587
as amended; 2588

(c) Any other offer to acquire any equity security, or the 2589
acquisition of any equity security pursuant to an offer, for the 2590
sole account of the offeror, from not more than fifty persons, in 2591
good faith and not for the purpose of avoiding the provisions of 2592
this chapter. 2593

(W) "Offeror" means a person who makes, or in any way 2594
participates or aids in making, a control bid and includes persons 2595
acting jointly or in concert, or who intend to exercise jointly or 2596
in concert any voting rights attached to the securities for which 2597
the control bid is made and also includes any subject company 2598
making a control bid for its own securities. 2599

(X)(1) "Investment adviser" means any person who, for 2600
compensation, engages in the business of advising others, either 2601
directly or through publications or writings, as to the value of 2602
securities or as to the advisability of investing in, purchasing, 2603
or selling securities, or who, for compensation and as a part of 2604
regular business, issues or promulgates analyses or reports 2605
concerning securities. 2606

(2) "Investment adviser" does not mean any of the following: 2607

(a) Any attorney, accountant, engineer, or teacher, whose 2608
performance of investment advisory services described in division 2609
(X)(1) of this section is solely incidental to the practice of the 2610
attorney's, accountant's, engineer's, or teacher's profession; 2611

(b) A publisher of any bona fide newspaper, news magazine, or 2612
business or financial publication of general and regular 2613
circulation; 2614

(c) A person who acts solely as an investment adviser 2615
representative; 2616

(d) A bank holding company, as defined in the "Bank Holding 2617
Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, that is not an 2618
investment company; 2619

(e) A bank, or any receiver, conservator, or other 2620
liquidating agent of a bank; 2621

(f) Any licensed dealer or licensed salesperson whose 2622
performance of investment advisory services described in division 2623

(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 2687
or serves as trustee or executor, any corporation or entity in 2688
which that person owns ten per cent or more of the equity, and any 2689
affiliate or associate of that person. 2690

(AA) "Offeree" means the beneficial or record owner of any 2691
security that an offeror acquires or offers to acquire in 2692
connection with a control bid. 2693

(BB) "Equity security" means any share or similar security, 2694
or any security convertible into any such security, or carrying 2695
any warrant or right to subscribe to or purchase any such 2696
security, or any such warrant or right, or any other security 2697
that, for the protection of security holders, is treated as an 2698
equity security pursuant to rules of the division of securities. 2699

(CC) "Investment company" has the same meaning as in section 2700
3(A) of the "Investment Company Act of 1940," 54 Stat. 789, 15 2701
U.S.C. 80a-1 to 80a-52. 2702

(DD) "Penny stock" has the same meaning as in section 2703
3(A)(51) of the "Securities Exchange Act of 1934," 48 Stat. 881, 2704
15 U.S.C. 78a-78jj, and the rules, regulations, and orders issued 2705
pursuant to that section. 2706

(EE) "Going concern transaction" has the same meaning given 2707
that term under the rules or regulations on the securities and 2708
exchange commission issued pursuant to section 13(c) of the 2709
"Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 2710
78a-78jj. 2711

(FF) "Person acting on behalf of an issuer" means an officer, 2712
director, or employee of an issuer. 2713

(GG) "Blank check company," "roll-up transaction," "executive 2714
officer of an entity," and "direct participation program" have the 2715
same meanings given those terms by rule or regulation of the 2716
securities and exchange commission. 2717

(HH) "Forward-looking statement" means any of the following:	2718
(1) A statement containing a projection of revenues, income	2719
including income loss, earnings per share including earnings loss	2720
per share, capital expenditures, dividends, capital structure, or	2721
other financial items;	2722
(2) A statement of the plans and objectives of the management	2723
of the issuer for future operations, including plans or objectives	2724
relating to the products or services of the issuer;	2725
(3) A statement of future economic performance, including any	2726
statement of that nature contained in a discussion and analysis of	2727
financial conditions by the management or in the results of	2728
operations included pursuant to the rules and regulations of the	2729
securities and exchange commission;	2730
(4) Any disclosed statement of the assumptions underlying or	2731
relating to a statement described in division (B)(1), (2), or (3)	2732
of section 1707.437 of the Revised Code;	2733
(5) Any report issued by an outside reviewer retained by an	2734
issuer to the extent that the report relates to a forward-looking	2735
statement made by the issuer;	2736
(6) A statement containing a projection or estimate of any	2737
other items that may be specified by rule or regulation of the	2738
securities and exchange commission.	2739
(II)(1) "Investment adviser representative" means a	2740
supervised person of an investment adviser, provided that the	2741
supervised person has more than five clients who are natural	2742
persons other than excepted persons defined in division (KK) of	2743
this section, and that more than ten per cent of the supervised	2744
person's clients are natural persons other than excepted persons	2745
defined in division (KK) of this section. "Investment adviser	2746
representative" does not mean any of the following:	2747

