

1301:6-3-01

Definitions.

- (A) "Having no readily determinable value," as used in division (L)(1) of section 1707.01 of the Revised Code and paragraph (E)(2)(b)(i) of rule 1301:6-3-15 of the Administrative Code, means any securities not listed on an exchange specified in division (E)(1) of section 1707.02 of the Revised Code or approved by the division in accordance with division (E)(2) of section 1707.02 of the Revised Code or securities not actively traded in the over-the-counter market.
- (B) "The distribution by a corporation of its securities," as used in division (K)(1) of section 1707.03 of the Revised Code, includes the distribution on a pro rata basis of shares of a subsidiary to shareholders of the parent corporation.
- (C) For the purposes of Chapter 1301:6-3 of the Administrative Code, "division" shall, where the context indicates, mean the Ohio division of securities.
- (D) "Institutional investor," as used in division (S) of section 1707.01 of the Revised Code, includes, but is not limited to, "qualified institutional buyer," as that term is defined in 17 C.F.R. 230.144A as in effect on March 1, 2003.
- (E) "Affiliated," as used in division (B) of section 1707.14 of the Revised Code, shall mean directly or indirectly through one or more intermediaries controlled by or under common control with another person or enterprise. For the purpose of this rule, "control" shall mean the authority to direct or cause the direction of the management and policies of the dealer through ownership, by contract, or otherwise. Without limiting the range of circumstances where persons or entities are determined to be affiliated, it shall be presumed that two or more persons or entities are affiliated when any person or entity is the owner of record or known beneficial owner of ten percent or more of the voting interests of the persons or entities, or when any person or entity is the owner of record or known beneficial owner of ten per cent or more of the voting interests of the dealer.
- (F) "Place of business," as used in section 1707.141 of the Revised Code and section 1707.161 of the Revised Code, means:
- (1) An office at which the investment adviser or investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and
 - (2) Any other location that is held out to the general public as a location at which the investment adviser or investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

(G) For the purpose of determining the number of clients in division (A)(4) of section 1707.141 of the Revised Code as a safe harbor and not as the exclusive method for determining who may be deemed a client, the following are deemed a "single client:"

(1) A natural person, and

(a) Any minor child of the natural person;

(b) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(c) All accounts of which the natural person and/or the persons referred to in paragraph (G)(1) of this rule are the only primary beneficiaries; and

(d) All trusts of which the natural person and/or the persons referred to in paragraph (G)(1) of this rule are the only primary beneficiaries.

(2) Legal organizations, including:

(a) A corporation, general partnership, limited partnership, limited liability company, trust, other than a trust referred to in paragraph (G)(1)(d) of this rule, or other legal organization that receives investment advice based on its investment objectives rather than the individual investment objectives of its owners. "Owners" includes shareholders, partners, limited partners, members, or beneficiaries.

(b) Two or more legal organizations referred to in paragraph (G)(2)(a) of this rule that have identical owners.

(H) Special rules. For purposes of paragraph (G) of this rule:

(1) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization, provided, however, that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

(2) An owner need not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers,

promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

- (3) A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership;
 - (4) Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client; and
 - (5) An investment adviser that has its principal office and place of business outside the United States must count only clients that are United States residents. An investment adviser that has its principal office and place of business in the United States must count all clients.
- (I) "Investments," as used in division (FF) of section 1707.01 of the Revised Code, has the same meaning as defined in rule 17 C.F.R. 270.2a51-1(b), as in effect on March 1, 2003.
- (J) For purposes of division (E)(1) of section 1707.01 of the Revised Code "dealer" shall not mean any person who is a member in good standing of a self-regulatory agency or stock exchange in Canada and is registered as a broker or dealer in a Canadian province or territory provided all transactions in Ohio are limited to:
- (1) Canadian residents who are temporarily in Ohio with whom the Canadian broker or dealer has a bona fide business customer relationship; or
 - (2) Self-directed, tax-advantaged retirement plans where the holder or contributor is a Canadian resident.
- (K) Exception to the definition of "investment adviser" in accordance with division (X)(2)(i) of section 1707.01 of the Revised Code. "Investment adviser" does not mean:
- (1) Any person who, during the course of the preceding twelve months:
 - (a) Has had fewer than fifteen clients;
 - (b) Does not hold himself out generally to the public as an investment adviser; and

(c) Has clients consisting solely of:

- (i) "Accredited investors" as defined in rule 501(a) of Regulation D under the Securities Act of 1933, as in effect on March 1, 2003;
- (ii) "Excepted persons" as defined in division (EE) of section 1707.01 of the Revised Code;
- (iii) "Qualified purchasers" as defined in division (FF) of section 1707.01 of the Revised Code;
- (iv) Trusts, provided the trust is not formed or operated for the purpose of evading sections 1707.01 to 1707.45 of the Revised Code;
- (v) An entity in which all of the equity owners and the person providing the investment advice are related by blood, marriage, or adoption, and not more remote than a first cousin; provided, however, that such entity may include persons who acquire an interest from such related person as a gift or bequest or pursuant to an agreement relating to a legal separation or divorce; or
- (vi) Any entity in which the equity owners are persons:
 - (a) Listed in paragraph (K)(1)(c)(i), (K)(1)(c)(ii), or (K)(1)(c)(iii) of this rule.
 - (b) Provided, however, that such entity also may include persons:
 - (i) Serving as an executive officer, director, trustee, general partner, or person serving in a similar capacity, of the entity; or
 - (ii) Serving as an employee of the entity, other than an employee performing solely clerical, secretarial, or administrative functions or duties, which employee, in connection with the employee's regular functions or duties, participates in the investment activities of the entity, 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 entity or performing

substantially similar functions or duties for or on behalf of another company.

(c) Provided further, that such entity may include persons who acquire an interest from a person listed in paragraph (K)(1)(c)(vi)(a) or (K)(1)(c)(vi)(b) of this rule as a gift or bequest or pursuant to an agreement relating to a legal separation or divorce.

(2) Any person who:

(a) Is acting solely as a "solicitor" as defined in paragraph (C)(4)(c) of rule 1301:6-3-44 of the Administrative Code; and

(b) Is in compliance with the requirements of paragraph (C)(1) of rule 1301:6-3-44 of the Administrative Code, or is excepted from the requirements of paragraph (C)(1) of rule 1301:6-3-44 of the Administrative Code by virtue of paragraph (C)(2) of rule 1301:6-3-44 of the Administrative Code.

(L) "Filed with the division" as used in sections 1707.141 and 1707.15 of the Revised Code and "filing with the division" as used in section 1707.151 and 1707.161 of the Revised Code, shall include information submitted to the central registration depository and the investment adviser registration depository maintained by the national association of securities dealers, inc.

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Certification

01/13/2005

Date

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