

**As Reported by the Senate Finance and Financial Institutions
Committee**

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

S. B. No. 32

SENATOR White

A BILL

To amend sections 1707.01, 1707.03, 1707.041, 1707.06, 1
1707.08, 1707.09, 1707.092, 1707.14, 1707.141, 2
1707.161, 1707.17, 1707.19, 1707.23, 1707.391, 3
1707.44, and 1707.45 and to repeal sections 1707.05 4
and 1707.07 of the Revised Code to make revisions 5
in the Securities Law, and to maintain the 6
provisions of this act on and after October 5, 7
2001, by amending the versions of sections 1707.01, 8
1707.17, 1707.23, and 1707.44 of the Revised Code 9
that are scheduled to take effect on that date. 10
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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, 12
1707.08, 1707.09, 1707.092, 1707.14, 1707.141, 1707.161, 1707.17, 13
1707.19, 1707.23, 1707.391, 1707.44, and 1707.45 of the Revised 14
Code be amended to read as follows: 15

Sec. 1707.01. As used in this chapter: 16

(A) Whenever the context requires it, "division" or "division 17
of securities" may be read as "director of commerce" or as 18
"commissioner of securities." 19

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

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

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- (2) "Sell" means any act by which a sale is made. 52
- (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

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

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

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

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

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

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(e) Any bank, ~~savings and loan association, savings bank, or credit union chartered under the laws of the United States or any state of the United States, provided that all transactions are consummated by or through a person licensed pursuant to section 1707.14 of the Revised Code;~~ 114
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(f) Any person that the division of securities by rule exempts from the definition of "dealer" under division (E)(1) of this section. 119
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(2) "Licensed dealer" means a dealer licensed under this chapter. 122
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(F)(1) "Salesman" or "salesperson" means every natural person, other than a dealer, who is employed, authorized, or appointed by a dealer to sell securities within this state. 124
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(2) The general partners of a partnership, and the executive officers of a corporation or unincorporated association, licensed as a dealer are not salespersons within the meaning of this definition, nor are such clerical or other employees of an issuer or dealer as are employed for work to which the sale of securities is secondary and incidental; but the division of securities may require a license from any such partner, executive officer, or employee if it determines that protection of the public necessitates the licensing. 127
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(3) "Licensed salesperson" means a salesperson licensed under this chapter. 136
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(G) "Issuer" means every person who has issued, proposes to issue, or issues any security. 138
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(H) "Director" means each director or trustee of a corporation, each trustee of a trust, each general partner of a partnership, except a partnership association, each manager of a partnership association, and any person vested with managerial or directory power over an issuer not having a board of directors or 140
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trustees.

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

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

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

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

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(2) "Tangible property" means all property other than
intangible property and includes securities, accounts receivable,
and contract rights, when the securities, accounts receivable, or

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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

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otherwise indicates.	207
(R) "Intoxicating liquor" includes all liquids and compounds that contain more than three and two-tenths per cent of alcohol by weight and are fit for use for beverage purposes.	208 209 210
(S) "Institutional investor" means any corporation, bank, insurance company, pension fund or pension fund trust, employees' profit-sharing fund or employees' profit-sharing trust, any association engaged, as a substantial part of its business or operations, in purchasing or holding securities, or any trust in respect of which a bank is trustee or cotrustee. "Institutional investor" does not include any business entity formed for the primary purpose of evading sections 1707.01 to 1707.45 of the Revised Code.	211 212 213 214 215 216 217 218 219
(T) "Securities Act of 1933," 48 Stat. 74, 15 U.S.C. 77a, "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78a, "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, "Investment Advisers Act of 1940," 54 Stat. 847, 15 U.S.C. 80b, and "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C. 80a mean the federal statutes of those names as amended before or after March 18, 1999.	220 221 222 223 224 225 226
(U) "Securities and exchange commission" means the securities and exchange commission established by the Securities Exchange Act of 1934.	227 228 229
(V)(1) "Control bid" means the purchase of or offer to purchase any equity security of a subject company from a resident of this state if either of the following applies:	230 231 232
(a) After the purchase of that security, the offeror would be directly or indirectly the beneficial owner of more than ten per cent of any class of the issued and outstanding equity securities of the issuer.	233 234 235 236
(b) The offeror is the subject company, there is a pending	237

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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

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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 300
investment adviser pursuant to section 202(a)(11)(A) to (E) of the 301
"Investment Advisers Act of 1940," 15 U.S.C. 80b-2(a)(11), or that 302
has received an order from the securities and exchange commission 303
under section 202(a)(11)(F) of the "Investment Advisers Act of 304
1940," 15 U.S.C. 80b-2(a)(11)(F), declaring that the person is not 305
within the intent of section 202(a)(11) of the Investment Advisers 306
Act of 1940. 307

(i) Any other person that the division designates by rule, if 308
the division finds that the designation is necessary or 309
appropriate in the public interest or for the protection of 310
investors or clients and consistent with the purposes fairly 311
intended by the policy and provisions of this chapter. 312