(a) A supervised person that does not on a regular basis 2748
solicit, meet with, or otherwise communicate with clients of the 2749
investment adviser; 2750

(b) A supervised person that provides only investment 2751
advisory services described in division (X)(1) of this section by 2752
means of written materials or oral statements that do not purport 2753
to meet the objectives or needs of specific individuals or 2754
accounts; 2755

(c) Any other person that the division designates by rule, if 2756
the division finds that the designation is necessary or 2757
appropriate in the public interest or for the protection of 2758
investors or clients and is consistent with the provisions fairly 2759
intended by the policy and provisions of this chapter. 2760

(2) For the purpose of the calculation of clients in division 2761
(II)(1) of this section, a natural person and the following 2762
persons are deemed a single client: Any minor child of the natural 2763
person; any relative, spouse, or relative of the spouse of the 2764
natural person who has the same principal residence as the natural 2765
person; all accounts of which the natural person or the persons 2766
referred to in division (II)(2) of this section are the only 2767
primary beneficiaries; and all trusts of which the natural person 2768
or persons referred to in division (II)(2) of this section are the 2769
only primary beneficiaries. Persons who are not residents of the 2770
United States need not be included in the calculation of clients 2771
under division (II)(1) of this section. 2772

(3) If subsequent to March 18, 1999, amendments are enacted 2773
or adopted defining "investment adviser representative" for 2774
purposes of the Investment Advisers Act of 1940 or additional 2775
rules or regulations are promulgated by the securities and 2776
exchange commission regarding the definition of "investment 2777
adviser representative" for purposes of the Investment Advisers 2778
Act of 1940, the division of securities shall, by rule, adopt the 2779

substance of the amendments, rules, or regulations, unless the 2780
division finds that the amendments, rules, or regulations are not 2781
necessary for the protection of investors or in the public 2782
interest. 2783

(JJ) "Supervised person" means a natural person who is any of 2784
the following: 2785

(1) A partner, officer, or director of an investment adviser, 2786
or other person occupying a similar status or performing similar 2787
functions with respect to an investment adviser; 2788

(2) An employee of an investment adviser; 2789

(3) A person who provides investment advisory services 2790
described in division (X)(1) of this section on behalf of the 2791
investment adviser and is subject to the supervision and control 2792
of the investment adviser. 2793

(KK) "Excepted person" means a natural person to whom any of 2794
the following applies: 2795

(1) Immediately after entering into the investment advisory 2796
contract with the investment adviser, the person has at least 2797
seven hundred fifty thousand dollars under the management of the 2798
investment adviser. 2799

(2) The investment adviser reasonably believes either of the 2800
following at the time the investment advisory contract is entered 2801
into with the person: 2802

(a) The person has a net worth, together with assets held 2803
jointly with a spouse, of more than one million five hundred 2804
thousand dollars. 2805

(b) The person is a qualified purchaser as defined in 2806
division (LL) of this section. 2807

(3) Immediately prior to entering into an investment advisory 2808
contract with the investment adviser, the person is either of the 2809

following: 2810

(a) An executive officer, director, trustee, general partner, 2811
or person serving in a similar capacity, of the investment 2812
adviser; 2813

(b) An employee of the investment adviser, other than an 2814
employee performing solely clerical, secretarial, or 2815
administrative functions or duties for the investment adviser, 2816
which employee, in connection with the employee's regular 2817
functions or duties, participates in the investment activities of 2818
the investment adviser, provided that, for at least twelve months, 2819
the employee has been performing such nonclerical, nonsecretarial, 2820
or nonadministrative functions or duties for or on behalf of the 2821
investment adviser or performing substantially similar functions 2822
or duties for or on behalf of another company. 2823

