

## Chapter 1707: SECURITIES

### 1707.01 Securities definitions.

As used in this chapter:

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

(B) "Security" means any certificate or instrument, or any oral, written, or electronic agreement, understanding, or opportunity, 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, an uncertificated security, 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, interests in or under profit-sharing or participation agreements, interests in or under oil, gas, or mining leases, preorganization or reorganization subscriptions, preorganization certificates, reorganization certificates, interests in any trust or pretended trust, any investment contract, any life settlement interest, any instrument evidencing a promise or an agreement to pay money, warehouse receipts for intoxicating liquor, and the currency of any government other than those of the United States and Canada, but sections [1707.01](#) to [1707.45](#) of the Revised Code do not apply to the sale of real estate.

(C)

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

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

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

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

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

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

(D) "Person," except as otherwise provided in this chapter, means a natural person, firm, partnership, limited partnership, partnership association, syndicate, joint-stock company, unincorporated association, trust or trustee except where the trust was created or the trustee designated by law or judicial authority or by a will,

and a corporation or limited liability company organized under the laws of any state, any foreign government, or any political subdivision of a state or foreign government.

(E)

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

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

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

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

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

(e) Any bank;

(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 clerical or other employees of an issuer or dealer that are employed for work to which the sale of securities is secondary and incidental; but the division of securities may require a license from any such partner, executive officer, or employee if it determines that protection of the public necessitates the licensing.

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

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

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

(I) "Incorporator" means any incorporator of a corporation and any organizer of, or any person participating,

other than in a representative or professional capacity, in the organization of an unincorporated issuer.

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

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

(L)

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

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

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

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

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

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

(Q)

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

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

(3) "Registration by coordination" means that there has been compliance with section [1707.091](#) of the Revised Code. Reference in this chapter to registration by qualification also includes registration by coordination unless the context otherwise indicates.

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

(S) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

- (1) A bank or international banking institution;
- (2) An insurance company;
- (3) A separate account of an insurance company;
- (4) An investment company as defined in the "Investment Company Act of 1940," 15 U.S.C. 80a-3 ;
- (5) A broker-dealer registered under the "Securities Exchange Act of 1934," 15 U.S.C. 78o, as amended, or licensed by the division of securities as a dealer;
- (6) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars or its investment decisions are made by a named fiduciary, as defined in the "Employee Retirement Income Security Act of 1974," 29 U.S.C. 1001, that is one of the following:
  - (a) A broker-dealer registered under the "Securities Exchange Act of 1934," 15 U.S.C. 78o, as amended;
  - (b) An investment adviser registered or exempt from registration under the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3 ;
  - (c) An investment adviser registered under this chapter, a bank, or an insurance company.
- (7) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the "Employee Retirement Income Security Act of 1974," 29 U.S.C. 1001, that is one of the following:
  - (a) A broker-dealer registered under the "Securities Exchange Act of 1934," 15 U.S.C. 78o, as amended;
  - (b) An investment adviser registered or exempt from registration under the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3 ;
  - (c) An investment adviser registered under this chapter, a bank, or an insurance company.
- (8) A trust, if it has total assets in excess of ten million dollars, its trustee is a bank, and its participants are exclusively plans of the types identified in division (S)(6) or (7) of this section, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;
- (9) An organization described in section 501(c)(3) of the "Internal Revenue Code of 1986," 26 U.S.C. 1, as amended, corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars;
- (10) A small business investment company licensed by the small business administration under section 301(c) of the "Small Business Investment Act of 1958," 15 U.S.C. 681(c), with total assets in excess of ten million dollars;
- (11) A private business development company as defined in section 202(a)(22) of the "Investment Advisers Act of 1940," 15 U.S.C. 80b - 2(a)(22), with total assets in excess of ten million dollars;
- (12) A federal covered investment adviser acting for its own account;

(13) A "qualified institutional buyer" as defined in 17 C.F.R. 230.144A(a)(1), other than 17 C.F.R. 230.144A(a)(1)(H) ;

(14) A "major U.S. institutional investor" as defined in 17 C.F.R. 240.15 a- 6(b)(4)(i);

(15) Any other person, other than an individual, of institutional character with total assets in excess of ten million dollars not organized for the specific purpose of evading this chapter;

(16) Any other person specified by rule adopted or order issued under this chapter.

(T) A reference to a statute of the United States or to a rule, regulation, or form promulgated by the securities and exchange commission or by another federal agency means the statute, rule, regulation, or form as it exists at the time of the act, omission, event, or transaction to which it is applied under this chapter.

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

(V)

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

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

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

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

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

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

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

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

(X)

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

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

- (a) Any attorney, accountant, engineer, or teacher, whose performance of investment advisory services described in division (X)(1) of this section is solely incidental to the practice of the attorney's, accountant's, engineer's, or teacher's profession;
- (b) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
- (c) A person who acts solely as an investment adviser representative;
- (d) A bank holding company, as defined in the "Bank Holding Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, that is not an investment company;
- (e) A bank, or any receiver, conservator, or other liquidating agent of a bank;
- (f) Any licensed dealer or licensed salesperson whose performance of investment advisory services described in division (X)(1) of this section is solely incidental to the conduct of the dealer's or salesperson's business as a licensed dealer or licensed salesperson and who receives no special compensation for the services;
- (g) Any person, the advice, analyses, or reports of which do not relate to securities other than securities that are direct obligations of, or obligations guaranteed as to principal or interest by, the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest, and that have been designated by the secretary of the treasury as exempt securities as defined in the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78c ;
- (h) Any person that is excluded from the definition of investment adviser pursuant to section 202(a)(11)(A) to (E) of the "Investment Advisers Act of 1940," 15 U.S.C. 80b - 2(a)(11) , or that has received an order from the securities and exchange commission under section 202(a)(11)(F) of the "Investment Advisers Act of 1940," 15 U.S.C. 80b - 2(a)(11)(F), declaring that the person is not within the intent of section 202(a)(11) of the Investment Advisers Act of 1940.
- (i) A person who acts solely as a state retirement system investment officer or as a bureau of workers' compensation chief investment officer;
- (j) Any other person that the division designates by rule, if the division finds that the designation is necessary or appropriate in the public interest or for the protection of investors or clients and consistent with the purposes fairly intended by the policy and provisions of this chapter.

(Y)

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

- (a) Its principal place of business or its principal executive office is located in this state, or it owns or controls assets located within this state that have a fair market value of at least one million dollars.
- (b) More than ten per cent of its beneficial or record equity security holders are resident in this state, more than ten per cent of its equity securities are owned beneficially or of record by residents in this state, or more than one thousand of its beneficial or record equity security holders are resident in this state.

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

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

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

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

(CC)

(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 (EE) 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 (EE) of this section. "Investment adviser representative" does not mean any of the following:

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

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

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

(2) For the purpose of the calculation of clients in division (CC)(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 (CC)(2) of this section are the only primary beneficiaries; and all trusts of which the natural person or persons referred to in division (CC)(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 (CC)(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.

(DD) "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.

(EE) "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 (FF) of this section.
- (3) Immediately prior to entering into an investment advisory contract with the investment adviser, the person is either of the following:
  - (a) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser;
  - (b) An employee of the investment adviser, other than an employee performing solely clerical, secretarial, or administrative functions or duties for the investment adviser, which employee, in connection with the employee's regular functions or duties, participates in the investment activities of the investment adviser, provided that, for at least twelve months, the employee has been performing such nonclerical, nonsecretarial, or nonadministrative functions or duties for or on behalf of the investment adviser or performing substantially similar functions or duties for or on behalf of another company.

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

(FF)

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

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



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

(GG)

(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.

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

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

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

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

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

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

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

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

(II) "State retirement system" means the public employees retirement system, Ohio police and fire pension fund, state teachers retirement system, school employees retirement system, and state highway patrol retirement system.

(JJ) "State retirement system investment officer" means an individual employed by a state retirement system as a chief investment officer, assistant investment officer, or the person in charge of a class of assets or in a position that is substantially equivalent to chief investment officer, assistant investment officer, or person in charge of a class of assets.

(KK) "Bureau of workers' compensation chief investment officer" means an individual employed by the administrator of workers' compensation as a chief investment officer or in a position that is substantially equivalent to a chief investment officer.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

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### **1707.02 Exempt securities.**

(A) "Exempt," as used in this section, means exempt from sections [1707.08](#) to [1707.11](#) and [1707.39](#) of the Revised Code.

(B)

(1) Except as provided in division (B)(2) of this section, the following securities are exempt, if the issuer or guarantor has the power of taxation or assessment for the purpose of paying the obligation represented by the security, or is in specific terms empowered by the laws of the state of issuance to issue securities payable as to principal or interest, or as to both, out of revenues collected or administered by such issuer:

(a) Any security issued or guaranteed by the United States;

(b) Any security issued or guaranteed by, and recognized, at the time of sale, as its valid obligation by, any foreign government with which the United States is, at the time of sale, maintaining diplomatic relations;

(c) Any security issued or guaranteed, and recognized as its valid obligation, by any political subdivision or any governmental or other public body, corporation, or agency in or of the United States, any state, territory, or possession of the United States, or any foreign government with which the United States is, at the time of sale, maintaining diplomatic relations.

(2) If a security described in division (B)(1) of this section is not payable out of the proceeds of a general tax, the security is exempt only if, at the time of its first sale in this state, there is no default in the payment of any of the interest or principal of the security, and there are no adjudications or pending suits adversely affecting its validity.

(C) Any security issued or guaranteed by a state or nationally chartered bank, savings and loan association, savings bank, or credit union, or a governmental corporation or agency created by or under the laws of the United States or of Canada is exempt, if it is under the supervision of or subject to regulation by the government or state under whose laws it was organized.

(D) Any interim certificate is exempt, if the securities to be delivered therefor are themselves exempt, are the subject matter of an exempt transaction, have been registered by description or registered by qualification, or are the subject matter of a transaction which has been registered by description.

(E)

(1) A security is exempt if it meets any of the following requirements:

(a) The security is listed, or authorized for listing, on the New York stock exchange, the American stock exchange, or the national market system of the NASDAQ stock market, or any successor to such entities.

(b) The security is listed, or authorized for listing, on a national securities exchange or system, or on a tier or segment of such exchange or system, designated by the securities and exchange commission in rule 146(b) promulgated under section 18(b)(1) of the Securities Act of 1933.

(c) The security is listed, or authorized for listing, on a national securities exchange or system, or on a tier or

segment of such exchange or system, that has listing standards that the division of securities, on its own initiative or on the basis of an application, determines by rule are substantially similar to the listing standards applicable to securities described in division (E)(1)(a) of this section.

(d) The security is a security of the same issuer that is equal in seniority or that is a senior security to a security described in division (E)(1)(a), (b), or (c) of this section.

(2) Application for approval of a stock exchange or system not approved in this section may be made by any organized stock exchange or system, or by any dealer who is a member of such exchange, in such manner and upon such forms as are prescribed by the division, accompanied by payment of an approval fee of two hundred dollars, and the division shall make such investigation and may hold such hearings as it deems necessary to determine the propriety of giving approval. The cost of such investigation shall be borne by the applicant. The division may enter an order of approval, and if it does so, it shall notify the applicant of such approval.

(3) The division may revoke the approval of an exchange or system enumerated in division (E)(1) of this section, provided that the exchange or system is not listed in section 18(b)(1) of the Securities Act of 1933 or any rule promulgated thereunder. The division may effect a revocation after due notice, investigation, a hearing, and a finding that the practices or requirements of such exchange or system have been so changed or modified, or are, in their actual operation, such that the contemplated protection is no longer afforded. The principles of res adjudicata ordinarily applicable in civil matters shall not be applicable to this matter, which is hereby declared to be administrative rather than judicial. Notice of the hearing may be given by certified mail at least ten days before such hearing.

(4) The division may suspend the exemption of any security described in division (E)(1) of this section, provided that the security is listed or authorized for listing on an exchange or system that is not listed in section 18(b)(1) of the Securities Act of 1933 or any rule promulgated thereunder. The division may effect a suspension by giving notice, by certified mail, to that effect to the exchange or system upon which such security is listed or designated and to the issuer of such security. After notice and hearing, the division may revoke such exemption if it appears to it that sales of such security have been fraudulent or that future sales of it would be fraudulent. The division shall set such hearing not later than ten days from the date of the order of suspension, but may for good cause continue such hearing upon application of the exchange or system upon which such security is listed or designated or upon application of the issuer of such security.

(F) Any security, issued or guaranteed as to principal, interest, or dividend or distribution by a corporation owning or operating any public utility, is exempt, if such corporation is, as to its rates and charges or as to the issuance and guaranteeing of securities, under the supervision of or regulated by a public commission, board, or officer of the United States, or of Canada, or of any state, province, or municipal corporation in either of such countries. Equipment-trust securities based on chattel mortgages, leases, or agreements for conditional sale, of cars, locomotives, motor trucks, or other rolling stock or of motor vehicles mortgaged, leased, or sold to, or finished for the use of, a public utility, are exempt; and so are equipment securities where the ownership or title of such equipment is pledged or retained, in accordance with the laws of the United States or of any state, or of Canada or any province thereof, to secure the payment of such securities.