(Y)(1) "Subject company" means an issuer that satisfies both 313
of the following: 314

(a) Its principal place of business or its principal 315
executive office is located in this state, or it owns or controls 316
assets located within this state that have a fair market value of 317
at least one million dollars. 318

(b) More than ten per cent of its beneficial or record equity 319
security holders are resident in this state, more than ten per 320
cent of its equity securities are owned beneficially or of record 321
by residents in this state, or more than one thousand of its 322
beneficial or record equity security holders are resident in this 323
state. 324

(2) The division of securities may adopt rules to establish 325
more specific application of the provisions set forth in division 326
(Y)(1) of this section. Notwithstanding the provisions set forth 327
in division (Y)(1) of this section and any rules adopted under 328
this division, the division, by rule or in an adjudicatory 329

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proceeding, may make a determination that an issuer does not
constitute a "subject company" under division (Y)(1) of this
section if appropriate review of control bids involving the issuer
is to be made by any regulatory authority of another jurisdiction.

(Z) "Beneficial owner" includes any person who directly or
indirectly through any contract, arrangement, understanding, or
relationship has or shares, or otherwise has or shares, the power
to vote or direct the voting of a security or the power to dispose
of, or direct the disposition of, the security. "Beneficial
ownership" includes the right, exercisable within sixty days, to
acquire any security through the exercise of any option, warrant,
or right, the conversion of any convertible security, or
otherwise. Any security subject to any such option, warrant,
right, or conversion privilege held by any person shall be deemed
to be outstanding for the purpose of computing the percentage of
outstanding securities of the class owned by that person, but
shall not be deemed to be outstanding for the purpose of computing
the percentage of the class owned by any other person. A person
shall be deemed the beneficial owner of any security beneficially
owned by any relative or spouse or relative of the spouse residing
in the home of that person, any trust or estate in which that
person owns ten per cent or more of the total beneficial interest
or serves as trustee or executor, any corporation or entity in
which that person owns ten per cent or more of the equity, and any
affiliate or associate of that person.

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

(BB) "Equity security" means any share or similar security,
or any security convertible into any such security, or carrying
any warrant or right to subscribe to or purchase any such
security, or any such warrant or right, or any other security

that, for the protection of security holders, is treated as an equity security pursuant to rules of the division of securities.

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

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

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

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

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

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

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

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

(3) A statement of future economic performance, including any statement of that nature contained in a discussion and analysis of

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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

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investors or clients and is consistent with the provisions fairly
intended by the policy and provisions of this chapter.

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

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

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

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

(2) An employee of an investment adviser;

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(3) A person who provides investment advisory services 454
described in division (X)(1) of this section on behalf of the 455
investment adviser and is subject to the supervision and control 456
of the investment adviser. 457

(KK) "Excepted person" means a natural person to whom any of 458
the following applies: 459

(1) Immediately after entering into the investment advisory 460
contract with the investment adviser, the person has at least 461
seven hundred fifty thousand dollars under the management of the 462
investment adviser. 463

(2) The investment adviser reasonably believes either of the 464
following at the time the investment advisory contract is entered 465
into with the person: 466

(a) The person has a net worth, together with assets held 467
jointly with a spouse, of more than one million five hundred 468
thousand dollars. 469

(b) The person is a qualified purchaser as defined in 470
division (LL) of this section. 471

(3) Immediately prior to entering into an investment advisory 472
contract with the investment adviser, the person is either of the 473
following: 474

(a) An executive officer, director, trustee, general partner, 475
or person serving in a similar capacity, of the investment 476
adviser; 477

(b) An employee of the investment adviser, other than an 478
employee performing solely clerical, secretarial, or 479
administrative functions or duties for the investment adviser, 480
which employee, in connection with the employee's regular 481
functions or duties, participates in the investment activities of 482
the investment adviser, provided that, for at least twelve months, 483

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the employee has been performing such nonclerical, nonsecretarial, 484
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

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regulations are not necessary for the protection of investors or
in the public interest.

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

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

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

Sec. 1707.03. (A) As used in this section, "exempt" means
that, except in the case of securities the right to buy, sell, or
deal in which has been suspended or revoked under an existing
order of the division of securities under section 1707.13 of the
Revised Code or under a cease and desist order under division (H)
of section 1707.23 of the Revised Code, transactions in securities
may be carried on and completed without compliance with sections
1707.08 to 1707.11 of the Revised Code.