If subsequent to March 18, 1999, amendments are enacted or 2824
adopted defining "excepted person" for purposes of the Investment 2825
Advisers Act of 1940 or additional rules or regulations are 2826
promulgated by the securities and exchange commission regarding 2827
the definition of "excepted person" for purposes of the Investment 2828
Advisers Act of 1940, the division of securities shall, by rule, 2829
adopt the substance of the amendments, rules, or regulations, 2830
unless the division finds that the amendments, rules, or 2831
regulations are not necessary for the protection of investors or 2832
in the public interest. 2833

(LL)(1) "Qualified purchaser" means either of the following: 2834

(a) A natural person who owns not less than five million 2835
dollars in investments as defined by rule by the division of 2836
securities; 2837

(b) A natural person, acting for the person's own account or 2838
accounts of other qualified purchasers, who in the aggregate owns 2839
and invests on a discretionary basis, not less than twenty-five 2840

million dollars in investments as defined by rule by the division 2841
of securities. 2842

(2) If subsequent to March 18, 1999, amendments are enacted 2843
or adopted defining "qualified purchaser" for purposes of the 2844
Investment Advisers Act of 1940 or additional rules or regulations 2845
are promulgated by the securities and exchange commission 2846
regarding the definition of "qualified purchaser" for purposes of 2847
the Investment Advisers Act of 1940, the division of securities 2848
shall, by rule, adopt the amendments, rules, or regulations, 2849
unless the division finds that the amendments, rules, or 2850
regulations are not necessary for the protection of investors or 2851
in the public interest. 2852

(MM)(1) "Purchase" has the full meaning of "purchase" as 2853
applied by or accepted in courts of law or equity and includes 2854
every acquisition of, or attempt to acquire, a security or an 2855
interest in a security. "Purchase" also includes a contract to 2856
purchase, an exchange, an attempt to purchase, an option to 2857
purchase, a solicitation of a purchase, a solicitation of an offer 2858
to sell, a subscription, or an offer to purchase, directly or 2859
indirectly, by agent, circular, pamphlet, advertisement, or 2860
otherwise. 2861

(2) "Purchase" means any act by which a purchase is made. 2862

(3) Any security given with, or as a bonus on account of, any 2863
purchase of securities is conclusively presumed to constitute a 2864
part of the subject of that purchase. 2865

(NN) "Life settlement interest" means the entire interest or 2866
any fractional interest in an insurance policy or certificate of 2867
insurance, or in an insurance benefit under such a policy or 2868
certificate, that is the subject of a life settlement contract. 2869

For purposes of this division, "life settlement contract" 2870
means an agreement for the purchase, sale, assignment, transfer, 2871

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. 2902
The division also may accept an application for renewal received 2903
by the division not later than the tenth day of January of the 2904
subsequent calendar year, provided that the application for 2905
renewal is accompanied by the license renewal fee and the 2906
additional fee prescribed in division (B) of this section. The 2907
division shall give notice, without unreasonable delay, of its 2908
action on any application for renewal of a dealer's or 2909
salesperson's license. 2910

(2) The license of every investment adviser and investment 2911
adviser representative licensed under section 1707.141 or 1707.161 2912
of the Revised Code shall expire on the thirty-first day of 2913
December of each year. The licenses may be renewed upon the filing 2914
with the division of an application for renewal, and the payment 2915
of the fee prescribed in division (B) of this section, between the 2916
fifteenth day of October and the thirtieth day of November of each 2917
year. The division may accept an application for renewal filed 2918
between the first and thirty-first day of December of each year. 2919
The division also may accept an application for renewal received 2920
by the division not later than the tenth day of January of the 2921
subsequent calendar year, provided that the application for 2922
renewal is accompanied by the license renewal fee and the 2923
additional fee prescribed in division (B) of this section. The 2924
division shall give notice, without unreasonable delay, of its 2925
action on any application for renewal. 2926

(3) An investment adviser required to make a notice filing 2927
under division (B) of section 1707.141 of the Revised Code 2928
annually shall file with the division the notice filing and the 2929
fee prescribed in division (B) of this section, no later than the 2930
thirty-first day of December of each year. The division may accept 2931
a notice filing received by the division not later than the tenth 2932
day of January of the subsequent calendar year, provided that the 2933

