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INFORMATION SHEET: ADVISORY OPINION NO. 2011-01
DISCLOSURE OF INVESTMENTS

What is the question addressed in the opinion?

How are financial disclosure filers required to disclose investments of various kinds, including: stocks, bonds, mutual funds, brokerage accounts, trusts, investment clubs, and investments for education?

What is the answer in the opinion?

The opinion describes many common types of investments identified to the Commission over the last ten years and explains the statutory requirement for the disclosure of these investments. There is an example for each type of investment, using the format of the financial disclosure form that filers must complete.

What prompted this opinion?

Because of the expanding number, variety, and complexity of available investment options, the Commission is receiving more questions about disclosure of investments. The Commission wants to provide detailed but clear guidance on the requirements in the law to filers in response to these questions. For that reason, Advisory Opinion No. 2011-01 includes examples of each type of investment discussed and a detailed list.

When did the conclusions in this opinion become effective?

The opinion became effective when rendered by the Commission at its meeting on January 13, 2011.

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ADVISORY OPINION NO. 2011-01 IS ATTACHED.**

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Advisory Opinion
Number 2011-01
January 13, 2011
**Financial Disclosure-
Investments**

Syllabus by the Commission:

- (1) Section 102.02 of the Ohio Revised Code requires public officials and employees who file annual financial disclosure statements to disclose specific personal financial information for the complete calendar year preceding the filing to assure notice to the public of potential conflicts of interest;
- (2) One of the disclosure requirements is that the public official or employee disclose the name of every corporation, trust, business trust, partnership, or association, authorized to do business in Ohio, in which, during the preceding calendar year, the filer or any other person for the filer's use and benefit, had an *investment* of over one thousand dollars;
- (3) For example, the financial disclosure filer is required to disclose the name of every company, corporate bond, and mutual fund in which the filer has invested more than \$1000, regardless of whether those individual investments are held within brokerage or investment accounts.

* * *

A central component of the Ohio Ethics Law is the requirement that some elected and high-ranking public officials and employees file annual financial disclosure statements. R.C. 102.02. The Ohio Ethics Commission has explained that the purpose of financial disclosure is twofold:

- (1) To remind public officials and employees of their holdings and assist them in avoiding conflicts of interest related to those holdings; and
- (2) To disclose information about the financial interests of public officials and employees to the Commission and the public in order to assist the public and the Commission in monitoring conflicts of interest.

Ohio Ethics Commission Advisory Opinion No. 2005-01. See also *State v. Morgan* (May 28, 1987), Clark App. No. 2294.

Approximately 11,000 public officials and employees file financial disclosure statements with the Ohio Ethics Commission each year. Public officials and employees who are required to file Financial Disclosure Statements (FDS) with the Commission include, but are not limited to, state, county, and city elected officials and candidates, high-ranking state officials and employees, such as department directors, university presidents and trustees, and members and chief executive officers of some state boards, state employees paid under Schedule “E-2” or “C,” and school district superintendents, treasurers, and business managers. R.C. 102.02. These officials and employees must file annually and disclose financial information for the complete calendar year preceding the year when the filing is made.

A key disclosure requirement, contained in R.C. 102.02(A)(3), is that all filers must disclose business entities in which they have investments. The Commission has been asked what level of detail is required for the disclosure of investments. While the Commission cannot identify every possible type of investment vehicle individual filers may have, this opinion will address filing requirements for some of the more common types of investments identified to it. Page 6 of this opinion provides examples of how to disclose investments using the format of the disclosure statement. A chart of investments and disclosure requirements is on page 7.

Filers should consult with their investment advisors and/or carefully review year-end/portfolio statements for information about the amount or type of investments they hold. A filer may attach a copy of a year-end or portfolio statement to his or her FDS provided that it contains the required information (name of qualifying business and nature of investment). However, the filer should delete account numbers, social security numbers, and any other personal information (except name) from any statement submitted to the Commission.

Disclosure of Investments—R.C. 102.02(A)(3)

R.C. 102.02(A)(3) requires that all filers shall disclose:

The name of every corporation on file with the secretary of state that is incorporated in this state or holds a certificate of compliance authorizing it to do business in this state, trust, business trust, partnership, or association that transacts business in this state in which the person filing the statement or any other person for the person’s use and benefit had during the preceding calendar year an investment of over one thousand dollars at fair market value as of the thirty-first day of December of the preceding calendar year, or the date of disposition, whichever is earlier . . . and a description of the nature of the investment.