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

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at a commission not exceeding the commission regularly charged in 546
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

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option to purchase a security, which right, warrant, or option 577
expressly provides that it shall not be exercisable except for a 578
security that at the time of the exercise is exempt, is the 579
subject matter of an exempt transaction, is registered by 580
description, by coordination, or by qualification, or at such time 581
is the subject matter of a transaction that has been registered by 582
description is exempt. 583

(H) The sale of notes, bonds, or other evidences of 584
indebtedness that are secured by a mortgage lien upon real estate, 585
leasehold estate other than oil, gas, or mining leasehold, or 586
tangible personal property, or which evidence of indebtedness is 587
due under or based upon a conditional-sale contract, if all such 588
notes, bonds, or other evidences of indebtedness are sold to a 589
single purchaser at a single sale, is exempt. 590

(I) The delivery of securities by the issuer on the exercise 591
of conversion rights, the sale of securities by the issuer on 592
exercise of subscription rights or of warrants or options to 593
purchase securities, the delivery of voting-trust certificates for 594
securities deposited under a voting-trust agreement, the delivery 595
of deposited securities on surrender of voting-trust certificates, 596
and the delivery of final certificates on surrender of interim 597
certificates are exempt; but the sale of securities on exercise of 598
subscription rights, warrants, or options is not an exempt 599
transaction unless those rights, warrants, or options when granted 600
were the subject matter of an exempt transaction under division 601
(G) of this section or were registered by description, by 602
coordination, or by qualification. 603

(J) The sale of securities by a bank, savings and loan 604
association, savings bank, or credit union organized under the 605
laws of the United States or of this state is exempt if at a 606
profit to that seller of not more than two per cent of the total 607
sale price of the securities. 608

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(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:

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

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

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

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

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

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

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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 bona fide owner of those securities in accordance with division (B) of this section;	673 674 675
(e)(d) Those securities were transported into Ohio in a transaction of the type described in division (L), (K), or (I) of this section, or in a transaction registered under division (A) of section 1707.06 of the Revised Code.	676 677 678 679
(N) For the purpose of this division and division (M) of this section, "underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or who participates directly or indirectly in any such undertaking or in the underwriting thereof, but "underwriter" does not include a person whose interest is limited to a discount, commission, or profit from the underwriter or from a dealer that is not in excess of the customary distributors' or sellers' discount, commission, or profit; and "issuer" includes any person or any group of persons acting in concert in the sale of such securities, owning beneficially one-fourth or more of the outstanding securities of the class involved in the transactions in question, with the record owner of securities being deemed the beneficial owner for this purpose, in the absence of actual knowledge to the contrary.	680 681 682 683 684 685 686 687 688 689 690 691 692 693 694
(O)(1) The sale of any equity security is exempt if all the following conditions are satisfied:	695 696
(a) The sale is by the issuer of the security.	697
(b) The total number of purchasers in this state of all securities issued or sold by the issuer in reliance upon this exemption during the period of one year ending with the date of the sale does not exceed ten. A sale of securities registered under this chapter or sold pursuant to an exemption under this	698 699 700 701 702

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chapter other than this exemption shall not be integrated with a 703
sale pursuant to this exemption in computing the number of 704
purchasers under this exemption. 705

(c) No advertisement, article, notice, or other communication 706
published in any newspaper, magazine, or similar medium or 707
broadcast over television or radio is used in connection with the 708
sale, but the use of an offering circular or other communication 709
delivered by the issuer to selected individuals does not destroy 710
this exemption. 711

(d) The issuer reasonably believes after reasonable 712
investigation that the purchaser is purchasing for investment. 713

(e) The aggregate commission, discount, and other 714
remuneration, excluding legal, accounting, and printing fees, paid 715
or given directly or indirectly does not exceed ten per cent of 716
the initial offering price. 717

(f) Any such commission, discount, or other remuneration for 718
sales in this state is paid or given only to dealers or 719
salespersons registered pursuant to this chapter. 720

(2) For the purposes of division (O)(1) of this section, each 721
of the following is deemed to be a single purchaser of a security: 722
husband and wife, a child and its parent or guardian when the 723
parent or guardian holds the security for the benefit of the 724
child, a corporation, a limited liability company, a partnership, 725
an association or other unincorporated entity, a joint-stock 726
company, or a trust, but only if the corporation, limited 727
liability company, partnership, association, entity, joint-stock 728
company, or trust was not formed for the purpose of purchasing the 729
security. 730

(3) As used in division (O)(1) of this section, "equity 731
security" means any stock or similar security of a corporation or 732
any membership interest in a limited liability company; or any 733

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security convertible, with or without consideration, into such a 734
security, or carrying any warrant or right to subscribe to or 735
purchase such a security; or any such warrant or right; or any 736
other security that the division considers necessary or 737
appropriate, by such rules as it may prescribe in the public 738
interest or for the protection of investors, to treat as an equity 739
security. 740

(P) The sale of securities representing interests in or under 741
profit-sharing or participation agreements relating to oil or gas 742
wells located in this state, or representing interests in or under 743
oil or gas leases of real estate situated in this state, is exempt 744
if the securities are issued by an individual, partnership, 745
limited partnership, partnership association, syndicate, pool, 746
trust or trust fund, or other unincorporated association and if 747
each of the following conditions is complied with: 748

(1) The beneficial owners of the securities do not, and will 750
not after the sale, exceed five natural persons; 751

(2) The securities constitute or represent interests in not 752
more than one oil or gas well; 753