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 2966
fee, the division may accept a notice filing received by the 2967
division between the first and tenth day of January of the 2968
subsequent calendar year. A notice filing may be made at any time 2969
during the calendar year. In that event, the notice filing fee 2970
shall not be reduced. ~~If the fee for an investment adviser notice~~ 2971
~~filing is paid to the division on or before October 1, 1999, that~~ 2972
~~fee shall cover the initial notice filing and also shall cover any~~ 2973
~~fee for the notice filing for the period ending December 31, 2000.~~ 2974

(5) The fee for each investment adviser representative's 2975
license, and for each annual renewal thereof that is received by 2976
the division not later than the thirty-first day of December of 2977
each year, shall be thirty-five dollars; however, the fee shall be 2978
waived for the investment adviser representative designated the 2979
principal of the investment adviser pursuant to division (D) of 2980
section 1707.151 of the Revised Code. Upon the payment of an 2981
additional fee of one-half of the license fee, the division may 2982
accept a license renewal application received by the division 2983
between the first and tenth day of January of the subsequent 2984
calendar year. ~~If the fee for an investment adviser~~ 2985
~~representative's license is paid to the division on or before~~ 2986
~~October 1, 1999, that fee shall cover the issuance of the initial~~ 2987
~~license and also shall cover any fee for renewal of the license~~ 2988
~~for the period ending December 31, 2000.~~ 2989

(C) A dealer's, salesperson's, investment adviser's, or 2990
investment adviser representative's license may be issued at any 2991
time for the remainder of the calendar year. In that event, the 2992
annual fee shall not be reduced. 2993

Sec. 1707.23. Whenever it appears to the division of 2994
securities, from its files, upon complaint, or otherwise, that any 2995
person has engaged in, is engaged in, or is about to engage in any 2996
practice declared to be illegal or prohibited by this chapter or 2997

rules adopted under this chapter by the division, or defined as 2998
fraudulent in this chapter or rules adopted under this chapter by 2999
the division, or any other deceptive scheme or practice in 3000
connection with the sale of securities, or acting as an investment 3001
adviser or investment adviser representative, or when the division 3002
believes it to be in the best interests of the public and 3003
necessary for the protection of investors, the division may do any 3004
of the following: 3005

(A) Require any person to file with it, on such forms as it 3006
prescribes, an original or additional statement or report in 3007
writing, under oath or otherwise, as to any facts or circumstances 3008
concerning the issuance, sale, or offer for sale of securities 3009
within this state by the person, as to the person's acts or 3010
practices as an investment adviser or investment adviser 3011
representative within this state, and as to other information as 3012
it deems material or relevant thereto; 3013

(B) Examine any investment adviser, investment adviser 3014
representative, or any seller, dealer, salesperson, or issuer of 3015
any securities, and any of their agents, employees, partners, 3016
officers, directors, members, or shareholders, wherever located, 3017
under oath; and examine records, books, documents, accounts, and 3018
papers as the division deems material or relevant to the inquiry; 3019

(C) Require the attendance of witnesses, and the production 3020
of books, records, and papers, as are required either by the 3021
division or by any party to a hearing before the division, and for 3022
that purpose issue a subpoena for any witness, or a subpoena duces 3023
tecum to compel the production of any books, records, or papers. 3024
The subpoena shall be served by personal service or by certified 3025
mail, return receipt requested. If the subpoena is returned 3026
because of inability to deliver, or if no return is received 3027
within thirty days of the date of mailing, the subpoena may be 3028
served by ordinary mail. If no return of ordinary mail is received 3029

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. 3062

(F) Require any dealers ~~forthwith~~ immediately to furnish to 3063
the division copies of prospectuses, circulars, or advertisements 3064
respecting securities that they publish or generally distribute, 3065
or require any investment advisers immediately to furnish to the 3066
division copies of brochures, advertisements, publications, 3067
analyses, reports, or other writings that they publish or 3068
distribute; 3069