(G) Commercial paper and promissory notes are exempt when they are not offered directly or indirectly for sale to the public.

(H) Any security issued or guaranteed by an insurance company, except as provided in section [1707.32](#) of the Revised Code, is exempt if such company is under the supervision of, and the issuance or guaranty of such security is regulated by, a state.

(I) Any security, except notes, bonds, debentures, or other evidences of indebtedness or of promises or agreements to pay money, which is issued by a person, corporation, or association organized not for profit, including persons, corporations, and associations organized exclusively for conducting county fairs, or for

religious, educational, social, recreational, athletic, benevolent, fraternal, charitable, or reformatory purposes, and agricultural cooperatives as defined in section [1729.01](#) of the Revised Code, is exempt, if no part of the net earnings of such issuer inures to the benefit of any shareholder or member of such issuer or of any individual, and if the total commission, remuneration, expense, or discount in connection with the sale of such securities does not exceed two per cent of the total sale price thereof plus five hundred dollars.

(J)

(1) Any securities outstanding for a period of not less than five years, on which there has occurred no default in payment of principal, interest, or dividend or distribution for the five years immediately preceding the sale, are exempt.

(2) For the purpose of division (J) of this section, the dividend, distribution, or interest rate on securities in which no such rate is specified shall be at the rate of at least four per cent annually on the aggregate of the price at which such securities are to be sold.

(K) All bonds issued under authority of Chapter 165. or 761., or section [4582.06](#) or [4582.31](#) of the Revised Code are exempt.

Effective Date: 09-16-2003

### **1707.03 Exempt transactions.**

(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 (G) of section [1707.23](#) of the Revised Code, transactions in securities may be carried on and completed without compliance with sections [1707.08](#) to [1707.11](#) of the Revised Code.

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

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

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

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

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

(G)

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

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

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

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

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

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

(K)

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

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

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

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

(M) A sale by a licensed dealer, acting either as principal or as agent, of securities issued and outstanding

before the sale is exempt, unless the sale is of one or more of the following:

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

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

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

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

(b) Those securities, or securities of the same class, 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) 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;

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

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

(O)

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

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

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

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

exemption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(U) The sale insofar as the security holders of a person are concerned, where, pursuant to statutory provisions of the jurisdiction under which that person is organized or pursuant to provisions contained in its articles of incorporation, certificate of incorporation, partnership agreement, declaration of trust, trust indenture, or similar controlling instrument, there is submitted to the security holders, for their vote or consent, (1) a plan or agreement for a reclassification of securities of that person that involves the substitution of a security of that person for another security of that person, (2) a plan or agreement of merger or consolidation or a similar plan or agreement of acquisition in which the securities of that person held by the security holders will become or be exchanged for securities of any other person, or (3) a plan or agreement for a combination as defined in division (Q) of section [1701.01](#) of the Revised Code or a similar plan or agreement for the transfer of assets of that person to another person in consideration of the issuance of securities of any person, is exempt if, with respect to any of the foregoing transactions, either of the following conditions is satisfied:

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

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

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

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

(1) No commission or other remuneration is given, directly or indirectly, to any person for soliciting or selling



to any person in this state in reliance on the exemption under this division, except to dealers licensed in this state.

(2)

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

(i) The person has filed an application for registration or qualification that is the subject of an effective order entered against the issuer, its officers, directors, general partners, controlling persons or affiliates thereof, pursuant to the law of any state within five years before the filing of a notice required under division (W)(3) of this section denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement.

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

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

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

(b)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Within the past five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) A statement indicating all of the following:

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

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

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

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

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

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

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

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

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

Effective Date: 10-08-2001; 09-15-2004

#### **1707.04 Issuance of securities in reorganizations.**

(A) The division of securities may consider and conduct hearings upon any plan of reorganization, recapitalization, or refinancing of a corporation organized under the laws of this state, or having its principal place of business within this state, when such plan is proposed by such corporation or by any of its shareholders or creditors and contains a proposal to issue securities in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange or partly for cash. The division may also approve the terms of such issuance and exchange and the fairness of such terms, after a hearing upon such fairness at which all persons to whom it is proposed to issue securities in such exchange have the right to appear, if application for such a hearing is made by such corporation, by the holders of a majority in amount of its debts, or by the holders of a majority in amount of any outstanding class of securities issued by it. Notice in person or by mail of the time and place of such hearing shall be given to all persons to whom it is proposed to issue such securities, and evidence satisfactory to the division that such notice has been given shall be filed with the division. Securities issued in accordance with a plan so approved by the division are exempt from sections [1707.01](#) to [1707.45](#) of the Revised Code, relating to registration or qualification of securities or the registration of transactions therein.

(B) "Reorganization," "recapitalization," and "refinancing," as used in this section, include the following:

- (1) A readjustment by the modification of the terms of securities by agreement;
- (2) A readjustment by the exchange of securities by the issuer for others of its securities;
- (3) The exchange of securities by the issuer for securities of another issuer;
- (4) The acquisition of assets of a person, directly or indirectly, partly or wholly in consideration for securities distributed or to be distributed as part of the same transaction, directly or indirectly, to holders of securities issued by such person or secured by assets of such person;
- (5) A merger or consolidation.

(C) Upon filing an application with the division under this section, the applicant shall pay to the division a filing fee of one hundred dollars and shall deposit with the division such sum, not in excess of one thousand dollars, as the division requires for the purpose of defraying the costs of the hearing provided for in this section and of any investigation which the division may make in connection herewith.

Effective Date: 07-30-1979

#### **1707.041 Control bids made pursuant to tender offer or request or invitation for tenders.**

- (A)
- (1) No control bid for any securities of a subject company shall be made pursuant to a tender offer or request or invitation for tenders until the offeror files with the division of securities the information prescribed in division (A)(2) of this section. The offeror shall deliver a copy of the information specified in division (A)(2) of this section, by personal service, to the subject company at its principal office not later than the time of the filing with the division. The offeror shall send or deliver to all offerees in this state, as soon as practicable after the filing, the material terms of the proposed offer and the information specified in division (A)(2) of this section.
  - (2) The information to be filed with the division, with the subject company, and with any other offeror, pursuant to division (A)(1) of this section, shall include:
    - (a) Copies of all prospectuses, brochures, advertisements, circulars, letters, or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer;

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

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

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

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

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

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

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

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

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

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

(5)

(a) If an offeror increases or decreases the percentage of the class of securities being sought, the consideration offered, or the dealer's soliciting fee in connection with a control bid for any securities of a subject company pursuant to a tender offer or request or invitation for tenders, or makes any other change in the terms or conditions of the tender offer or request or invitation for tenders that requires the offeror to hold the tender offer or request or invitation for tenders open for at least ten business days from the date that notice of the change is first published or sent to security holders in this state, the offeror shall file with the division both of the following:

(i) All material information, including all information sent or otherwise provided to offerees in this state, pertaining to the increase, decrease, or other change;

(ii) All material information required to update the information filed with the division pursuant to division (A)(2) of this section.

(b) The offeror shall file the information described in division (A)(5)(a) with the division not later than the date on which the information regarding the increase, decrease, or other change first is published or sent to offerees in this state. The offeror shall deliver a copy of the information, by personal services, to the subject company at its principal office not later than the time of the filing with the division.

(6) Within three calendar days of the date of filing by an offeror of the information specified in division (A)(5) of this section, the division, by order, may summarily suspend the continuation of the control bid if the division determines that all of the information specified has not been provided by the offeror or that the information provided to offerees does not provide full disclosure to offerees of all material information concerning the increase, decrease, or other change. The suspension shall remain in effect only until the determination following a hearing held pursuant to division (A)(7) of this section.

(7) The division shall schedule and hold, within three calendar days of the date on which the suspension is imposed, a hearing with respect to each suspension imposed under division (A)(6) of this section. Chapter 119. of the Revised Code does not apply to a hearing held under division (A)(7) of this section. The division may allow any interested party to appear at and participate in the hearing in a manner considered appropriate by the division. The division shall make a determination following the hearing within three calendar days after the hearing has been completed, and not later than nine calendar days after the date on which the information regarding the increase, decrease, or other change first is published or sent to offerees in this state. The division, by rule or order, may prescribe time limits for conducting the hearing and for the making of the determination that are shorter than those specified in this division. If, based upon the hearing, the division determines that all of the information required to be provided by division (A)(5) of this section has not been provided by the offeror; that the information provided to offerees does not provide full disclosure to offerees of

all material information concerning the increase, decrease, or other change; or that the control bid is in material violation of any provision of this chapter, the division shall maintain the suspension of the continuation of the control bid, subject to the right of the offeror to correct disclosure and other deficiencies identified by the division and to reinstate the control bid by filing new or amended information pursuant to this section.

(B)

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

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

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

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

(C) If the offeror or the subject company is a banking corporation or savings and loan association subject to regulation by the division of financial institutions, or is a public utility corporation subject to regulation by the public utilities commission, the division of securities shall 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 defining 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 other matters as necessary to give effect to this section.

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

(G) This section does not apply when:

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

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

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

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

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

Effective Date: 10-08-2001; 10-12-2006

### **1707.042 Prohibited acts relating to control bids.**

(A) No person who makes or opposes a control bid to offerees in this state shall knowingly do any of the following:

(1) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(2) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any such offeree;

(3) Engage in any manipulative act or practice.

(B) Any person who makes or opposes a control bid to offerees in this state, or who realizes any profit which inures to and is recoverable by a corporation, formed in this state, pursuant to section [1707.043](#) of the Revised Code, is conclusively presumed to have designated the secretary of state as its agent for the service of process in any action or proceeding under this chapter. Upon receipt of any such process, together with an affidavit showing the last known address of the person who made or opposed the control bid or who realized such profit, the secretary of state shall forthwith give notice by telegraph of the fact of the service of process and forward a copy of such process to such address by certified mail, return receipt requested. This section does not affect any right to serve process in any other manner permitted by law.



(C) Any person who makes or opposes a control bid 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 [1707.41](#) to [1707.45](#) of the Revised Code.

(D) In case any provision or application of any provision of this section is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any legal and valid provision or application of this section.

Effective Date: 04-11-1990

### **1707.043 Preventing manipulative practices.**

(A) For the purpose of preventing manipulative practices by a person who makes a proposal, or publicly discloses the intention or possibility of making a proposal, to acquire control of a corporation formed under the laws of this state, any profit realized, directly or indirectly, from the disposition of any equity securities of a corporation by a person who, within eighteen months before disposition directly or indirectly, alone or in concert with others, made a proposal, or publicly disclosed the intention or possibility of making a proposal, to acquire control of the corporation, inures to and is recoverable by the corporation.

(B) No profit from the disposition of equity securities shall inure to or be recoverable by a corporation under this section if any of the following apply:

(1) The equity securities were acquired by the person disposing of them at any of the following times:

(a) More than eighteen months before the date on which the proposal or public disclosure was made;

(b) Before the effective date of this section;

(c) Pursuant to a contract executed prior to the effective date of this section.

(2) The person who disposed of the equity securities proves in a court of competent jurisdiction either of the following:

(a) At the time the proposals or public disclosures were made, the person's sole purpose in making the proposals or public disclosures was to succeed in acquiring control of the corporation and under the circumstances, including, without limitation, the person's proposed price, financing and other acquisition plans, the person's financial resources and capabilities, and all other alternatives reasonably anticipated to become available to the corporation's shareholders, there were reasonable grounds to believe that the person would acquire control of the corporation;

(b) The person's public disclosure concerning the intention or possibility of making a proposal to acquire control of the corporation and all other potentially manipulative conduct and practices by or on his behalf were not effected with a purpose of affecting market trading and thereby increasing any profit or decreasing any loss which the person might realize, directly or indirectly, from the disposition of the equity securities and did not have a material effect upon the price or volume of market trading in the equity securities. Evidence with respect to the past practices of such person is admissible and relevant in respect to the person's intent or purpose under divisions (B)(2)(a) and (b) of this section.

(3) The aggregate amount of all profit the person realized, directly or indirectly, does not exceed two hundred fifty thousand dollars.

(C) Equity securities acquired by a person as a result of a share split, share dividend, or other similar distribution by a corporation of equity securities issued by it not involving a sale of the equity securities, is deemed to have been acquired by such person on the date on which the person acquired the equity security with respect to which the equity securities were subsequently distributed by the corporation.

(D) No profit or any portion thereof recoverable by a corporation in an action brought under section 16(b) of the federal "securities exchange act of 1934," is recoverable by the corporation under this section.

