

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1301:6-3-15.1

Rule Type: Amendment

Rule Title/Tagline: Application for investment adviser's license; responsibilities of licensed investment adviser.

Agency Name: Department of Commerce

Division: Division of Securities

Address: 77 S. High Street, 22nd Floor Columbus OH 43215

Contact: Kelly Kauffman **Phone:** 614-644-7293

Email: kelly.kauffman@com.ohio.gov

I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 5/6/2021
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 1707.20
5. **What statute(s) does the rule implement or amplify?** 1707.151
6. **What are the reasons for proposing the rule?**

Amend an existing rule to modernize filing process requirements. Modify existing exam requirements to align with majority state model rules and clarify existing record keeping requirements.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

Application for investment adviser's license; responsibilities of licensed investment adviser. Modernize fingerprinting process, clarify Form ADV annual amendment

requirement; amend minimum competency examination requirements for sole proprietor investment advisers, which align with national model rule and includes grandfathering provisions for existing registrants, clarifies advertising record keeping requirements; clarifies existing fiduciary duties to specifically require physical security and cybersecurity policies and procedure, and privacy policy requirements; clarify fiduciary duty as prohibiting mandatory arbitration clauses in advisory agreements.

8. Does the rule incorporate material by reference? Yes
9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.

The revisions are exempt because they state, or restate, generally accepted commercial codes or industry conduct standards that are readily available to, or ascertainable, by the person the standards are likely to affect.

10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.

Initially uploaded wrong version of the rule.

08/06/2021 Accidentally uploaded as pdf instead of xml.

06/17/2021 The Division seeks to amend the existing exam requirement and clarify other existing duties and requirements as noted above. The Division also relaxes one regulatory requirement by allowing electronic submission of fingerprints via the application process.

06/02/2021 Correct ORC citation

II. Fiscal Analysis

11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.

This will have no impact on revenues or expenditures.

-0-

Not applicable.

12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

The revisions will involve a one-time cost of the requisite national exam(s) for impacted registrants who do not already meet grandfathering provisions (Series 65 exam - \$187 or the combination of the DIE exam, \$60, together with the Series 7 exam, \$245, and the Series 66 exam, \$177). The exam fees are separately administered by a third-party vendor with no revenue to the agency. There may be a minimal cost for fingerprint submissions (\$30-\$45), where applicable. There should be no new costs for other revisions as they simply clarify existing requirements.

13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No

14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No

15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not applicable.

III. Common Sense Initiative (CSI) Questions

16. Was this rule filed with the Common Sense Initiative Office? Yes

17. Does this rule have an adverse impact on business? Yes

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

The Division does anticipate minimal compliance costs associated with the revisions. These costs are outweighed by the safeguards and protections provided to Ohio investors by the revisions.

B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

Yes, minimal expenditures.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

A. How many new regulatory restrictions do you propose adding? 9

Adds to (E)(1)(u) "policies and procedures must be tailored to the investment adviser's business model"

Adds to (E)(1)(u)(i) "physical security and cybersecurity policies and procedures must:"

Adds to (E)(1)(u)(ii) (ii) "The physical security and cybersecurity policies and procedures must cover at least five functions"

Adds to (E)(1)(u)(iii) (iii) "The investment adviser must review"

Adds to (E)(1)(v) "Every investment adviser shall establish, implement, and maintain written procedures"

Adds to (E)(1)(v) "The plan shall be based upon the facts and circumstances of the investment adviser's business model"

Adds to (E)(1)(v) "The plan shall provide for at least the following"

Adds to (H) "The investment adviser must deliver"

Adds to (H) "The investment adviser must promptly update"

B. How many existing regulatory restrictions do you propose removing? 22

Strikes shall in (A)(1)

Strikes shall in (A)(5)

Strikes shall in (A)(6)

Strikes shall in (A)(9)

Strikes shall in (A)(12)

Strikes shall in (A)(13)

Strikes shall in (A)(16)

Strikes shall in (A)(17)

Strikes shall in (A)(18)

Strikes shall in (B)

Strikes shall in (B)(1)

Strikes shall in (B)(1)(c)(i)

Strikes require in (B)(1)(c)(ii)

Strikes shall in (B)(1)(c)(iii)

Strikes shall in (D)

Strikes shall in (E)(1)(c)

Strikes shall in (E)(1)(g)

Strikes shall in (E)(1)(l)(iv)

Strikes shall in (E)(1)(l)(v)

Strikes shall in (E)(1)(m)(iv)

Strikes shall in (E)(1)(m)(v)

Strikes shall in (E)(10)