(G) Require any dealers to mail to the division, prior to 3070
sale, notices of intention to sell, in respect to all securities 3071
which are not exempt under section 1707.02 of the Revised Code, or 3072
which are sold in transactions not exempt under section 1707.03 or 3073
1707.04 of the Revised Code; 3074

(H) Issue and cause to be served by certified mail upon all 3075
persons affected an order requiring the person or persons to cease 3076
and desist from the acts or practices appearing to the division to 3077
constitute violations of this chapter or rules adopted under this 3078
chapter by the division. The order shall state specifically the 3079
section or sections of this chapter or the rule or rules adopted 3080
under this chapter by the division that appear to the division to 3081
have been violated and the facts constituting the violation. If 3082
after the issuance of the order it appears to the division that 3083
any person or persons affected by the order have engaged in any 3084
act or practice from which the person or persons shall have been 3085
required, by the order, to cease and desist, the director of 3086
commerce may apply to the court of common pleas of any county for, 3087
and upon proof of the validity of the order of the division, the 3088
delivery of the order to the person or persons affected, and of 3089
the illegality and the continuation of the acts or practices that 3090
are the subject of the order, the court may grant an injunction 3091
implementing the order of the division. 3092

(I) Issue and initiate contempt proceedings in this state 3093

regarding subpoenas and subpoenas duces tecum at the request of 3094
the securities administrator of another state, if it appears to 3095
the division that the activities for which the information is 3096
sought would violate this chapter if the activities had occurred 3097
in this state. 3098

Sec. 1707.44. (A)(1) No person shall engage in any act or 3099
practice that violates division (A), (B), or (C) of section 3100
1707.14 of the Revised Code, and no salesperson shall sell 3101
securities in this state without being licensed pursuant to 3102
section 1707.16 of the Revised Code. 3103

(2) No person shall engage in any act or practice that 3104
violates division (A) of section 1707.141 or section 1707.161 of 3105
the Revised Code. 3106

(B) No person shall knowingly make or cause to be made any 3107
false representation concerning a material and relevant fact, in 3108
any oral statement or in any prospectus, circular, description, 3109
application, or written statement, for any of the following 3110
purposes: 3111

(1) ~~Complying with Registering securities or transactions, or~~ 3112
~~exempting securities or transactions from registration, under this~~ 3113
~~chapter, in regard to registering securities by description;~~ 3114

(2) Securing the qualification of any securities under this 3115
chapter; 3116

(3) Procuring the licensing of any dealer, salesperson, 3117
investment adviser, or investment adviser representative under 3118
this chapter; 3119

(4) Selling any securities in this state; 3120

(5) Advising for compensation, as to the value of securities 3121
or as to the advisability of investing in, purchasing, or selling 3122
securities; 3123

(6) Submitting a notice filing to the division under section 3124
1707.092 or 1707.141 of the Revised Code. 3125

(C) No person shall knowingly and intentionally sell, cause 3126
to be sold, offer for sale, or cause to be offered for sale, any 3127
security which comes under any of the following descriptions: 3128

(1) Is not exempt under section 1707.02 of the Revised Code, 3129
nor the subject matter of one of the transactions exempted in 3130
section 1707.03, 1707.04, or 1707.34 of the Revised Code, has not 3131
been registered by ~~description~~, coordination, or qualification, 3132
and is not the subject matter of a transaction that has been 3133
registered by description; 3134

(2) The prescribed fees for registering by description, by 3135
coordination, or by qualification have not been paid in respect to 3136
such security; 3137

(3) Such person has been notified by the division, or has 3138
knowledge of the notice, that the right to buy, sell, or deal in 3139
such security has been suspended or revoked, or that the 3140
registration by description, by coordination, or by qualification 3141
under which it may be sold has been suspended or revoked; 3142

(4) The offer or sale is accompanied by a statement that the 3143
security offered or sold has been or is to be in any manner 3144
indorsed by the division. 3145

(D) No person who is an officer, director, or trustee of, or 3146
a dealer for, any issuer, and who knows such issuer to be 3147
insolvent in that the liabilities of the issuer exceed its assets, 3148
shall sell any securities of or for any such issuer, without 3149
disclosing the fact of the insolvency to the purchaser. 3150