In other words, a financial disclosure filer is required to list the name of every corporation or other entity incorporated in Ohio, holding a certificate of compliance authorizing it to do business in Ohio, or doing business in Ohio, in which the filer or another person on the filer’s behalf has invested over \$1,000 during the reporting year.¹ For clarity, this opinion will use the phrase “qualifying business” to indicate entities that fall within these parameters.

¹ In order to check whether a particular corporation, trust, business trust, partnership, or association is incorporated or doing business in Ohio, or holds a certificate of compliance authorizing it to do business in Ohio, the filer can contact the corporation or the Secretary of State’s Office: www.sos.state.oh.us/SOS/businessServices/cogs.aspx.

The word “investment” is not defined in R.C. Chapter 102. The General Assembly has stated that words and phrases used in statutes “shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.42. An investment is a purchase or expenditure to acquire property or assets to produce future revenue. Black’s Law Dictionary (7th Ed. 1999) 831. Some common investments are stocks, bonds, and mutual funds.

Stocks, Bonds, and Mutual Funds

A **stock** is a type of security that signifies ownership in a corporation and represents a claim on part of the corporation’s assets and earnings. A financial disclosure filer who purchases more than \$1,000 of stock in a qualifying business must disclose the investment on his or her statement. (Examples A and B on page 6).

A **bond** is a debt investment in which the investor loans money to an entity for a defined period of time at a fixed interest rate. The two most common bonds are corporate and governmental bonds. Because the operation of a public entity is not the operation of a business, a filer is not required to disclose government securities or municipal bonds as investments on his or her financial disclosure statement. Adv. Op. No. 93-003. However, a financial disclosure filer who purchases more than \$1,000 in bonds in a qualifying business must disclose the investment. (Example C on page 6).

A **mutual fund** is a company that pools money from many investors and invests the money usually in a diversified selection of securities and assets, such as stocks, bonds, and money market instruments. Black’s Law Dictionary (7th Ed. 1999) 1040, 1041. A financial disclosure filer who invests more than \$1,000 in a mutual fund that is a qualifying business must disclose the mutual fund on his or her financial disclosure statement. However, because a person who invests in a mutual fund owns shares of the mutual fund, and does not have a direct ownership interest in the holdings within the fund, the filer is not required to disclose the holdings within the fund as investments. (Examples D and E on page 6).

Investments Vehicles, Trusts, and Accounts

Stocks, bonds, mutual funds, and other investments can be purchased individually or through other investment vehicles such as brokerage or managed accounts and trusts. Even though the investments within these accounts are managed by a company or advisor, the account holder has a financial interest in the investments.

Where a filer’s investments are held within an investment account or portfolio, and the filer has more than \$1,000 invested in the account or portfolio, the filer is required to disclose the company that manages the account if the company is a qualifying business.² Because the account or portfolio is made up individual investments, the filer is also required to disclose these individual investments, valued at over \$1,000, in any qualifying businesses that are held in the

² As noted above, in order to check whether a particular corporation, trust, business trust, partnership, or association is incorporated or doing business in Ohio, or holds a certificate of compliance authorizing it to do business in Ohio, the filer should contact the corporation or the Secretary of State’s Office. The filer should be aware, however, that not all business entities transacting business in Ohio are registered with the Secretary of State’s Office.

accounts. This is true whether the filer personally chooses or directs the investments within the account or has empowered another person to direct investments on the filer's behalf. As explained above, a filer is required to disclose investments he or she makes **and those made by any other person for the filer's use and benefit**, such as investments made by the manager of a trust for the trust beneficiary.

A **brokerage account** or **managed account** is an investment account that allows an investor to purchase investments by engaging a broker or brokerage firm to conduct the transactions on the investor's behalf. The investor **owns** the invested assets in the account directly in his or her own name. A financial disclosure filer is required to disclose the qualifying business that manages the investment account *and* the individual stocks, bonds, mutual funds, and other investments that are held in his or her brokerage account. (Examples F through K on page 6).

A **trust** is a right of property, real or personal, held by one party for the benefit of another. Black's Law Dictionary (Rev. 4th Ed. 1968) 1680. The law requires a filer who is a beneficiary of a trust is required to disclose, within the parameters of the law, the trust and the *individual* investments and assets that are held in the trusts. Adv. Op. No. 2005-01. (Examples L, M, and N on page 6).

An **investment club (or stock club)** is a group of investors who pool their money and make joint investments. Usually, an investment club is organized as a general partnership but could also be formed as a limited liability partnership, company, or corporation.³ A financial disclosure filer is required to disclose the *individual* stocks, bonds, mutual funds, and other investments in qualifying businesses made by the club in which he or she has an investment of over \$1,000. (Examples O and P on page 6).