(E)

(1) A corporation may commence an action to recover any profit recoverable under this section in any court of competent jurisdiction. If the corporation fails or refuses to bring the action within sixty days after written request by any holder of any equity security in the corporation or fails to diligently prosecute the action, the holder may bring the action on behalf of the corporation. If a court of competent jurisdiction enters a judgment requiring the payment of any such profits, the party who brought the action is entitled to all costs, including reasonable attorney fees, incurred in connection with the enforcement of this section.

(2) No action shall be brought by or on behalf of a corporation upon a cause of action arising under this section at any time after two years from the date on which the disposition of equity securities occurred.

(F) This section does not apply to any corporation which does not have issued and outstanding shares that are listed on a national securities exchange or are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association or to any corporation whose articles or regulations provide by specific reference to this section that this section does not apply to the corporation and its equity securities.

(G) The division of securities, pursuant to Chapter 119. of the Revised Code, may adopt reasonable rules to define terms used in this section and types of conduct or practices which the division determines are either of the following:

(1) Comprehended as within the purpose of this section as set forth in division (A) of this section and therefore subject to this section;

(2) Not comprehended as within the purpose of division (A) of this section and therefore exempt from this section.

(H) As used in this section:

(1) "Corporation" and "person" have the same meanings as in section [1701.01](#) of the Revised Code.

(2) "Profit from the disposition of equity securities of a corporation" means both of the following:

(a) The excess of the fair market value of the consideration directly or indirectly received or to be received from the disposition, less the usual and customary broker's commissions actually paid in connection with the disposition, over the fair market value of the consideration directly or indirectly paid for the acquisition of the equity securities, plus the usual and customary broker's commissions actually paid in connection with the acquisition;

(b) The value of any tax benefit to which a person is directly or indirectly entitled resulting from disposition of equity securities of the corporation for consideration with a value that is less than the fair market value of the equity securities at the time of disposition.

(3) "Disposition of equity securities of a corporation" means any sale, exchange, transfer, or other disposition of any kind of the equity securities or any contract to sell, exchange, transfer, or otherwise dispose of the equity securities, to any other person, including the corporation, for valuable consideration.

(4) "Equity securities" means any of the following:

(a) Shares of any class or series of a corporation;

- (b) Any securities convertible into or exercisable for shares of any class or series of a corporation, with or without additional consideration;
- (c) Any warrant, right, or option to subscribe for or to purchase shares of any class or series of the corporation, or any securities convertible into shares of any class or series;
- (d) Any interest, direct or indirect, in any equity securities.

(5) "Publicly disclosed," "publicly discloses," and "public disclosure" includes, but is not limited to, any disclosure, whether or not required by law, that becomes public and was made or caused to be made by a person:

- (a) With the intent or expectation that the disclosure become public; or
  - (b) To another person where the person making or causing to be made the disclosure, knows or reasonably should know, that the person who receives the disclosure is not under an obligation to refrain from making the disclosure, directly or indirectly, to the public and such person does make the disclosure, directly or indirectly, to the public.
- (6) "To acquire control of the corporation" means the acquisition by any person, directly or indirectly, either alone or in concert with another person, of the power, whether or not exercised, to direct or cause the direction of the management and policies of the corporation, whether through the ownership of voting shares, by contract or otherwise, unless any proposal, or public disclosure of the intention or possibility of making a proposal, to acquire control of the corporation made by such person affirmatively states that the person does not intend, either alone or in concert with another person, to exercise control of the corporation and such person does not, directly or indirectly, exercise control of the corporation prior to his disposition of any equity securities of the corporation.

Effective Date: 04-11-1990

### **1707.05 [Repealed].**

Effective Date: 10-08-2001

### **1707.06 Transactions requiring registration.**

(A) The following transactions in securities may be carried out upon compliance with sections [1707.08](#) and [1707.11](#) of the Revised Code:

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

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

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

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

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

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

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

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

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

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

(1) Husband and wife;

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

(3) A corporation, a limited liability company, a partnership, an association or other unincorporated entity, a joint-stock company, or a trust, but only if the corporation, limited liability company, partnership, association, entity, joint-stock company, or trust was not formed for the purpose of purchasing the security.

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

Effective Date: 10-08-2001

### **1707.07 [Repealed].**

Effective Date: 10-08-2001

### **1707.08 Registration by description.**

(A) 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.

(B) A description, verified either by the oath of the individual filing it or of any individual having knowledge of

the facts, shall be filed with the division of securities by the issuer, or by a majority of the incorporators of 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:

- (1) The name of the issuer;
- (2) A brief description of the securities;
- (3) The amount of the securities to be offered after the filing of the description for sale in this state and, if all the securities are not to be offered by the person filing the description, then the respective amounts to be offered by others, so far as those amounts are known, and the names and addresses of the other offerors;
- (4) A brief statement of the facts which show that the securities are the subject matter of a transaction enumerated in section [1707.06](#) of the Revised Code;
- (5) The price at which the securities are to be offered for sale.

(C) The individual who executes the application for registration by description on behalf of the applicant shall state the individual's relationship to the applicant and certify all of the following:

- (1) The individual has executed the application on behalf of the applicant.
- (2) The individual is fully authorized to execute and file the application on behalf of the applicant.
- (3) The individual is familiar with the applicant's application.
- (4) To the best of the individual's knowledge, information, and belief, the statements made in the application are true, and the documents submitted with the application are true copies of the original documents.

(D) A registration by description is effective seven business days after the division receives the description on applicable forms, together with any filing fee required under this division, if no proceeding is pending under section [1707.13](#) or [1707.131](#) of the Revised Code. However, the division may permit an earlier effective date by rule or by issuing a certificate of acknowledgment for the registration by description.

For an offering that exceeds fifty thousand dollars, a filing fee of fifty dollars shall be submitted with the registration by description.

(E) In order to correct errors or omissions, a registration by description may be amended by the person that originally filed it, by the filing, in the same manner as in the case of an original registration by description, of an amended registration by description or of an amendment of the original registration by description.

(F) 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, the transactions may be consummated so long as the registration remains in full force.

Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 09-16-2003

### **[1707.09 Registration by qualification.](#)**

- (A)
- (1) All securities, except those enumerated in section [1707.02](#) 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.

(2) Applications for 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 individual having knowledge of the facts stated in the application, and filed in the office of the division.

(3) The individual who executes the application for qualification of securities on behalf of the applicant shall state the individual's relationship to the applicant and certify that: the individual has executed the application on behalf of the applicant; the individual is fully authorized to execute and file the application on behalf of the applicant; the individual is familiar with the applicant's application; and to the best of the individual's knowledge, information, and belief, the statements made in the application are true, and the documents submitted with the application are true copies of the original documents.

(B) The division shall require the applicant for qualification of securities to submit to it the following information:

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

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

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

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

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

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

(7) A statement showing the considerations received or to be received by the issuer of the securities purchased or to be purchased from the issuer and an itemized statement of all expenses of financing to be paid from those considerations so as to show the aggregate net amount actually received or to be received by the issuer;

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

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

issuer is a partnership or an unincorporated association, or any other form of organization, there shall be filed with the application a copy of its articles of partnership or association and of all other papers pertaining to its organization, if the articles or other papers are not already on file in the office of the secretary of state;

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

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

(C) If the division finds that it is not necessary in the public interest and for the protection of investors to require all the information specified in divisions (B)(1) to (10) of this section, it may permit the filing of applications for qualification that contain the information that it considers necessary and appropriate in the public interest and for the protection of investors, but this provision applies only in the case of applications for qualification of securities previously issued and outstanding that may not be made the subject matter of transactions exempt under division (M) of section [1707.03](#) of the Revised Code by reason of the fact that those securities within one year were purchased outside this state or within one year were transported into this state.

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

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

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

(G)

(1) The division, at any time, as a prerequisite to qualification, may make an examination of the issuer of securities sought to be qualified. The applicant for qualification of any securities may be required by the division to advance sufficient funds to pay all or any part of the actual expenses of that examination, an itemized statement of which shall be furnished the applicant.

(2) If the division finds that the business of the issuer is not fraudulently conducted, that the proposed offer or

disposal of securities is not on grossly unfair terms, that the plan of issuance and sale of the securities referred to in the proposed offer or disposal would not defraud or deceive, or tend to defraud or deceive, purchasers, and that division (B)(10) of this section applies and has been complied with, the division shall notify the applicant of its findings, and, upon payment of a registration fee of one-tenth of one per cent of the aggregate price at which the securities are to be sold to the public in this state, which fee, however, shall in no case be less than one hundred or more than one thousand dollars, the division shall register the qualification of the securities.

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

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

Effective Date: 09-16-2003

#### **1707.091 Registration by coordination.**

(A) Any security for which a registration statement has been filed pursuant to section 6 of the Securities Act of 1933 or for which a notification form and offering circular has been filed pursuant to regulation A of the general rules and regulations of the securities and exchange commission, 17 C.F.R. sections 230.251 to 230.256 and 230.258 to 230.263, as amended before or after the effective date of this section, in connection with the same offering may be registered by coordination.

(B) A registration statement filed by or on behalf of the issuer under this section with the division of securities shall contain the following information and be accompanied by the following items in addition to the consent to service of process required by section [1707.11](#) of the Revised Code:

(1) One copy of the latest form of prospectus or offering circular and notification filed with the securities and exchange commission;

(2) If the division of securities by rule or otherwise requires, a copy of the articles of incorporation and code of regulations or bylaws, or their substantial equivalents, as currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the division of securities requests, any other information, or copies of any other documents, filed with the securities and exchange commission;

(4) An undertaking by the issuer to forward to the division, promptly and in any event not later than the first business day after the day they are forwarded to or thereafter are filed with the securities and exchange commission, whichever occurs first, all amendments to the federal prospectus, offering circular, notification form, or other documents filed with the securities and exchange commission, other than an amendment that merely delays the effective date;

(5) A filing fee of one hundred dollars.



(C) A registration statement filed under this section becomes effective either at the moment the federal registration statement becomes effective or at the time the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the securities and exchange commission, if all of the following conditions are satisfied:

(1) No stop order is in effect, no proceeding is pending under section [1707.13](#) of the Revised Code, and no cease and desist order has been issued pursuant to section [1707.23](#) of the Revised Code;

(2) The registration statement has been on file with the division for at least fifteen days or for such shorter period as the division by rule or otherwise permits; provided, that if the registration statement is not filed with the division within five days of the initial filing with the securities and exchange commission, the registration statement must be on file with the division for thirty days or for such shorter period as the division by rule or otherwise permits.

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file with the division for two full business days or for such shorter period as the division by rule or otherwise permits and the offering is made within those limitations;

(4) The division has received a registration fee of one-tenth of one per cent of the aggregate price at which the securities are to be sold to the public in this state, which fee, however, shall in no case be less than one hundred or more than one thousand dollars.

(D) The issuer shall promptly notify the division by telephone or telegram of the date and time when the federal registration statement became effective, or when the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the securities and exchange commission, and of the contents of the price amendment, if any, and shall promptly file the price amendment.

"Price amendment" for the purpose of this division, means the final federal registration statement amendment that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

If the division fails to receive the required notice and required copies of the price amendment, the division may enter a provisional stop order retroactively denying effectiveness to the registration statement or suspending its effectiveness until there is compliance with this division, provided the division promptly notifies the issuer or its representative by telephone or telegram, and promptly confirms by letter or telegram when it notifies by telephone, of the entry of the order. If the issuer or its representative proves compliance with the requirements of this division as to notice and price amendment filing, the stop order is void as of the time of its entry. The division may by rule or otherwise waive either or both of the conditions specified in divisions (C)(2) and (3) of this section. If the federal registration statement becomes effective, or if the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the securities and exchange commission, before all of the conditions specified in divisions (C) and (D) of this section are satisfied and they are not waived by the division the registration statement becomes effective as soon as all of the conditions are satisfied.

If the issuer advises the division of the date when the federal registration statement is expected to become effective, or when the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the securities and exchange commission, the division shall promptly advise the issuer or its representative by telephone or telegram, at the issuer's expense, whether all of the conditions have been satisfied or whether the division then contemplates the institution of a proceeding under section [1707.13](#) or [1707.23](#) of the Revised Code, but such advice does not preclude the institution of such a proceeding at any time.

Effective Date: 10-11-1994

### **1707.092 Notice filings.**

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

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

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

(b) A form U-1 or form NF of the North American securities administrators association.

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

(a) A flat fee of one hundred dollars;

(b) 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.

(B)

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

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

(C)

(1) For offerings involving covered securities, as defined in section 18 of the "Securities Act of 1933," 15 U.S.C. 77r, that are not subject to section [1707.02](#), [1707.03](#), [1707.04](#), [1707.06](#), [1707.08](#), [1707.09](#), or [1707.091](#) of the Revised Code, or division (A) of this section, a notice filing shall be submitted to the division together with a consent to service of process pursuant to section [1707.11](#) of the Revised Code and a filing fee as provided in division (A)(2) of this section.