(E) No person with intent to aid in the sale of any 3151
securities on behalf of the issuer, shall knowingly make any 3152
representation not authorized by such issuer or at material 3153
variance with statements and documents filed with the division by 3154

such issuer. 3155

(F) No person, with intent to deceive, shall sell, cause to 3156
be sold, offer for sale, or cause to be offered for sale, any 3157
securities of an insolvent issuer, with knowledge that such issuer 3158
is insolvent in that the liabilities of the issuer exceed its 3159
assets, taken at their fair market value. 3160

(G) No person in purchasing or selling securities shall 3161
knowingly engage in any act or practice that is, in this chapter, 3162
declared illegal, defined as fraudulent, or prohibited. 3163

(H) No licensed dealer shall refuse to buy from, sell to, or 3164
trade with any person because the person appears on a blacklist 3165
issued by, or is being boycotted by, any foreign corporate or 3166
governmental entity, nor sell any securities of or for any issuer 3167
who is known in relation to the issuance or sale of such 3168
securities to have engaged in such practices. 3169

(I) No dealer in securities, knowing that the dealer's 3170
liabilities exceed the reasonable value of the dealer's assets, 3171
shall accept money or securities, except in payment of or as 3172
security for an existing debt, from a customer who is ignorant of 3173
the dealer's insolvency, and thereby cause the customer to lose 3174
any part of the customer's securities or the value of those 3175
securities, by doing either of the following without the 3176
customer's consent: 3177

(1) Pledging, selling, or otherwise disposing of such 3178
securities, when the dealer has no lien on or any special property 3179
in such securities; 3180

(2) Pledging such securities for more than the amount due, or 3181
otherwise disposing of such securities for the dealer's own 3182
benefit, when the dealer has a lien or indebtedness on such 3183
securities. 3184

It is an affirmative defense to a charge under this division 3185

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 3217
operates or would operate as a fraud or deceit upon any person; 3218

(c) In acting as principal for the investment adviser's or 3219
investment adviser representative's own account, knowingly sell 3220
any security to or purchase any security from a client, or in 3221
acting as salesperson for a person other than such client, 3222
knowingly effect any sale or purchase of any security for the 3223
account of such client, without disclosing to the client in 3224
writing before the completion of the transaction the capacity in 3225
which the investment adviser or investment adviser representative 3226
is acting and obtaining the consent of the client to the 3227
transaction. Division (M)(1)(c) of this section does not apply to 3228
any investment adviser registered with the securities and exchange 3229
commission under section 203 of the "Investment Advisers Act of 3230
1940," 15 U.S.C. 80b-3, or to any transaction with a customer of a 3231
licensed dealer or salesperson if the licensed dealer or 3232
salesperson is not acting as an investment adviser or investment 3233
adviser representative in relation to the transaction. 3234

(d) Engage in any act, practice, or course of business that 3235
is fraudulent, deceptive, or manipulative. The division of 3236
securities may adopt rules reasonably designed to prevent such 3237
acts, practices, or courses of business as are fraudulent, 3238
deceptive, or manipulative. 3239

(2) No investment adviser or investment adviser 3240
representative licensed or required to be licensed under this 3241
chapter shall take or have custody of any securities or funds of 3242
any person, except as provided in rules adopted by the division. 3243

(3) In the solicitation of clients or prospective clients, no 3244
person shall make any untrue statement of a material fact or omit 3245
to state a material fact necessary in order to make the statements 3246
made not misleading in light of the circumstances under which the 3247
statements were made. 3248

Section 4. That the existing versions of sections 1707.01, 3249
1707.17, 1707.23, and 1707.44 of the Revised Code that are 3250
scheduled to take effect October 5, 2001, are hereby repealed. 3251

Section 5. Sections 3 and 4 of this act shall take effect 3252
October 5, 2001. 3253

Section 6. Section 1707.06 of the Revised Code is presented 3254
in this act as a composite of the section as amended by both Am. 3255
Sub. H.B. 488 and Sub. S.B. 74 of the 120th General Assembly. The 3256
General Assembly, applying the principle stated in division (B) of 3257
section 1.52 of the Revised Code that amendments are to be 3258
harmonized if reasonably capable of simultaneous operation, finds 3259
that the composite is the resulting version of the section in 3260
effect prior to the effective date of the section as presented in 3261
this act. 3262