(3) A certificate or other instrument in writing is furnished 754
to each purchaser of the securities at or before the consummation 755
of the sale, disclosing the maximum commission, compensation for 756
services, cost of lease, and expenses with respect to the sale of 757
such interests and with respect to the promotion, development, and 758
management of the oil or gas well, and the total of that 759
commission, compensation, costs, and expenses does not exceed 760
twenty-five per cent of the aggregate interests in the oil or gas 761
well, exclusive of any landowner's rental or royalty; 762

(4) The sale is made in good faith and not for the purpose of 763
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avoiding this chapter.	765
(Q) The sale of any security is exempt if all of the following conditions are satisfied:	766
(1) The provisions of section 5 of the Securities Act of 1933 do not apply to the sale by reason of an exemption under section 4 (2) of that act.	767
(2) The aggregate commission, discount, and other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly does not exceed ten per cent of the initial offering price.	768
(3) Any such commission, discount, or other remuneration for sales in this state is paid or given only to dealers or salespersons registered under this chapter.	769
(4) The issuer or dealer files with the division of securities, not later than sixty days after the sale, a report setting forth the name and address of the issuer, the total amount of the securities sold under this division, the number of persons to whom the securities were sold, the price at which the securities were sold, and the commissions or discounts paid or given.	770
(5) The issuer pays a filing fee of one hundred dollars for the first filing and fifty dollars for every subsequent filing during each calendar year.	771
(R) A sale of a money order, travelers' check, or other instrument for the transmission of money by a person qualified to engage in such business under section 1109.60 or Chapter 1315. of the Revised Code is exempt.	772
(S) A sale by a licensed dealer of securities that are in the process of registration under the Securities Act of 1933, unless exempt under that act, and that are in the process of	773
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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

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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.

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

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

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

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

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

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

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

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salespersons licensed under this chapter;	921
(3) The issuer pays a filing fee of one hundred dollars to the division; however, no filing fee shall be required to file amendments to the form D of the securities and exchange commission.	922 923 924 925
(Y) The offer or sale of securities by an issuer is exempt provided that all of the following apply:	926 927
(1) The sale of securities is made only to persons who are, or who the issuer reasonably believes are, accredited investors as defined in Rule 501 of Regulation D under the Securities Act of 1933.	928 929 930 931
(2) The issuer reasonably believes that all purchasers are purchasing for investment and not with a view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve months of sale shall be presumed to be with a view to distribution and not for investment, except a resale to which any of the following applies:	932 933 934 935 936 937 938
(a) The resale is pursuant to a registration statement effective under section 1707.09 or 1707.091 of the Revised Code.	939 940
(b) The resale is to an accredited investor, as defined in Rule 501 of Regulation D under the Securities Act of 1933.	941 942
(c) The resale is to an institutional investor pursuant to the exemptions under division (B) or (D) of this section.	943 944
(3) The exemption under this division is not available to an issuer that is in the development stage and that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entities or persons.	945 946 947 948 949
(4) The exemption under this division is not available to an	950

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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.

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(b) Before the first offer is made under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification.	982 983 984 985
(c) The issuer did not know and, in the exercise of reasonable care based on reasonable investigation, could not have known that a disqualification from the exemption existed under division (Y)(4) of this section.	986 987 988 989
(6) A general announcement of the proposed offering may be made by any means; however, the general announcement shall include only the following information, unless additional information is specifically permitted by the division by rule:	990 991 992 993
(a) The name, address, and telephone number of the issuer of the securities;	994 995
(b) The name, a brief description, and price of any security to be issued;	996 997
(c) A brief description of the business of the issuer;	998
(d) The type, number, and aggregate amount of securities being offered;	999 1000
(e) The name, address, and telephone number of the person to contact for additional information; and	1001 1002
(f) A statement indicating all of the following:	1003
(i) Sales will only be made to accredited investors as defined in Rule 501 of Regulation D under the Securities Act of 1933;	1004 1005 1006
(ii) No money or other consideration is being solicited or will be accepted by way of this general announcement;	1007 1008
(iii) The securities have not been registered with or approved by any state securities administrator or the securities	1009 1010

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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

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dollars also shall be included. 1042

Sec. 1707.041. (A)(1) No control bid for any securities of a 1043
subject company shall be made pursuant to a tender offer or 1044
request or invitation for tenders until the offeror files with the 1045
division of securities the information prescribed in division 1046
(A)(2) of this section. The offeror shall deliver a copy of the 1047
information specified in division (A)(2) of this section, by 1048
personal service, to the subject company at its principal office 1049
not later than the time of the filing with the division of 1050
~~securities~~. The offeror shall send or deliver to all offerees in 1051
this state, as soon as practicable after the filing, the material 1052
terms of the proposed offer and the information specified in 1053
division (A)(2) of this section. 1054

(2) The information to be filed with the division of 1055
~~securities~~, with the subject company, and with any other offeror, 1056
pursuant to division (A)(1) of this section, shall include: 1057