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

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

Effective Date: 06-18-2002

### **1707.093 Electronic filings.**

Notwithstanding any provision of Chapter 1707. of the Revised Code, or any rule adopted by the division of securities under that chapter, requiring a signature or verification, the division may provide by rule for the electronic filing or submission of any form, document, material, or information that is required or permitted to be filed with or submitted to the division.

Effective Date: 03-18-1999

### **1707.10 Provisional registration by qualification.**

Any securities required by sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code, to be registered by qualification before being sold in this state may be offered for sale and sold preliminary to and pending their full qualification, where the division of securities is satisfied that the issuer is solvent and of good business repute and that such preliminary offering will not deceive or tend to deceive the public; but no such preliminary offering shall be made until the division consents thereto in writing, and such consent shall be on condition that within thirty days from the date thereof, or within such further time as the division allows, there is filed in the office of the division application under such sections for the full qualification of said securities, or for a registration of such securities by description if, within such time, such securities become entitled to registration by description; and the entire proceeds of the sale of such securities, without deduction for commissions or other charges, shall be segregated or deposited in escrow in such manner and for such time as the division directs.

No applicant which is an issuer not a resident of this state shall be entitled to the benefit of this section unless there shall also be on file with the division a consent to service as provided in section [1707.11](#) of the Revised Code.

At the time of filing the statement prescribed in this section, the applicant shall pay to the division the filing fee prescribed by section [1707.09](#) of the Revised Code; and upon receipt of notice of the division's favorable action on the application, the applicant shall pay to the division the registration fee prescribed by such section for the qualification of securities.

If the dealer is unable to complete such qualification or such registration by description, or if the division, acting upon more complete information furnished or obtained from its examination, does not finally register such security by description or qualification, the issuer or dealer who has sold it or offered it for sale shall withdraw the security from the market and return or tender to purchasers of the security, within such time as the division specifies, the amounts paid for it by them.

Effective Date: 10-01-1953

### **1707.11 Consent to service.**

(A) Each person that is not organized under the laws of this state, that is not licensed under section [1703.03](#) of the Revised Code, or that does not have its principal place of business in this state, shall submit to the division of securities an irrevocable consent to service of process, as described in division (B) of this section, in connection with any of the following:

- (1) Filings to claim any of the exemptions enumerated in division (Q), (W), or (Y) of section [1707.03](#) of the Revised Code;
- (2) Applications for registration by description, qualification, or coordination;
- (3) Notice filings pursuant to section [1707.092](#) of the Revised Code.

(B) The irrevocable written consent shall be executed and acknowledged by an individual duly authorized to give the consent and shall do all of the following:

- (1) Designate the secretary of state as agent for service of process or pleadings;
- (2) State that actions growing out of the sale of such securities, the giving of investment advice, or fraud committed by a person on whose behalf the consent is submitted may be commenced against the person, in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff in the action may reside, by serving on the secretary of state any proper process or pleading authorized by the laws

of this state;

(3) Stipulate that service of process or pleading on the secretary of state shall be taken in all courts to be as valid and binding as if service had been made upon the person on whose behalf the consent is submitted.

(C) Notwithstanding any application, form, or other material filed with or submitted to the division that purports to appoint as agent for service of process a person other than the secretary of state, the application, form, or other material shall be considered to appoint the secretary of state as agent for service of process.

(D) Service of any process or pleadings may be made on the secretary of state by duplicate copies, of which one shall be filed in the office of the secretary of state, and the other immediately forwarded by the secretary of state by certified mail to the principal place of business of the person on whose behalf the consent is submitted or to the last known address as shown on the filing made with the division. However, failure to mail such copy does not invalidate the service.

(E) Notwithstanding any provision of this chapter, or of any rule adopted by the division of securities under this chapter, that requires the submission of a consent to service of process, the division may provide by rule for the electronic filing or submission of a consent to service of process.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 09-16-2003

### **1707.12 Documents open to inspection.**

(A) Except for offering materials filed with the division of securities in connection with exempt transactions under divisions (Q) and (W) of section [1707.03](#) of the Revised Code, all applications and other papers filed with the division shall be open to inspection at all reasonable times, except for unreasonable or improper purposes.

(B) Information obtained by the division through any offering materials filed with the division in connection with exempt transactions under divisions (Q) and (W) of section [1707.03](#) of the Revised Code or through any investigation shall be retained by the division and shall not be available to inspection by persons other than those having a direct economic interest in the information or the transaction under investigation, or by law enforcement agencies, state agencies, federal agencies, and other entities as set forth by rules adopted by the division.

(C) Confidential law enforcement investigatory records and trial preparation records of the division of securities or any other law enforcement or administrative agency which are in the possession of the division of securities shall in no event be available to inspection by other than law enforcement agencies, state agencies, federal agencies, and other entities as set forth by rules adopted by the division.

(D) All public records shall be prepared and made available promptly to any member of the general public at all reasonable times for inspection. Upon request, the custodian of public records shall make copies of the records available at cost, within a reasonable period of time. To facilitate public access, the division shall maintain public records in such a manner that they can be made available pursuant to this section.

(E) No employee or representative of the division or the department of commerce shall be required to testify concerning any document or record subject to division (B) or (C) of this section, except as set forth by rules adopted by the division.

(F) As used in this section:

(1) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, provided that release of the record would

create a high probability of disclosure of any of the following:

- (a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality reasonably has been promised;
  - (b) Information provided by an information source or witness to whom confidentiality reasonably has been promised, which information reasonably would tend to disclose the identity of the information source or witness;
  - (c) Specific confidential investigatory techniques or procedures or specific investigatory work product.
- (2) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a criminal, quasi-criminal, civil, or administrative action or proceeding, including, but not limited to, the independent thought processes and personal trial preparation of an attorney and division personnel, their notes, diaries, and memoranda.

Effective Date: 06-18-2002

### **1707.13 Suspension and revocation of registration.**

The division of securities may suspend the registration by description or by qualification of any securities, or the right of any dealers or of the issuer, or of both, to buy, sell, or deal in any particular security whether it is registered, qualified, or exempt or even though transactions in it are registered or exempt, if the division finds that the issuer has violated sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code, or any lawful order or requirement of the division, has fraudulently conducted its business, or has been engaged in or is engaged or about to engage in deceptive or fraudulent acts, practices, or transactions; that such security is being disposed of or purchased on grossly unfair terms, in such manner as to deceive or defraud or as to tend to deceive or defraud purchasers or sellers, or in disregard of the lawful rules and regulations of the division applicable to such security or to transactions therein; or, in the case of securities being sold under a registration or qualification, that the issuer is insolvent. Notice of such suspension shall be mailed by the division to the issuer and to all licensed dealers concerned. Such notice shall specify the particular security whose registration is being suspended and shall set a date, not more than ten days later than the date of the order of suspension, for a hearing on the continuation or revocation of such suspension. For good cause the division may continue such hearing on application of any interested party. In conducting such hearing the division shall have all the authority and powers set forth in section [1707.23](#) of the Revised Code. Following such hearing the division shall either confirm or revoke such suspension. No such suspension shall invalidate any sale of securities made prior thereto; the rights of persons defrauded by any sale shall in no wise be impaired.

If the issuer of a security refuses to permit an examination to be made by the division of its books, records, and property, or refuses to furnish the division any information which it may lawfully require under sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code, such refusal is a sufficient ground for the division to suspend the registration by description or by qualification of such security, or the right of any dealers or of the issuer, or of both, to buy, sell, or deal in such security.

If any interested party desires an investigation at a place other than the office of the division, such person may be required by the division to advance sufficient funds to pay the actual expenses of such investigation.

Whenever the division determines, upon hearing, that any application for qualification was made, or that any securities or any transaction was registered by description, by a person who knew that untrue statements were contained in such application or description, the division may proceed under sections [1707.19](#), [1707.23](#), and [1707.44](#) of the Revised Code, or any of them, against the person who filed such application or such registration by description.

Effective Date: 10-01-1953

### **1707.131 Refusing registration.**

(A) For purposes of this section, "five per cent shareholder" means a beneficial owner of five per cent or more of the issuer's outstanding securities.

(B) The division of securities shall refuse any registration by description, by qualification, or by coordination if the issuer is in the development stage and either has no specific business plan or purpose or has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other entities or persons.

(C) The division may refuse any registration by description, by qualification, or by coordination if either of the following applies:

(1) The issuer does not disclose in the final offering circular, prospectus, or form U-7 of the North American securities administrators association that any future transaction with an officer, director, five per cent shareholder, manager, trustee, or general partner will be on terms no less favorable to the issuer than could be obtained from an independent third party.

(2) The issuer does not disclose both of the following in the final offering circular, prospectus, or form U-7 of the North American securities administrators association:

(a) Any outstanding loan from the issuer to an officer, director, five per cent shareholder, manager, trustee, or general partner is required to be repaid within six months of the offering, except for a loan or extension of credit made by a bank.

(b) Any future loan from the issuer to an officer, director, five per cent shareholder, manager, trustee, or general partner will be for a bona fide business purpose and approved by a majority of the disinterested directors, managers, trustees, or general partners, or will be a type of transaction involving a director or executive officer of the issuer that is permitted by section 13(k) of the "Securities Exchange Act of 1934," 116 Stat. 787, 15 U.S.C.A. 78m, as amended.

Effective Date: 09-16-2003

### **1707.14 Dealer's license.**

(A) No person shall act as a dealer, unless the person is licensed as a dealer by the division of securities, except when at least one of the following cases applies:

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

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

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

(4) When the person is participating in transactions exempt, under section [1707.34](#) of the Revised Code, from this chapter;

(5) When the person has no place of business in this state, is registered with the securities and exchange commission, and the only transactions effected in this state are with institutional investors.

(B) Each dealer that in any twelve-month or shorter period, alone or with any other dealer with which it is

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

(1) A bank;

(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) to (4) of this section.

(C) Every dealer that must be registered as a broker or dealer with the securities and exchange commission pursuant to division (B) of this section shall become so registered no later than ninety days after the date on which the dealer meets the requirements for such registration.

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

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

(1) A husband and wife;

(2) A minor child and the minor child's parent or legal guardian;

(3) A corporation, a partnership, an association or other unincorporated entity, a joint stock company, or a trust.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Effective Date: 10-08-2001

### **1707.141 Investment adviser's license required - exceptions - notice filing requirement.**

(A) 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 Act of 1940;

- (b) Other investment advisers;
  - (c) Licensed dealers;
  - (d) Banks;
  - (e) Insurance companies subject to regulation under Title XXXIX [39] of the Revised Code and health insuring corporations regulated under Chapter 1751. of the Revised Code;
  - (f) Employee benefit plans with assets of not less than one million dollars;
  - (g) Government agencies or instrumentalities, whether acting for themselves or trustees with investment control;
  - (h) Other institutional investors as the division may designate by rule.
- (4) The person has no place of business in this state, and during the preceding twelve-month period, the person has had not more than five clients, other than those described in division (A)(3) of this section, that are residents of this state.
- (5) The person is a charitable organization, as defined in section 3(c)(10) of the "Investment Company Act of 1940," 54 Stat. 797, 15 U.S.C. 80a - 3(c) (10 ), as amended, or is a trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of the person's employment or duties with such an organization, whose advice, analysis, or reports are provided only to one or more of the following:
- (a) Any such charitable organization;
  - (b) A fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the "Investment Company Act of 1940," 54 Stat. 797, 15 U.S.C. 80a - 3(c) (10 )(B), as amended;
  - (c) A trust or other donative instrument described in section 3(c)(10)(B) of the "Investment Company Act of 1940," 54 Stat. 797, 15 U.S.C. 80a - 3(c) (10 )(B), as amended, or the trustees, administrators, settlors and potential settlors, or beneficiaries of any such trust or other instrument.
- (6) The person is a plan described in subsection 414(e) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 414, as amended, any person or entity eligible to establish and maintain such a plan under Title 26 of the United States Code, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any plan, person, or entity, or any company, account, or fund that is excluded from the definition of an investment company under section 3(c)(14) of the "Investment Company Act of 1940," 54 Stat. 797, 15 U.S.C. 80a - 3(c) (14 ), as amended.
- (B)
- (1) No person who is registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3, as an investment adviser shall act as an investment adviser, unless the person has done both of the following:
- (a) Filed with the division a copy of those documents that have been filed by the investment adviser with the securities and exchange commission as specified in rules adopted by the division;
  - (b) Paid the notice filing fee specified in division (B) of section [1707.17](#) of the Revised Code.
- (2) Upon compliance with division (B)(1) of this section, the division shall issue to the person an acknowledgment of notice filing.
- (3) The notice filing and fee requirements of division (B)(1) of this section do not apply to a person described



in division (A)(3), (4), (5), or (6) of this section.