Investments for Education

529 Plans and Coverdale Education Savings Accounts (ESA) are types of the savings plans that help families save for future college costs. The tax-advantages, investment options, restrictions, and fees can vary a great deal among these investments.

There are two types of **529 Plans**: *pre-paid tuition plans and college savings plans*. Both plans allow the account holder to maintain control over the assets for the life for the account. *Pre-paid tuition plans* allow investors to pay for amounts of future tuition (years, credits, or units) at current college prices. These plans pool the money and make long-range investments so that the earnings meet or exceed college tuition increases. Under *college savings plans* the account holder pays money into an investment account on behalf of a designated beneficiary. The account holder may typically choose from several investment options (including stocks and mutual funds), which the college savings plan invests on behalf of the account holder. A financial disclosure filer is

³A filer should also disclose the club itself under the question regarding "Offices and Fiduciary Relationships." For example, if a filer is a member of Jonesworth Investment Club which has been organized as a general partnership, the filer would list *Jonesworth Investment Club* under "CORPORATION, ETC" and *Partner* under "Office or Nature of Relationship."

required to disclose the *individual* investments in qualifying businesses that are held in these savings plans and valued at over \$1,000. (Examples Q and R on page 6).

ESAs, formerly known as Education IRAs, are an investment vehicle targeted to education expense rather than retirement. ESAs have virtually limitless investment options. A financial disclosure filer is required to disclose the *individual* investments in qualifying businesses that are held in these savings plans and valued at over \$1,000. (Example S on page 6).

Conclusion

This advisory opinion is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and the Commission advises that: Section 102.02 of the Ohio Revised Code requires public officials and employees who file annual financial disclosure statements to disclose specific personal financial information for the complete calendar year preceding the filing to assure notice to the public of potential conflicts of interest. One of the disclosure requirements is that the public official or employee disclose the name of every corporation, trust, business trust, partnership, or association, authorized to do business in Ohio, in which, during the preceding calendar year, the filer or any other person for the filer's use and benefit, had an *investment* of over one thousand dollars. For example, the financial disclosure filer is required to disclose the name of every company, corporate bond, and mutual fund in which the filer has invested more than \$1000, regardless of whether those individual investments are held within brokerage or investment accounts.

By my signature below, I certify that Advisory Opinion No. 2011-01 was rendered by the Ohio Ethics Commission at its meeting on January 13, 2011.



Ben Rose, Chair
Ohio Ethics Commission

Examples of Investments Disclosure on Financial Disclosure Statement

CORPORATION, ETC.	<i>Nature of Investment</i>
A Microsoft Corporation	Stock
B General Electric Company	Stock
C West Coast Energy	Corporate Bond
D Northern Mid Cap Growth Stock Fund	Mutual Fund
E Eaton Value Floating Rate Advantage Bond Fund	Mutual Fund
F Wells Fargo Brokerage Company	Brokerage Account
G Westwood One, Inc.	Stock [Held in Wells Fargo Account] ⁴
H Merrill Lynch	Brokerage Account
I Fidelity Investment Grade Bond Fund	Corporate Bond [Held in Merrill Lynch Account] ⁴
J E*Trade	Brokerage Account
K Janus Overseas	Mutual Fund [Held in E*Trade Account] ⁴
L Johnson Family Trust	Beneficiary
M Muscato Group, Inc.	Common Stock [Held by Johnson Family Trust] ⁴
N Simon Property Group	Real estate investment trust
O Verizon, Inc.	Stock [Held in Jones Investment Club] ⁴
P Oppenheimer Developing Markets	Mutual Fund [Held in Jones Investment Club] ⁴
Q ING Small Company Fund	Mutual Fund in BlackRock CollegeAdvantage 529 Plan
R GE Institutional International Equity (Fund) Option	Mutual Fund in CollegeAdvantage 529 Plan
S Mosiac Equity Trust Mid-Cap Fund	Mutual Fund in Coverdale ESA Plan

⁴ Information in brackets is included in this opinion for illustration purposes. A filer is not required to disclose these details on his or her financial disclosure statement.

QUICK INVESTMENT DISCLOSURE GUIDE

If I have more than \$1,000 invested in a(n).....	Do I need to disclose this investment?	Do I need to list the individual holdings within this investment?
Mutual Fund	Yes	No
Stock	Yes	No
Bond	Yes	No
Brokerage Account	Yes	Yes
Managed Account	Yes	Yes
Trust (Beneficiary)	Yes	Yes
Investment Club Account	Yes	Yes
529 Plan	Yes	Yes
ESA	Yes	Yes
Public Retirement System Account (PERS, STRS, SERS, HPRS, or OPFPF)	No	No
Social Security	No	No