(a) Copies of all prospectuses, brochures, advertisements, 1058
circulars, letters, or other matter by means of which the offeror 1059
proposes to disclose to offerees all information material to a 1060
decision to accept or reject the offer; 1061

(b) The identity and background of all persons on whose 1062
behalf the acquisition of any equity security of the subject 1063
company has been or is to be effected; 1064

(c) The source and amount of funds or other consideration 1065
used or to be used in acquiring any equity security, including a 1066
statement describing any securities, other than the existing 1067
capital stock or long term debt of the offeror, which are being 1068
offered in exchange for the equity securities of the subject 1069
company; 1070

(d) A statement of any plans or proposals that the offeror, 1071

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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 organization₇i the form of 1094
organization₇i the jurisdiction in which it is organized₇i a 1095
description of each class of the offeror's capital stock and of 1096
its long term debt₇i 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 subsidiaries₇i a 1103

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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 ~~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 ~~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 ~~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

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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

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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 1182
invitation for tenders not subject to Rule 14D-1 or Rule 14D-4 of 1183
the securities and exchange commission under the "Securities 1184
Exchange Act of 1934," for less than all the outstanding equity 1185
securities of a class, and if a greater number of securities is 1186
deposited pursuant thereto within ten days after copies of the 1187
offer or request or invitation for tenders are first published or 1188
sent or given to security holders than the offeror is bound or 1189
willing to take up and pay for, the securities shall be taken up 1190
as nearly as may be pro rata, disregarding fractions, according to 1191
the number of securities deposited by each offeree. The preceding 1192
sentence applies to securities deposited within ten days after 1193
notice of an increase in the consideration offered to security 1194
holders, as described in the next sentence, is first published or 1195
sent or given to security holders. If the terms of a control bid 1196
are changed before its expiration by increasing the consideration 1197
offered to offerees, the offeror shall pay the increased 1198
1199

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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

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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

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<u>1707.08 and 1707.11</u> 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

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those securities does not exceed ten per cent of the initial 1293
offering price, and the sale is made in good faith and not for the 1294
purpose of avoiding this chapter. For the purposes of this 1295
division, neither of the following shall be included among the 1296
thirty-five purchaser maximum: 1297

(a) Any purchaser of at least one hundred thousand dollars of 1298
the offered ~~securites~~ securities; 1299

(b) Any trustee, general partner, director, or executive 1300
officer of the issuer, or any member of a limited liability 1301
company, if the issuer is a limited liability company in which the 1302
management is reserved to its members, or manager of a limited 1303
liability company, if the issuer is a limited liability company in 1304
which the management is not reserved to its members. 1305

(4) The offering and sale of additional securities of a 1306
corporation, made by it to its own security holders exclusively, 1307
may be so carried out where no commission or other remuneration is 1308
paid or given directly or indirectly in connection with the 1309
offering and sale, other than a commission in respect of the 1310
securities purchased by such security holders or a discount in 1311
respect of the securities not purchased by the security holders, 1312
or both, paid by the corporation to a dealer who has agreed to 1313
purchase all of those securities not taken by the security 1314
holders. 1315

(B) An issuer engaging in any transaction specified in this 1316
section shall not be deemed a dealer. Any commission, discount, or 1317
other remuneration for sales in this state of securities specified 1318
in this section shall be paid only to dealers or ~~salesmen~~ 1319
salespersons licensed pursuant to this chapter. 1320

(C) For the purpose of this section, each of the following is 1321
deemed to be a single purchaser of a security: 1322

(1) Husband and wife; 1323

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(2) A child and its parent or guardian when the parent or guardian holds the security for the benefit of the child; 1324
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(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. 1326
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(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. 1332
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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.~~ 1337
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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: 1342
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(A) The name of the issuer; 1349

(B) A brief description of the securities; 1350

(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 1351
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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

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~~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:

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- (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

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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

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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

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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

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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

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

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

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

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

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

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

(i) A flat fee of one hundred dollars;

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

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

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

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

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(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
1629

(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

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(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

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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.

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(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;

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(e) Insurance companies subject to regulation under Title XXXIX of the Revised Code and health insuring corporations regulated under Chapter 1751. of the Revised Code;	1726 1727 1728
(f) Employee benefit plans with assets of not less than one million dollars;	1729 1730
(g) Government agencies or instrumentalities, whether acting for themselves or trustees with investment control;	1731 1732
(h) Other institutional investors as the division may designate by rule.	1733 1734
(4) The person has no place of business in this state, and during the preceding twelve-month period, the person has had not more than five clients, other than those described in division (A)(3) of this section, that are residents of this state.	1735 1736 1737 1738
(B)(1) Subject to division (C)(2) of this section, no <u>No</u> person who is registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, as an investment adviser shall act as an investment adviser, unless the person has done both of the following:	1739 1740 1741 1742 1743
(a) Filed with the division a consent to service of process <u>pursuant to section 1707.11 of the Revised Code</u> , together with either a notice filing form as specified in rules adopted by the division or a copy of those documents that have been filed by the investment adviser with the securities and exchange commission as specified in rules adopted by the division;	1744 1745 1746 1747 1748 1749
(b) Paid the notice filing fee specified in division (B) of section 1707.17 of the Revised Code.	1750 1751
(2) Upon compliance with division (B)(1) of this section, the division shall issue to the person an acknowledgment of notice filing.	1752 1753 1754
(3) The notice filing and fee requirements of division (B)(1)	1755