Effective Date: 06-18-2002

### **1707.142 Compliance with federal laws - federal documents to be filed with division.**

(A) Every dealer required to be licensed under section [1707.14](#) of the Revised Code shall comply with all broker and dealer capital, custody, margin, financial responsibility, record-making, record-keeping, bonding, financial reporting, and operational reporting requirements contained in Section 15 of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78o, as amended, and section 17 of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78q, as amended, and the rules of the securities and exchange commission promulgated under those sections.

(B)

(1) Subject to division (B)(2) of this section, every dealer required to be licensed under section [1707.14](#) of the Revised Code shall file with the division of securities any report or document that rules adopted pursuant to section 15 of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78o, as amended, and section 17 of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78q, as amended, require federally registered brokers or dealers to file with the securities and exchange commission.

(2) Except as otherwise provided by rule or order of the division, if a dealer has filed a report or document described in division (B)(1) of this section with the securities and exchange commission, the document or report shall be deemed to also have been filed with the division.

(C) The division by order or rule may permit, but not require, a dealer that is not required by federal law or the law of this state to register as a broker or dealer with the securities and exchange commission to do both of the following:

(1) Elect one or more alternative financial and reporting provisions that are acceptable to the division. For purposes of division (C)(1) of this section, "alternative financial and reporting provision" means any capital, custody, margin, financial responsibility, record-making, record-keeping, bonding, financial reporting, or operational reporting provision that differs from those established by the securities and exchange commission.

(2) Elect an exemption, the scope of which is acceptable to the division, from all or a specified part of the capital, custody, margin, financial responsibility, record-making, record-keeping, bonding, financial reporting, or operational reporting requirements contained in section 15 of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78o, as amended, or section 17 of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78q, as amended, or the rules of the securities and exchange commission promulgated under those sections.

(D) For purposes of division (C) of this section, in determining an acceptable alternative financial and reporting provision and in determining the acceptable scope of any exemption that is elected, the division shall consider the size, scope, and type of business of the dealers who will be permitted to elect the provision or exemption and shall consider the protection of investors and customers of the electing dealers.

Effective Date: 10-12-2006

### **1707.15 Applying for dealer's license.**

(A) Application for a dealer's license shall be made in accordance with this section and by filing with the division of securities the information, materials, and forms specified in rules adopted by the division, along with all of the following information:

(1) The name and address of the applicant;

- (2) The location and addresses of the principal office and all other offices of the applicant;
- (3) A general description of the business of the applicant done prior to the application, including a list of states in which the applicant is a licensed dealer.

(B)

(1) The division may investigate any applicant for a license, and may require such additional information as it deems necessary to determine the applicant's business repute and qualifications to act as a dealer in securities.

(2) If the application for any license involves investigation outside of this state, the applicant may be required by the division to advance sufficient funds to pay any of the actual expenses of such examination. An itemized statement of any such expenses which the applicant is required to pay shall be furnished the applicant by the division.

(C) The division shall by rule require one natural person who is a principal, officer, director, general partner, manager, or employee of a dealer to pass an examination designated by the division. Each dealer that is not a natural person shall notify the division of the name and relationship to the dealer of the natural person who has passed the examination on behalf of the dealer and who will serve as the designated principal on behalf of the dealer.

(D) Dealers shall employ as salespersons only those salespersons who are licensed under this chapter. If at any time a salesperson resigns or is discharged or a new salesperson is added, the dealer shall promptly notify the division.

(E) If the division finds that the applicant is of good business repute, appears qualified to act as a dealer in securities, and has fully complied with this chapter and rules adopted under this chapter by the division, the division, upon payment of the fees prescribed by division (B) of section [1707.17](#) of the Revised Code, shall issue to the applicant a license authorizing the applicant to act as a dealer.

Effective Date: 06-18-2002

**[1707.151 Application for and issuance of investment adviser's license.](#)**

(A) Application for an investment adviser's license shall be made in accordance with this section and by filing with the division of securities the information, materials, and forms specified in rules adopted by the division.

(B)

(1) The division may investigate any applicant for a license and may require any additional information as it considers necessary to determine the applicant's business repute and qualifications to act as an investment adviser.

(2) If the application for any license involves investigation outside of this state, the applicant may be required by the division to advance sufficient funds to pay any of the actual expenses of the examination. The division shall furnish the applicant with an itemized statement of such expenses that the applicant is required to pay.

(C) The division shall by rule require a natural person who is an applicant for an investment adviser's license to pass an examination designated by the division or achieve a specified professional designation.

(D) An investment adviser licensed under section [1707.141](#) of the Revised Code shall employ only investment adviser representatives licensed, or exempted from licensure, under section [1707.161](#) of the Revised Code.

(E) If the division finds that the applicant is of good business repute, appears to be qualified to act as an

investment adviser, and has complied with this chapter and rules adopted under this chapter by the division, the division, upon payment of the fees prescribed by division (B) of section [1707.17](#) of the Revised Code, shall issue to the applicant a license authorizing the applicant to act as an investment adviser.

Effective Date: 06-18-2002

### **[1707.16 Application for and issuance of salesperson's license.](#)**

(A) Every salesperson of securities must be licensed by the division of securities and shall be employed, authorized, or appointed only by the licensed dealer specified in the salesperson's license. If the relationship between the salesperson and the dealer is severed, the salesperson's license shall be void.

(B) Application for a salesperson's license shall be made in accordance with this section and by filing with the division the information, materials, and forms specified in rules adopted by the division, along with all of the following information:

(1) The name and complete residence and business addresses of the applicant;

(2) The name of the dealer who is employing the applicant or who intends to employ the applicant;

(3) The applicant's age and education, and the applicant's experience in the sale of securities; whether the applicant has ever been licensed by the division, and if so, when; whether the applicant has ever been refused a license by the division; and whether the applicant has ever been licensed or refused a license or any similar permit by any division or commissioner of securities, whatsoever name known or designated, anywhere.

(C) The division shall by rule require an applicant to pass an examination designated by the division.

(D) If the division finds that the applicant is of good business repute, appears to be qualified to act as a salesperson of securities, and has fully complied with this chapter, and that the dealer named in the application is a licensed dealer, the division shall, upon payment of the fees prescribed by section [1707.17](#) of the Revised Code, issue a license to the applicant authorizing the applicant to act as salesperson for the dealer named in the application.

Effective Date: 09-16-2003

### **[1707.161 Investment adviser representative's license required - exceptions - application for and issuance of investment adviser representative's license.](#)**

(A) No person shall act as an investment adviser representative, unless one of the following applies:

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

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

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

(4) The person is employed by or associated with an investment adviser that is excepted from licensure pursuant to division (A)(3), (4), (5), or (6) of section [1707.141](#) of the Revised Code or excepted from notice filing pursuant to division (B)(3) of section [1707.141](#) of the Revised Code.

(B)

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

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

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

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

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

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

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

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

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

(D)

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

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

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

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

Effective Date: 06-18-2002

**1707.162 State retirement system investment adviser license required.**

(A) No person shall act as a state retirement system investment officer unless the person is licensed as a state retirement system investment officer by the division of securities.

(B) No state retirement system investment officer shall act as a dealer, salesperson, investment advisor, or investment advisor representative.

Effective Date: 12-14-2004

**1707.163 Application for and issuance of state retirement system investment adviser license.**

(A) Application for a state retirement system investment officer's license shall be made in accordance with this section by filing with the division of securities the information, materials, and forms specified in rules adopted by the division.

(B)

(1) The division may investigate any applicant for a license and may require any additional information as it considers necessary to determine the applicant's business repute and qualifications to act as an investment officer.

(2) If the application for a state retirement system investment officer's license involves investigation outside of this state, the applicant may be required by the division to advance sufficient funds to pay any of the actual expenses of the investigation. The division shall furnish the applicant with an itemized statement of the expenses the applicant is required to pay.

(C) The division shall by rule require an applicant for a state retirement system investment officer's license to pass an examination designated by the division or achieve a specified professional designation unless the applicant meets both of the following requirements:

(1) Acts as a state retirement system investment officer on the effective date of this section;

(2) Has experience or equivalent education acceptable to the division.

(D) If the division finds that the applicant is of good business repute, appears to be qualified to act as a state retirement system investment officer, and has complied with this chapter and rules adopted under this chapter by the division, the division, on payment of the fees prescribed by division (B) of section [1707.17](#) of the Revised Code, shall issue to the applicant a license authorizing the applicant to act as a state retirement system investment officer.

Effective Date: 09-15-2004

**1707.164 Bureau chief investment officer - securities license required.**

(A) No person shall act as a bureau of workers' compensation chief investment officer unless the person is licensed as a bureau of workers' compensation chief investment officer by the division of securities.

(B) No bureau of workers' compensation chief investment officer shall act as a dealer, salesperson, investment advisor, or investment advisor representative.

Effective Date: 09-29-2005

### **1707.165 Application for bureau chief investment officer - investigation - examination.**

(A) Application for a bureau of workers' compensation chief investment officer's license shall be made in accordance with this section by filing with the division of securities the information, materials, and forms specified in rules adopted by the division.

(B) The division may investigate any applicant for a license and may require any additional information as it considers necessary to determine the applicant's business repute and qualifications to act as a chief investment officer. If the application for a bureau of workers' compensation chief investment officer's license involves investigation outside of this state, the applicant may be required by the division to advance sufficient funds to pay any of the actual expenses of the investigation. The division shall furnish the applicant with an itemized statement of the expenses the applicant is required to pay.

(C) The division shall by rule require an applicant for a bureau of workers' compensation chief investment officer's license to pass an examination designated by the division or achieve a specified professional designation unless the applicant meets both of the following requirements:

- (1) Acts as a bureau of workers' compensation chief investment officer on the effective date of this section;
- (2) Has experience or education acceptable to the division.

(D) If the division finds that the applicant is of good business repute, appears to be qualified to act as a bureau of workers' compensation chief investment officer, and has complied with this chapter and rules adopted by the division under this chapter, the division, upon receipt of the fees prescribed by division (B) of section [1707.17](#) of the Revised Code, shall issue to the applicant a license authorizing the applicant to act as a bureau of workers' compensation chief investment officer.

Effective Date: 09-29-2005

### **1707.17 Renewal - license fees.**

(A)

(1) The license of every dealer in and salesperson of securities shall expire on the thirty-first day of December of each year, and may be renewed upon the filing with the division of securities of an application for renewal, and the payment of the fee prescribed in this section. The division shall give notice, without unreasonable delay, of its action on any application for renewal of a dealer's or salesperson's license.

(2) The license of every investment adviser and investment adviser representative licensed under section [1707.141](#) or [1707.161](#) of the Revised Code shall expire on the thirty-first day of December of each year. The licenses may be renewed upon the filing with the division of an application for renewal, and the payment of the fee prescribed in division (B) of this section. The division shall give notice, without unreasonable delay, of its action on any application for renewal.

(3) An investment adviser required to make a notice filing under division (B) of section [1707.141](#) of the Revised Code annually shall file with the division the notice filing and the fee prescribed in division (B) of this section, no later than the thirty-first day of December of each year.

(4) The license of every state retirement system investment officer licensed under section [1707.163](#) of the Revised Code and the license of a bureau of workers' compensation chief investment officer issued under section [1707.165](#) of the Revised Code shall expire on the thirtieth day of June of each year. The licenses may be renewed on the filing with the division of an application for renewal, and the payment of the fee prescribed in division (B) of this section. The division shall give notice, without unreasonable delay, of its action on any application for renewal.

## (B)

- (1) The fee for each dealer's license, and for each annual renewal thereof, shall be two hundred dollars.
- (2) The fee for each salesperson's license, and for each annual renewal thereof, shall be sixty dollars.
- (3) The fee for each investment adviser's license, and for each annual renewal thereof, shall be one hundred dollars.
- (4) The fee for each investment adviser notice filing required by division (B) of section [1707.141](#) of the Revised Code shall be one hundred dollars.
- (5) The fee for each investment adviser representative's license, and for each annual renewal thereof, shall be thirty-five dollars.
- (6) The fee for each state retirement system investment officer's license, and for each annual renewal thereof, shall be fifty dollars.
- (7) The fee for a bureau of workers' compensation chief investment officer's license, and for each annual renewal thereof, shall be fifty dollars.

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

(D) The division may, by rule or order, waive, in whole or in part, any of the fee requirements of this section for any person or class of persons if, in the same calendar year, the person or class of persons is required to pay an additional fee as a result of changes in federal law and regulations implemented under Title IV of the "Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010," 124 Stat. 1576 (2010), 15 U.S.C. 80b - 3a(a), under which a person or class of persons formerly subject to regulation under the United States securities and exchange commission is subject to state regulation under Chapter 1707. of the Revised Code.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 06-18-2002; 09-15-2004; 09-29-2005

### **[1707.18 Application for transfer of license.](#)**

## (A)

(1) If a partnership licensed as a dealer is terminated under the laws of the state where the partnership is organized, or by death, resignation, withdrawal, or addition of a general partner, the license of the partnership shall be automatically extended for a period of thirty days after the termination. The license of the partnership and the licenses of its salespersons may be transferred to the successor partnership within that period if the division of securities finds that the successor partnership is substantially similar to its predecessor partnership, and if an application for transfer of license has been filed. The fee for such a transfer shall be fifty dollars, plus fifteen dollars for every salesperson's license that is transferred.

(2) If a partnership licensed as an investment adviser is terminated under the laws of the state where the partnership is organized, or by death, resignation, withdrawal, or addition of a general partner, the license of the partnership shall be automatically extended for a period of thirty days after the termination. The license of the partnership shall, and the licenses of its investment adviser representatives may, be transferred to the successor partnership within that period if the division finds that the successor partnership is substantially

similar to its predecessor partnership, and if an application for transfer of license has been filed. The fee for such transfer shall be fifty dollars, plus fifteen dollars for every investment adviser representative's license that is transferred.

(B)

(1) If a licensed dealer changes its business form, reincorporates, or by merger or otherwise becomes a different person, as person is defined in section [1707.01](#) of the Revised Code, upon application the division may transfer the dealer's license and the licenses of its salespersons to the successor entity, if the division finds that the successor entity is substantially similar to the predecessor entity. The fee for such a transfer shall be fifty dollars plus fifteen dollars for every salesperson's license transferred.

(2) If a licensed investment adviser changes its business form, reincorporates, or by merger or otherwise becomes a different person, as person is defined in section [1707.01](#) of the Revised Code, upon application, the division may transfer the investment adviser license and the licenses of its investment adviser representatives to the successor entity, if the division finds that the successor entity is substantially similar to the predecessor entity. The fee for the transfer shall be fifty dollars plus fifteen dollars for every investment adviser representative's license transferred.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 03-18-1999

#### **1707.19 Refusal, suspension, and revocation of license.**

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

(1) Is not of good business repute;

(2) Is conducting an illegitimate or fraudulent business;

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

(4) Has knowingly violated any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code, or any regulation or order made thereunder;

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

(6) Has refused to comply with any lawful order or requirement of the division under section [1707.23](#) of the Revised Code;

(7) Has been guilty of any fraudulent act in connection with the sale of any securities or in connection with acting as an investment adviser, investment adviser representative, bureau of workers' compensation chief investment officer, or state retirement system investment officer;

(8) Conducts business in purchasing or selling securities at such variations from the existing market as in the light of all the circumstances are unconscionable;



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

(10)

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

(b) Has failed to furnish to the division any information with respect to acting as an investment adviser, investment adviser representative, bureau of workers' compensation chief investment officer, or state retirement system investment officer 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, investment adviser representative's, bureau of workers' compensation chief investment officer's, or state retirement system investment officer'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. If it is a state retirement system investment officer whose license is suspended, the division shall also notify the state retirement system with whom the state retirement system investment officer is employed. If it is a bureau of workers' compensation chief investment officer whose license is suspended, the division shall also notify the bureau of workers' compensation.

(E)

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

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

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

Effective Date: 10-08-2001; 09-15-2004; 09-29-2005

### **[1707.20 Adopting, amending, and rescinding rules, forms, and orders.](#)**

(A)

(1) The division of securities may adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out sections [1707.01](#) to [1707.45](#) of the Revised Code, including rules and forms governing registration

statements, applications, and reports, and defining any terms, whether or not used in sections [1707.01](#) to [1707.45](#) of the Revised Code, insofar as the definitions are not inconsistent with these sections. For the purpose of rules and forms, the division may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

(2) Notwithstanding sections [121.71](#) to [121.76](#) of the Revised Code, the division may incorporate by reference into its rules any statute enacted by the United States congress or any rule, regulation, or form promulgated by the securities and exchange commission, or by another federal agency, in a manner that also incorporates all future amendments to the statute, rule, regulation, or form.

(B) No rule, form, or order may be made, amended, or rescinded unless the division finds that the action is necessary or appropriate in the public interest or for the protection of investors, clients, prospective clients, state retirement systems, or the workers' compensation system and consistent with the purposes fairly intended by the policy and provisions of sections [1707.01](#) to [1707.45](#) of the Revised Code. In prescribing rules and forms and in otherwise administering sections [1707.01](#) to [1707.45](#) of the Revised Code, the division may cooperate with the securities administrators of the other states and the securities and exchange commission with a view of effectuating the policy of this section to achieve maximum uniformity in the form and content of registration statements, applications, reports, and overall securities regulation wherever practicable.

(C) The division may by rule or order prescribe:

(1) The form and content of financial statements required under sections [1707.01](#) to [1707.45](#) of the Revised Code;

(2) The circumstances under which consolidated financial statements will be filed;

(3) Whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(D) All rules and forms of the division shall be published; and in addition to fulfilling the requirements of Chapter 119. of the Revised Code, the division shall prescribe, and shall publish and make available its rules regarding the sale of securities, the administration of sections [1707.01](#) to [1707.45](#) of the Revised Code, and the procedure and practice before the division.

(E)

(1) No provision of sections [1707.01](#) to [1707.45](#) of the Revised Code imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the division of securities, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason, except that the issuance of an order granting effectiveness to a registration under section [1707.09](#) or [1707.091](#) of the Revised Code for the purposes of this division shall not be deemed an order other than as the establishment of the fact of registration.

(2) No provision of sections [1707.01](#) to [1707.45](#) of the Revised Code imposing any liability, penalty, sanction, or disqualification applies to any act done or omitted in good faith in conformity with either of the following:

(a) Any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code that incorporates by reference a federal statute, rule, regulation, or form;

(b) Any rule, form, or order of the division that incorporates by reference a federal statute, rule, regulation, or form.

Division (E)(2) of this section applies notwithstanding that the incorporation by reference, or any application of the incorporated provision, is later determined by judicial or other authority to be unconstitutional or invalid

for any reason.

Effective Date: 06-18-2002; 09-15-2004; 09-29-2005; 10-12-2006

### **1707.201 Federal provisions.**

Notwithstanding any provision of the Revised Code, if the "Securities Act of 1933," the "Securities Exchange Act of 1934," the "Investment Company Act of 1940," the "Investment Advisers Act of 1940," and any amendments to any of those federal acts, if any rule, regulation, release, statement, or position promulgated or adopted under the authority of any of those federal acts, and any amendments to those federal acts, or if any rule, regulation, or guideline of a self-regulatory organization registered under the "Securities Exchange Act of 1934," and any amendments to that act, contains a provision that is not contained in this chapter or the rules adopted under this chapter and that affects any matter within the scope of this chapter, the division of securities by rule may promulgate a similar provision.

A rule adopted under the authority granted in this section becomes effective on the later of the date on which the division issues the rule or the date on which the federal statute or the rule, regulation, release, statement, or position on which the division's rule is based becomes effective. The division, upon thirty days' written notice, may revoke any rule adopted under the authority granted in this section. A rule adopted under the authority granted in this section, and not revoked by the commissioner of securities, lapses and has no further force and effect eighteen months after the rule's effective date.

Effective Date: 06-18-2002

### **1707.21 Registration statement may be filed with securities and exchange commission.**

In so far as any information required to be filed with the division of securities under sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code, is contained in a registration statement filed with the securities and exchange commission of the United States and such registration statement is in effect, such required information may, with the consent of the division, be furnished by filing with the division a copy of such registration statement together with an affidavit of an interested party that it is in effect.

Effective Date: 10-01-1953

### **1707.22 Appeals - effect of order.**

Whenever a dealer's, salesperson's, investment adviser's, investment adviser representative's, bureau of workers' compensation chief investment officer's, or state retirement system investment officer's license has been refused, suspended, or revoked, or a renewal thereof has been denied, by the division of securities, or whenever the division has refused to qualify securities or has suspended or revoked the registration of any particular security by description or by qualification, or the right to buy, sell, or deal in any particular security whether it is registered or qualified or exempt, or whether the transactions in it are registered or exempt, the aggrieved party may appeal in accordance with Chapter 119. of the Revised Code.

An order sustaining the refusal of the division to grant or renew a dealer's, salesperson's, investment adviser's, investment adviser representative's, bureau of workers' compensation chief investment officer's, or state retirement system investment officer's license or to grant qualification of securities, or an order sustaining the division in suspending or revoking a dealer's, salesperson's, investment adviser's, investment adviser representative's, bureau of workers' compensation chief investment officer's, or state retirement system investment officer's license, the registration of any particular security by description or by qualification, or the right to buy, sell, or deal in any particular security, shall not bar, after ten days from the order, a new registration by description, or a new application of the plaintiff for such a license or qualification or for a withdrawal of a revocation or suspension; nor shall an order in favor of the plaintiff prevent the division, after proper notice and hearing, from thereafter revoking or suspending such license, registration, or right to buy,

sell, or deal in a particular security, for any proper cause which may, after the order, accrue or be discovered.

Effective Date: 03-18-1999; 09-15-2004; 09-29-2005

### **1707.23 Division of securities - enforcement powers.**

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

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

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

(C) Require the attendance of witnesses, and the production of books, records, and papers, as are required either by the division or by any party to a hearing before the division, and for that purpose issue a subpoena for any witness, or a subpoena duces tecum to compel the production of any books, records, or papers. The subpoena shall be served by personal service or by certified mail, return receipt requested. If the subpoena is returned because of inability to deliver, or if no return is received within thirty days of the date of mailing, the subpoena may be served by ordinary mail. If no return of ordinary mail is received within thirty days after the date of mailing, service shall be deemed to have been made. If the subpoena is returned because of inability to deliver, the division may designate a person or persons to effect either personal or residence service upon the witness. The person designated to effect personal or residence service under this division may be the sheriff of the county in which the witness resides or may be found or any other duly designated person. The fees and mileage of the person serving the subpoena shall be the same as those allowed by the courts of common pleas in criminal cases, and shall be paid from the funds of the division. Fees and mileage for the witness shall be determined under section [119.094](#) of the Revised Code, and shall be paid from the funds of the division upon request of the witness following the hearing.

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

(E) Require any dealers immediately to furnish to the division copies of prospectuses, circulars, or advertisements respecting securities that they publish or generally distribute, or require any investment

advisers immediately to furnish to the division copies of brochures, advertisements, publications, analyses, reports, or other writings that they publish or distribute;

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

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

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

(I) The remedies provided by this section are cumulative and concurrent with any other remedy provided in this chapter, and the exercise of one remedy does not preclude or require the exercise of any other remedy.

Effective Date: 09-16-2003; 09-15-2004; 09-29-2005; 2008 HB525 07-01-2009

#### **1707.24 Contempt proceedings.**

In case any person fails to file any statement or report, to obey any subpoena, to give testimony, to answer questions, or to produce any books, records, or papers as required by the division of securities under sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code, the court of common pleas of any county in the state, upon application made to it by the division and upon proof made to it by the division of such failure, may make an order awarding process of subpoena or subpoena duces tecum for such person to appear and testify before the division, and may order any person to give testimony and answer questions, and to produce books, records, or papers, as required by the division. Upon the filing of such order in the office of the clerk of the court of common pleas, said clerk, under the seal of said court, shall issue process of subpoena for such person to appear before the division at a time and place named in such subpoena, and thereafter from day to day until the examination of such person is completed. Such subpoena may contain a direction that such witness bring with him to such examination any books, records, or papers mentioned in such subpoena. Said clerk shall also issue, under the seal of said court, such other orders, in reference to such examination, appearance, and production of books, records, or papers, as said court directs. If any person so summoned by subpoena fails to obey such subpoena, to give testimony, to answer questions as required, to produce any books, records, or papers so required, or to obey an order of the court, the court, on motion supported by proof, may order an attachment for contempt to be issued against the person charged with disobedience of any order or injunction issued by such court under sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code. If such person is brought before the court by virtue of said attachment, and if upon a hearing such disobedience appears, such court may order such offender to be committed and kept in close custody.

Effective Date: 10-01-1953

#### **1707.25 Injunction against issuance, sale, acting as an investment adviser or acting as an**

### **investment adviser representative.**

In case any person fails to file any statement or report required by sections [1707.01](#) to [1707.45](#) of the Revised Code, to obey any subpoena the issuance of which is provided for in those sections, or to produce books, records, or papers, give testimony, or answer questions, as required by those sections, the director of commerce may apply to a court of common pleas of any county for, and upon proof of such failure the court may grant, an injunction restraining the acting as an investment adviser, investment adviser representative, bureau of workers' compensation chief investment officer, or state retirement system investment officer, or the issuance, sale, or offer for sale of any securities by the person or by its agents, employees, partners, officers, directors, or shareholders, until such failure has been remedied and other relief as the facts may warrant has been had. Such injunctive relief is available in addition to the other remedies provided for in sections [1707.01](#) to [1707.45](#) of the Revised Code.

Where the person refusing to comply with such order of court is an issuer of securities, the court may enjoin the sale by any dealer of any securities of the issuer, and the division of securities may revoke the qualification of the securities of the issuer, or suspend or revoke the sale of any securities of the issuer which have been registered by description, and such securities shall not thereafter be sold by any dealer until the order of the court or of the division is withdrawn.