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of this section do not apply to a person described in division 1756
(A)(3) or (4) of this section. 1757

~~(C)(1) On the effective date of this section, if a person is 1758
registered as an investment adviser with the securities and 1759
exchange commission pursuant to section 203 of the "Investment 1760
Advisers Act of 1940," 15 U.S.C. 80b-3, and is required to be 1761
licensed as an investment adviser by the division of securities, 1762
that person has until no later than December 31, 1999, to be 1763
licensed as an investment adviser by the division of securities. 1764
However, a person required to be licensed by the division as an 1765
investment adviser by no later than December 31, 1999, may be 1766
licensed as an investment adviser by the division on the effective 1767
date of this section and prior to December 31, 1999. 1768~~

~~(2) On the effective date of this section, if a person is 1769
registered as an investment adviser with the securities and 1770
exchange commission pursuant to section 203 of the "Investment 1771
Advisers Act of 1940," 15 U.S.C. 80b-3, and is subject to the 1772
notice filing requirements of division (B) of this section, that 1773
person has until no later than December 31, 1999, to comply with 1774
the notice filing requirements of division (B) of this section. 1775
However, a person required to comply with the notice filing 1776
requirements of division (B) of this section by no later than 1777
December 31, 1999, may comply with those notice filing 1778
requirements on the effective date of this section and prior to 1779
December 31, 1999. 1780~~

Sec. 1707.161. ~~(A) Subject to division (F) of this section, 1781
no No person shall act as an investment adviser representative, 1782
unless one of the following applies: 1783~~

~~(1) The person is licensed as an investment adviser 1784
representative by the division of securities. 1785~~

~~(2) The person is a natural person who is licensed as an 1786~~

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investment adviser by the division, and does not act as an 1787
investment adviser representative for another investment adviser; 1788
however, a natural person who is licensed as an investment adviser 1789
by the division may act as an investment adviser representative 1790
for another investment adviser if the natural person also is 1791
licensed by the division, or is properly excepted from licensure, 1792
as an investment adviser representative of the other investment 1793
adviser. 1794

(3) The person is employed by or associated with an 1795
investment adviser registered under section 203 of the "Investment 1796
Advisers Act of 1940," 15 U.S.C. 80b-3, and does not have a place 1797
of business in this state. 1798

(4) The person is employed by or associated with an 1799
investment adviser that is excepted from licensure pursuant to 1800
division (A)(3) or (4) of section 1707.141 of the Revised Code or 1801
excepted from notice filing pursuant to division (B)(3) of section 1802
1707.141 of the Revised Code. 1803

(B)(1) No investment adviser representative required to be 1804
licensed under this section shall act as an investment adviser 1805
representative for more than two investment advisers. An 1806
investment adviser representative that acts as an investment 1807
adviser representative for two investment advisers shall do so 1808
only after the occurrence of both of the following: 1809

(a) Being properly licensed, or properly excepted from 1810
licensure under this section, as an investment adviser 1811
representative for both investment advisers; 1812

(b) Complying with the requirements set forth in rules 1813
adopted by the division regarding consent of both investment 1814
advisers and notice. 1815

(2) Nothing in this section shall be construed to prohibit a 1816
natural person from being licensed by the division as both an 1817

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investment adviser and an investment adviser representative.	1818
(3) Nothing in this section shall be construed to prohibit a natural person from being licensed by the division as both a salesperson and an investment adviser representative.	1819 1820 1821
(4) Nothing in this section shall be construed to prohibit a natural person from being licensed by the division as both a dealer and an investment adviser representative.	1822 1823 1824
(C) An investment adviser representative's license issued under this section shall not be effective during any period when the investment adviser representative is not employed by or associated with an investment adviser that is licensed by the division or that is in compliance with the notice filing requirements of division (B) of section 1707.141 of the Revised Code. Notice of the commencement and termination of the employment or association of an investment adviser representative licensed under this section shall be given to the division within thirty days after the commencement or termination by either of the following:	1825 1826 1827 1828 1829 1830 1831 1832 1833 1834 1835
(1) The investment adviser, in the case of an investment adviser representative licensed under this section and employed by or associated with, or formerly employed by or associated with, an investment adviser licensed under section 1707.141 of the Revised Code;	1836 1837 1838 1839 1840
(2) The investment adviser representative, in the case of an investment adviser representative licensed under this section and employed by or associated with, or formerly employed by or associated with, an investment adviser that is subject to the notice filings requirements of division (B) of section 1707.141 of the Revised Code.	1841 1842 1843 1844 1845 1846
(D)(1) Application for an investment adviser representative license shall be made in accordance with this section and by	1847 1848

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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

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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

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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~~ 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~~

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~~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

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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 <u>knowingly</u> 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 <u>or an omission of a material fact</u> 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

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

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

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

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

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

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

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

associated.	2036
(E)(1) The suspension or revocation of the dealer's license suspends the licenses of all the dealer's salespersons.	2037 2038
(2) The suspension or revocation of the investment adviser's license suspends the licenses of all the investment adviser's investment adviser representatives. The suspension or revocation of an investment adviser's registration under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, suspends the licenses of all the investment adviser's investment adviser representatives.	2039 2040 2041 2042 2043 2044 2045
(F) It is sufficient cause for refusal, revocation, or suspension of the license in case of a partnership, partnership association, corporation, or unincorporated association if any general partner of the partnership, manager of the partnership association, or executive officer of the corporation or unincorporated association is not of good business repute or has been guilty of any act or omission which would be cause for refusing or revoking the license of an individual dealer, salesperson, investment adviser, or investment adviser representative.	2046 2047 2048 2049 2050 2051 2052 2053 2054 2055
Sec. 1707.23. Whenever it appears to the division of securities, from its files, upon complaint, or otherwise, that any person has engaged in, is engaged in, or is about to engage in any practice declared to be illegal or prohibited by Chapter 1707. of the Revised Code <u>this chapter</u> or rules adopted under that <u>this</u> chapter by the division, or defined as fraudulent in that <u>this</u> chapter or rules adopted under that <u>this</u> chapter by the division, or any other deceptive scheme or practice in connection with the sale of securities, or acting as an investment adviser or investment adviser representative, or when the division believes it to be in the best interests of the public and necessary for the	2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066

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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

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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

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(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

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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.

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(B) No person shall knowingly make or cause to be made any	2193
false representation concerning a material and relevant fact, in	2194
any oral statement or in any prospectus, circular, description,	2195
application, or written statement, for any of the following	2196
purposes:	2197
(1) Complying with <u>Registering securities or transactions, or</u>	2198
<u>exempting securities or transactions from registration, under this</u>	2199
chapter, in regard to registering securities by description;	2200
(2) Securing the qualification of any securities under this	2201
chapter;	2202
(3) Procuring the licensing of any dealer, salesperson,	2203
investment adviser, or investment adviser representative under	2204
this chapter;	2205
(4) Selling any securities in this state;	2206
(5) Advising for compensation, as to the value of securities	2207
or as to the advisability of investing in, purchasing, or selling	2208
securities;	2209
(6) <u>Submitting a notice filing to the division under section</u>	2210
<u>1707.092 or 1707.141 of the Revised Code.</u>	2211
(C) No person shall knowingly and intentionally sell, cause	2212
to be sold, offer for sale, or cause to be offered for sale, any	2213
security which comes under any of the following descriptions:	2214
(1) Is not exempt under section 1707.02 of the Revised Code,	2215
nor the subject matter of one of the transactions exempted in	2216
sections 1707.03, 1707.04, and 1707.34 of the Revised Code, has	2217
not been registered by description , coordination, or	2218
qualification, and is not the subject matter of a transaction that	2219
has been registered by description;	2220
(2) The prescribed fees for registering by description, by	2221
coordination, or by qualification have not been paid in respect to	2222

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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

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

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

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

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

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

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

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

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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

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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

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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

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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

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

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

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

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

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

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

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

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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

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- 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

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defined.	2532
(Q)(1) "Registration by description" means that the requirements of section 1707.08 of the Revised Code have been complied with.	2533 2534 2535
(2) "Registration by qualification" means that the requirements of sections 1707.09 and 1707.11 of the Revised Code have been complied with.	2536 2537 2538
(3) "Registration by coordination" means that there has been compliance with section 1707.091 of the Revised Code. Reference in this chapter to registration by qualification also shall be deemed to include registration by coordination unless the context otherwise indicates.	2539 2540 2541 2542 2543
(R) "Intoxicating liquor" includes all liquids and compounds that contain more than three and two-tenths per cent of alcohol by weight and are fit for use for beverage purposes.	2544 2545 2546
(S) "Institutional investor" means any corporation, bank, insurance company, pension fund or pension fund trust, employees' profit-sharing fund or employees' profit-sharing trust, any association engaged, as a substantial part of its business or operations, in purchasing or holding securities, or any trust in respect of which a bank is trustee or cotrustee. "Institutional investor" does not include any business entity formed for the primary purpose of evading sections 1707.01 to 1707.45 of the Revised Code.	2547 2548 2549 2550 2551 2552 2553 2554 2555
(T) "Securities Act of 1933," 48 Stat. 74, 15 U.S.C. 77a, "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78a, "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, "Investment Advisers Act of 1940," 54 Stat. 847, 15 U.S.C. 80b, and "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C. 80a mean the federal statutes of those names as amended before or after March 18, 1999.	2556 2557 2558 2559 2560 2561 2562