Effective Date: 03-18-1999; 09-15-2004; 09-29-2005

### **1707.26 Injunction against violations.**

Whenever it appears to the division of securities, upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in, any deceptive, fraudulent, or manipulative act, practice, or transaction, in violation of sections [1707.01](#) to [1707.45](#) of the Revised Code, the director of commerce may apply to a court of common pleas of any county in this state for, and upon proof of any of such offenses such court shall grant an injunction restraining such person and its agents, employees, partners, officers, directors, and shareholders from continuing, engaging in, or doing any acts in furtherance of, such acts, practices, or transactions, and may order such other equitable relief as the facts warrant.

Effective Date: 11-19-1982

### **1707.261 Director's request for restitution or rescission.**

(A) If a court of common pleas grants an injunction pursuant to section [1707.26](#) of the Revised Code, after consultation with the attorney general the director of commerce may request that court to order the defendant or defendants that are subject to the injunction to make restitution or rescission to any purchaser or holder of securities damaged by the defendant's or defendants' violation of any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code.

(B) If the court of common pleas is satisfied with the sufficiency of the director's request for restitution or rescission under division (A) of this section and with the sufficiency of the proof of a substantial violation of any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code, or of the use of any act, practice, or transaction declared to be illegal or prohibited or defined as fraudulent by those sections or rules adopted under those sections by the division of securities, to the material prejudice of a purchaser or holder of securities, the court may order the defendant or defendants subject to the injunction to make restitution or rescission to any purchaser or holder of securities damaged by the defendant's or defendants' violation of sections [1707.01](#) to [1707.45](#) of the Revised Code.

(C) A court order granting restitution or rescission based upon a request made pursuant to division (A) of this section shall meet the requirements of division (B) of this section and may not be based solely upon a final order issued by the division of securities pursuant to Chapter 119. of the Revised Code or upon an action to

enforce a final order issued by the division pursuant to that chapter. Notwithstanding the foregoing provision, a request for restitution or rescission pursuant to division (A) of this section may concern the same acts, practices, or transactions that were, or may later be, the subject of a division of securities action for a violation of any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code. If a request for restitution or rescission pursuant to division (A) of this section concerns the same acts, practices, or transactions that were the subject of a final order issued by the division of securities pursuant to Chapter 119. of the Revised Code, the court shall review the request in accordance with division (B) of this section, and the standard of review in section [119.12](#) of the Revised Code shall not apply to the request.

(D) No purchaser or holder of securities who is entitled to restitution or rescission under this section shall recover, pursuant to this section or any other proceeding, a total amount in excess of the person's purchase price for the securities sold in violation of sections [1707.01](#) to [1707.45](#) of the Revised Code.

(E)

(1) If a court of common pleas grants an injunction pursuant to section [1707.26](#) of the Revised Code against any state retirement system investment officer, after consultation with the attorney general, the director of commerce may request that court to order the state retirement system investment officer or officers that are subject to the injunction to make restitution to the state retirement system damaged by the state retirement system investment officer's or officers' violation of any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code.

(2) If the court of common pleas is satisfied with the sufficiency of the director's request for restitution under division (E)(1) of this section and with the sufficiency of the proof of a substantial violation of any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code, or of the use of any act, practice, or transaction declared to be illegal or prohibited or defined as fraudulent by those sections or rules adopted under those sections by the division of securities, to the material prejudice of a state retirement system, the court may order the state retirement system investment officer or officers subject to the injunction to make restitution to the state retirement system damaged by the state retirement system investment officer's or officers' violation of sections [1707.01](#) to [1707.45](#) of the Revised Code. A request for restitution pursuant to division (E)(1) of this section may concern the same acts, practices, or transactions that were, or may later be, the subject of a division of securities action for a violation of any provision of section [1707.01](#) to [1707.45](#) of the Revised Code.

(F)

(1) If a court of common pleas grants an injunction pursuant to section [1707.26](#) of the Revised Code against a bureau of workers' compensation chief investment officer, after consultation with the attorney general, the director of commerce may request that court to order the bureau of workers' compensation chief investment officer who is subject to the injunction to make restitution to the bureau of workers' compensation damaged by the bureau of workers' compensation chief investment officer's violation of any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code.

(2) If the court of common pleas is satisfied with the sufficiency of the director's request for restitution under division (F)(1) of this section and with the sufficiency of the proof of a substantial violation of any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code, or of the use of any act, practice, or transaction declared to be illegal or prohibited or defined as fraudulent by those sections or rules adopted under those sections by the division of securities, to the material prejudice of the bureau of workers' compensation, the court may order the bureau of workers' compensation chief investment officer subject to the injunction to make restitution to the bureau of workers' compensation damaged by the bureau of workers' compensation chief investment officer's violation of sections [1707.01](#) to [1707.45](#) of the Revised Code. A request for restitution pursuant to division (F)(1) of this section may concern the same acts, practices, or transactions that were, or may later be, the subject of a division of securities action for a violation of any provision of section [1707.01](#) to [1707.45](#) of

the Revised Code.

Effective Date: 09-16-2003; 09-15-2004; 09-29-2005

### **1707.27 Appointment of receiver.**

If the court of common pleas is satisfied with the sufficiency of the application for a receivership, and of the sufficiency of the proof of substantial violation of sections [1707.01](#) to [1707.45](#) of the Revised Code, or of the use of any act, practice, or transaction declared to be illegal or prohibited, or defined as fraudulent by those sections or rules adopted under those sections by the division of securities, to the material prejudice of a purchaser or holder of securities, or client of an investment adviser or investment adviser representative, the court may appoint a receiver, for any person so violating sections [1707.01](#) to [1707.45](#) of the Revised Code or rules adopted under those sections by the division, with power to sue for, collect, receive, and take into the receiver's possession all the books, records, and papers of the person and all rights, credits, property, and choses in action acquired by the person by means of any such act, practice, or transaction, and also all property with which the property has been mingled, if the property cannot be identified in kind because of the commingling, and with power to sell, convey, and assign the property, and to hold and dispose of the proceeds under the direction of the court of common pleas. The court shall have jurisdiction of all questions arising in the proceedings and may make orders and decrees therein as justice and equity require.

Effective Date: 03-18-1999

### **1707.28 Statute of limitations.**

No prosecution or action by the division of securities or the director of commerce for a violation of any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code shall bar any prosecution or action by the division of securities or the director of commerce, or be barred by any prosecution or other action, for the violation of any other provision of any of those sections or of any other statute; but prosecutions and actions by the division of securities or the director of commerce for a violation of any provision of sections [1707.01](#) to [1707.45](#) of the Revised Code must be commenced within five years after the commission of the alleged violation.

Effective Date: 09-16-2003

### **1707.29 Presumption of knowledge.**

In any prosecution brought under sections [1707.01](#) to [1707.45](#) of the Revised Code, except prosecutions brought for violation of division (A) of section [1707.042](#) of the Revised Code, the accused shall be deemed to have had knowledge of any matter of fact, where in the exercise of reasonable diligence, he should, prior to the alleged commission of the offense in question, have secured such knowledge.

Effective Date: 11-19-1982

### **1707.30 Certificate of division as evidence.**

In any prosecution, action, or proceeding based upon sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code, a certificate signed by the division of securities, showing the filing of or the failure to file any statement, description, or application required by such sections, shall constitute prima-facie evidence of such filing or of such failure to file, and shall be admissible in evidence in any action at law or in equity to enforce sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code, or to prosecute violations of such sections.

Effective Date: 10-01-1953

### **1707.31 Certified copies as evidence.**



Copies of any statement and documents filed in the office of the division of securities and of any records of the division, if such copies are certified to by the division, shall be admissible in any prosecution, action, or proceeding based upon sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code, to the same effect as the originals of such statements, documents, or records would be.

Effective Date: 10-01-1953

### **[1707.32 Insurance securities.](#)**

If an issuer of securities is incorporated or organized to make any insurance named in Title XXXIX[39] of the Revised Code, the superintendent of insurance shall, for all the purposes of sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code, be substituted for the division of securities and the issuer and the beneficial owners of shares thereof shall be subject to section [3901.31](#) of the Revised Code. The superintendent of insurance shall have over any company disposing or attempting to dispose of any of its securities within this state the powers of regulation, supervision, and examination conferred on him by law, with reference to companies licensed to transact the business of insurance within this state.

No person shall, for the purpose of organizing or promoting any insurance company, or of assisting in the sale of the securities of any insurance company after its organization, dispose or offer to dispose, within this state, of any such securities, unless the contract of subscription or disposal is in writing and contains a provision substantially in the following language:

No sum shall be used for commission, promotion, and organization expenses on account of any share of stock in this company in excess of ..... per cent of the amount actually paid upon separate subscriptions, and the remainder of such payment shall be invested as authorized by the law governing such company and shall be held by the organizers of such company before organization, and by its directors and officers after organization, as bailees for the subscriber, to be used only in the conduct of the business of such company after the company has been licensed and authorized for such business by proper authority.

In lieu of "in excess of ..... per cent of the amount actually paid upon separate subscriptions," the language of such contract may be, "..... dollars per share from every fully paid subscription"; and in lieu of "organizers" it may be "trustees" if such payments are to be held by trustees.

Funds and securities held by such organizers, trustees, directors, or officers, as bailees, shall be deposited with a bank or trust company of this state, or invested as provided in sections [3925.05](#) and [3925.08](#) of the Revised Code, until such company has been licensed to transact the business of insurance in this state.

The amount of such commission, promotion, and organization expenses shall in no case exceed fifteen per cent of the amount actually received upon the subscriptions; except that in the case of joint-stock life insurance companies and joint-stock insurance companies other than life, the amount of such commission, promotion, and organization expenses shall in no case exceed ten per cent of the amount actually received upon the subscriptions.

Effective Date: 11-11-1965

### **[1707.33, 1707.331 \[Repealed\].](#)**

Effective Date: 09-11-1985

### **[1707.34 Warehouse receipts for intoxicating liquor.](#)**

(A) Sections [1707.01](#) to [1707.45](#) of the Revised Code do not apply to the sale of warehouse receipts for intoxicating liquor to distillers, to rectifiers, or to any person engaged in the business of dealing in warehouse receipts.

(B) Warehouse receipts for intoxicating liquor may be sold in this state in accord with and upon compliance with sections [1707.01](#) to [1707.45](#) of the Revised Code.

Effective Date: 04-11-1985

### **[1707.35 Securities authorized before July 22, 1929.](#)**

All securities which were "certificated" by the division of securities before July 22, 1929, are, if the "certification" remained unrevoked on such date, qualified for all purposes under sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code.

All securities authorized to be sold by reason of the filing of information relative thereto before July 22, 1929, shall for all purposes be deemed registered by description under such sections, but the division shall have the same power to require further information with respect to the further sale of such securities as with respect to the further sale of securities registered by description or by qualification under sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code.

Effective Date: 10-01-1953

### **[1707.36 Attorney-inspector - control-bid attorneys.](#)**

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

The office of the attorney-inspector is hereby designated a criminal justice agency in investigating reported violations of law relating to securities and investment advice, and as such is authorized by this state to apply for access to the computerized databases administered by the national crime information center or the law enforcement automated data system in Ohio, and to other computerized databases administered for the purpose of making criminal justice information accessible to state criminal justice agencies.

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

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

Effective Date: 09-13-1999

### **[1707.37 Division of securities fund.](#)**

(A) All fees and charges collected under this chapter shall be paid into the state treasury to the credit of the division of securities fund, which is hereby created. All expenses of the division of securities, other than those specified in division (B) of this section, shall be paid from the fund.

The fund shall be assessed a proportionate share of the administrative costs of the department of commerce in accordance with procedures prescribed by the director of commerce and approved by the director of budget and management. The assessments shall be paid from the division of securities fund to the division of administration fund.

If moneys in the division of securities fund are determined by the director of budget and management and the

director of commerce to be in excess of those necessary to defray all the expenses in any fiscal year, the director of budget and management shall transfer the excess to the general revenue fund.

(B) There is hereby created in the state treasury the division of securities investor education and enforcement expense fund, which shall consist of all money received in settlement of any violation of this chapter and any cash transfers. Money in the fund shall be used to pay expenses of the division of securities relating to education or enforcement for the protection of securities investors and the public. The division may adopt rules pursuant to section [1707.20](#) of the Revised Code that establish what qualifies as such an expense.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 10-11-1994

### **1707.38 Effect of violation on validity of security.**

The issuance or sale of any security in violation of sections [1707.01](#) to [1707.45](#), inclusive, of the Revised Code, does not invalidate such security; but the rights of persons defrauded by any such issuance or sale shall not be impaired.