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(U) "Securities and exchange commission" means the securities and exchange commission established by the Securities Exchange Act of 1934.	2563 2564 2565
(V)(1) "Control bid" means the purchase of or offer to purchase any equity security of a subject company from a resident of this state if either of the following applies:	2566 2567 2568
(a) After the purchase of that security, the offeror would be directly or indirectly the beneficial owner of more than ten per cent of any class of the issued and outstanding equity securities of the issuer.	2569 2570 2571 2572
(b) The offeror is the subject company, there is a pending control bid by a person other than the issuer, and the number of the issued and outstanding shares of the subject company would be reduced by more than ten per cent.	2573 2574 2575 2576
(2) For purposes of division (V)(1) of this section, "control bid" does not include any of the following:	2577 2578
(a) A bid made by a dealer for the dealer's own account in the ordinary course of business of buying and selling securities;	2579 2580
(b) An offer to acquire any equity security solely in exchange for any other security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, in good faith and not for the purpose of avoiding the provisions of this chapter, and not involving any public offering of the other security within the meaning of Section 4 of Title I of the "Securities Act of 1933," 48 Stat. 77, 15 U.S.C.A. 77d(2), as amended;	2581 2582 2583 2584 2585 2586 2587 2588
(c) Any other offer to acquire any equity security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, from not more than fifty persons, in good faith and not for the purpose of avoiding the provisions of this chapter.	2589 2590 2591 2592 2593

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(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

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(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.

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(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. 2655
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(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. 2661
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(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 2670
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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

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

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(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

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

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

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

(2) An employee of an investment adviser;

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

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

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

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

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

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

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

following: 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

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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

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devise, or bequest of any portion of the death benefit or	2872
ownership of any life insurance policy or contract, in return for	2873
consideration or any other thing of value that is less than the	2874
expected death benefit of the life insurance policy or contract.	2875
"Life settlement contract" includes a viatical settlement contract	2876
as defined in section 3916.01 of the Revised Code, but does not	2877
include any of the following:	2878
(1) A loan by an insurer under the terms of a life insurance	2879
policy, including, but not limited to, a loan secured by the cash	2880
value of the policy;	2881
(2) An agreement with a bank that takes an assignment of a	2882
life insurance policy as collateral for a loan;	2883
(3) The provision of accelerated benefits as defined in	2884
section 3915.21 of the Revised Code;	2885
(4) Any agreement between an insurer and a reinsurer;	2886
(5) An agreement by an individual to purchase an existing	2887
life insurance policy or contract from the original owner of the	2888
policy or contract, if the individual does not enter into more	2889
than one life settlement contract per calendar year;	2890
(6) The initial purchase of an insurance policy or	2891
certificate of insurance from its owner by a viatical settlement	2892
provider, as defined in section 3916.01 of the Revised Code, that	2893
is licensed under Chapter 3916. of the Revised Code.	2894
Sec. 1707.17. (A)(1) The license of every dealer in and	2895
salesperson of securities shall expire on the thirty-first day of	2896
December of each year, and may be renewed upon the filing with the	2897
division of securities of an application for renewal, and the	2898
payment of the fee prescribed in this section, between the first	2899
day of November and the fifteenth day of December of each year.	2900
The division may accept an application for renewal filed between	2901

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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

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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

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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

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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

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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

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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

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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

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

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such issuer.	3155
(F) No person, with intent to deceive, shall sell, cause to be sold, offer for sale, or cause to be offered for sale, any securities of an insolvent issuer, with knowledge that such issuer is insolvent in that the liabilities of the issuer exceed its assets, taken at their fair market value.	3156 3157 3158 3159 3160
(G) No person in purchasing or selling securities shall knowingly engage in any act or practice that is, in this chapter, declared illegal, defined as fraudulent, or prohibited.	3161 3162 3163
(H) No licensed dealer shall refuse to buy from, sell to, or trade with any person because the person appears on a blacklist issued by, or is being boycotted by, any foreign corporate or governmental entity, nor sell any securities of or for any issuer who is known in relation to the issuance or sale of such securities to have engaged in such practices.	3164 3165 3166 3167 3168 3169
(I) No dealer in securities, knowing that the dealer's liabilities exceed the reasonable value of the dealer's assets, shall accept money or securities, except in payment of or as security for an existing debt, from a customer who is ignorant of the dealer's insolvency, and thereby cause the customer to lose any part of the customer's securities or the value of those securities, by doing either of the following without the customer's consent:	3170 3171 3172 3173 3174 3175 3176 3177
(1) Pledging, selling, or otherwise disposing of such securities, when the dealer has no lien on or any special property in such securities;	3178 3179 3180
(2) Pledging such securities for more than the amount due, or otherwise disposing of such securities for the dealer's own benefit, when the dealer has a lien or indebtedness on such securities.	3181 3182 3183 3184
It is an affirmative defense to a charge under this division	3185

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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;

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(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

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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