Effective Date: 10-01-1953

### **1707.39 Qualification of securities sold without compliance.**

When any securities have been sold without compliance with sections [1707.01](#) to [1707.45](#) of the Revised Code, or any former law in force at the time of such sale, any interested person may apply in writing to the division of securities for the qualification of such securities under such sections. If it appears to the division that no person has been defrauded, prejudiced, or damaged by such noncompliance or sale and that no person will be defrauded, prejudiced, or damaged by such qualification, the division may permit such securities to be so qualified upon the payment of a fee of one hundred dollars plus a fee of one-fifth of one per cent of the aggregate price at which the securities have been sold in this state, which fee shall in no case be less than one hundred dollars nor more than two thousand dollars. In addition, the division may require the applicant to advance sufficient funds to pay the actual expenses of an examination or investigation by the division, whether to be conducted in this state or outside this state. An itemized statement of such expenses shall be furnished to the applicant.

Such qualification shall estop the division from proceeding under division (D) of section [1707.23](#) of the Revised Code against anyone who has violated division (C)(1) of section [1707.44](#) of the Revised Code for acts within the scope of the application, or from proceeding with administrative action pursuant to section [1707.13](#) of the Revised Code.

Effective Date: 04-11-1985; 09-15-2004

### **1707.391 Late applications.**

When any securities have been sold in reliance upon division (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 this chapter that the division of securities may specify by rule, but such reliance was improper because the required filings were not timely or properly made due to excusable neglect, upon the effective date of an application made to the division and payment of any applicable fee, if required and not already paid, and upon payment of a penalty fee equal to the greater of the fee or one hundred dollars, the sale of the securities shall be deemed exempt, qualified, or registered, as though timely and properly filed. 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.

Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 10-08-2001

### **1707.40 Civil liabilities.**

Except as provided in section [1707.261](#) of the Revised Code, sections [1707.01](#) to [1707.45](#) of the Revised Code create no new civil liabilities, and do not limit or restrict common law liabilities for deception or fraud other than as specified in sections [1707.042](#), [1707.043](#), [1707.41](#), [1707.42](#), and [1707.43](#) of the Revised Code, and there is no civil liability for noncompliance with orders, requirements, rules, or regulations made by the division of securities under sections [1707.19](#), [1707.20](#), [1707.201](#), and [1707.23](#) of the Revised Code.

Effective Date: 09-16-2003

### **1707.41 Civil liability of seller for fraud.**

(A) In addition to the other liabilities imposed by law, any person that, by a written or printed circular, prospectus, or advertisement, offers any security for sale, or receives the profits accruing from such sale, is liable, to any person that purchased the security relying on the circular, prospectus, or advertisement, for the loss or damage sustained by the relying person by reason of the falsity of any material statement contained therein or for the omission of material facts, unless the offeror or person that receives the profits establishes that the offeror or person had no knowledge of the publication prior to the transaction complained of, or had just and reasonable grounds to believe the statement to be true or the omitted facts to be not material.

(B)

(1) Whenever a corporation is liable as described in division (A) of this section, each director of the corporation is likewise liable unless the director shows that the director had no knowledge of the publication complained of, or had just and reasonable grounds to believe the statement therein to be true or the omission of facts to be not material.

(2) Any director, upon the payment by the director of a judgment so obtained against the director, shall be subrogated to the rights of the plaintiff against the corporation, and shall have the right of contribution for the payment of the judgment against the director's fellow directors as would be individually liable under this section.

(C) For purposes of this section, lack of reasonable diligence in ascertaining the fact of a publication or the falsity of any statement contained in it or of the omission of a material fact shall be deemed knowledge of the publication and of the falsity of any untrue statement in it or of the omission of material facts.

(D) No action brought against any director, based upon the liability imposed by this section, shall be brought unless it is brought within two years after the plaintiff knew, or had reason to know, of the facts by reason of which the actions of the person or the director were unlawful, or within five years after the purchase of the securities, whichever is the shorter period, or, in the case of an action to enforce a right of contribution under this section, the action is brought within two years after the payment of the judgment for which contribution is sought.

Effective Date: 09-16-2003

### **1707.42 Civil liability of adviser.**

(A) Whoever, with intent to secure financial gain to self, advises and procures any person to purchase any security, and receives any commission or reward for the advice or services without disclosing to the purchaser the fact of the person's agency or interest in such sales, shall be liable to the purchaser for the amount of the purchaser's damage thereby, upon tender of the security to, and suit brought against, the adviser, by the purchaser. No suit shall be brought more than one year subsequent to the purchase.

(B) Whoever acts as an investment adviser or investment adviser representative in violation of Chapter 1707. of the Revised Code shall be liable for damages resulting from the violation in an action at law in a court of competent jurisdiction. Damages may include consideration paid for the advice, any loss due to the advice, and all court costs, less the amount of any income received from the advice. No person may bring an action under this division more than five years after the rendering of investment advice or two years after discovery of facts constituting the violation, whichever is the shorter period.

Effective Date: 09-16-2003

### **1707.43 Remedies of purchaser in unlawful sale.**

(A) Subject to divisions (B) and (C) of this section, every sale or contract for sale made in violation of Chapter 1707. of the Revised Code, is voidable at the election of the purchaser. The person making such sale or contract for sale, and every person that has participated in or aided the seller in any way in making such sale or contract for sale, are jointly and severally liable to the purchaser, in an action at law in any court of competent jurisdiction, upon tender to the seller in person or in open court of the securities sold or of the contract made, for the full amount paid by the purchaser and for all taxable court costs, unless the court determines that the violation did not materially affect the protection contemplated by the violated provision.

(B) No action for the recovery of the purchase price as provided for in this section, and no other action for any recovery based upon or arising out of a sale or contract for sale made in violation of Chapter 1707. of the Revised Code, shall be brought more than two years after the plaintiff knew, or had reason to know, of the facts by reason of which the actions of the person or director were unlawful, or more than five years from the date of such sale or contract for sale, whichever is the shorter period.

(C) No purchaser is entitled to the benefit of this section who has failed to accept, within thirty days from the date of such offer, an offer in writing made after two weeks from the date of the sale or contract of sale, by the seller or by any person that has participated in or aided the seller in any way in making the sale or contract of sale, to take back the security in question and to refund the full amount paid by the purchaser.

Effective Date: 09-16-2003

### **1707.431 Claiming exemption for publicly advertised meeting.**

For purposes of this section, the following persons shall not be deemed to have effected, participated in, or aided the seller in any way in making, a sale or contract of sale in violation of sections [1707.01](#) to [1707.45](#) of the Revised Code:

(A) Any attorney, accountant, or engineer whose performance is incidental to the practice of the person's profession;

(B) Any person, other than an investment adviser, investment adviser representative, bureau of workers' compensation chief investment officer, or state retirement system investment officer, who brings any issuer together with any potential investor, without receiving, directly or indirectly, a commission, fee, or other remuneration based on the sale of any securities by the issuer to the investor. Remuneration received by the person solely for the purpose of offsetting the reasonable out-of-pocket costs incurred by the person shall not

be deemed a commission, fee, or other remuneration.

Any person claiming exemption under this division for a publicly advertised meeting shall file a notice with the division of securities indicating an intent to cause or hold such a meeting at least twenty-one days prior to the meeting. The division may, upon receipt of such notice, issue an order denying the availability of an exemption under this division not more than fourteen days after receipt of the notice based on a finding that the applicant is not entitled to the exemption. Notwithstanding the notice described in this section, a failure to file the notice does not create a presumption that a person was participating in or aiding in the making of a sale or contract of sale in violation of this chapter.

(C) Any person whom the division exempts from this provision by rule.

Effective Date: 03-18-1999; 09-15-2004; 09-29-2005

### **1707.432 to 1707.439 [Repealed].**

Effective Date: 10-05-2001

### **1707.44 Prohibited acts.**

(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.

(3) No person shall engage in any act or practice that violates section [1707.162](#) of the Revised Code.

(4) No person shall engage in any act or practice that violates section [1707.164](#) of the Revised Code.

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

(1) Registering securities or transactions, or exempting securities or transactions from registration, under this chapter;

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

(3) Procuring the licensing of any dealer, salesperson, investment adviser, investment adviser representative, bureau of workers' compensation chief investment officer, or state retirement system investment officer under this chapter;

(4) Selling any securities in this state;

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

(6) Submitting a notice filing to the division under division (X) of section [1707.03](#) or section [1707.092](#) or [1707.141](#) of the Revised Code.

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

(1) Is not exempt under section [1707.02](#) of the Revised Code, nor the subject matter of one of the transactions exempted in section [1707.03](#), [1707.04](#), or [1707.34](#) of the Revised Code, has not been registered by coordination or qualification, and is not the subject matter of a transaction that has been registered by description;

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

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

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

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

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

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

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

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

(M)

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

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

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

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

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

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

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

(N) No person knowingly shall influence, coerce, manipulate, or mislead any person engaged in the preparation, compilation, review, or audit of financial statements to be used in the purchase or sale of securities for the purpose of rendering the financial statements materially misleading.

(O) No state retirement system investment officer shall do any of the following:

(1) Employ any device, scheme, or artifice to defraud any state retirement system;

(2) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit on any state retirement system;

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



business as are fraudulent, deceptive, or manipulative;

(4) Knowingly fail to comply with any policy adopted regarding the officer established pursuant to section [145.094](#), [742.104](#), [3307.043](#), [3309.043](#), or [5505.065](#) of the Revised Code.

(P) No bureau of workers' compensation chief investment officer shall do any of the following:

(1) Employ any device, scheme, or artifice to defraud the workers' compensation system;

(2) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit on the workers' compensation system;

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

(4) Knowingly fail to comply with any policy adopted regarding the officer established pursuant to section [4123.441](#) of the Revised Code.

Effective Date: 09-16-2003; 09-15-2004; 09-29-2005; 10-12-2006

#### **1707.45 Burden of proof.**

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

Effective Date: 10-08-2001

#### **1707.46 Duties of commissioner of securities.**

The principal executive officer of the division of securities shall be the commissioner of securities, who shall be appointed by the director of commerce. The commissioner of securities shall enforce all the laws and administrative rules enacted or adopted to regulate the sale of bonds, stocks, and other securities and to prevent fraud in such sales. The commissioner also shall enforce all the laws and administrative rules enacted or adopted to regulate investment advisers, investment adviser representatives, state retirement system investment officers, and the bureau of workers' compensation chief investment officer and to prevent fraud in their acts, practices, and transactions.

The commissioner shall be paid at a rate not less than pay range 47 set out in schedule E-2 of section [124.152](#) of the Revised Code, to be paid as other operating expenses of the division.

Effective Date: 03-18-1999; 09-15-2004; 09-29-2005

#### **1707.47 [Repealed].**

Effective Date: 10-11-1994

#### **1707.48 Division of securities to retain documents and records or copies.**

The division of securities shall retain the originals or copies of all documents filed with the division pertaining to registration by description, qualification, or coordination and all filings for claims of exemption for eight years from the date of the initial filing. For purposes of this section, the date of the initial filing shall be the date upon which the first fee for such filing was received by the division.

The division shall retain all documents, testimony transcripts, investigative reports, and investigative notes that the division has compiled in original or copy form for five years from the date of the alleged or suspected violation of any provision of this chapter.

All other documents filed with the division shall be retained in original or copy form for five years.

The division may by rule exempt any document or record from this section, provided that any document or record exempted is retained by the division for at least as long as it would have been retained had it been subject to this section.

Effective Date: 03-18-1999

### **1707.99 Penalty.**

Whoever commits any act described in division (A) of section [1707.042](#) or section [1707.44](#) of the Revised Code is guilty of a violation of sections [1707.01](#) to [1707.45](#) of the Revised Code and the following apply to the offender:

(A) If the value of the funds or securities involved in the offense or the loss to the victim is less than one thousand dollars, the offender is guilty of a felony of the fifth degree, and the court may impose upon the offender an additional fine of not more than two thousand five hundred dollars.

(B) If the value of the funds or securities involved in the offense or the loss to the victim is one thousand dollars or more but less than seven thousand five hundred dollars, the offender is guilty of a felony of the fourth degree, and the court may impose upon the offender an additional fine of not more than five thousand dollars.

(C) If the value of the funds or securities involved in the offense or the loss to the victim is seven thousand five hundred dollars or more but less than thirty-seven thousand five hundred dollars, the offender is guilty of a felony of the third degree, and the court may impose upon the offender an additional fine of not more than ten thousand dollars.

(D) If the value of the funds or securities involved in the offense or the loss to the victim is thirty-seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars, the offender is guilty of a felony of the second degree, and the court may impose upon the offender an additional fine of not more than fifteen thousand dollars.

(E) If the value of the funds or securities involved in the offense or the loss to the victim is one hundred fifty thousand dollars or more, the offender is guilty of a felony of the first degree, and the court may impose upon the offender an additional fine of not more than twenty thousand dollars.

Amended by 129th General Assembly File No.29, HB 86, §1, eff. 9/30/2011.

Effective Date: 03-18-1999