

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Securities /Commerce

Regulation/Package Title: 2014 Five Year Review / 123437 and 124337

Rule Number(s): 1301:6-3-02; 1301:6-3-03; 1301:6-3-04.1; 1301:6-3-06; 1301:6-3-08;
1301:6-3-09; 1301:6-3-09.1; 1303:6-3-09.3; 1301:6-3-12; 1303:6-3-13

Date: October 14, 2014

Rule Type:

New

☒ Amended

☒ 5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

This rule

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments

These rules deal with the registration of securities – how registration of securities may be accomplished and what exemptions are available.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- 1301:6-3-02: This rule describes how securities listed on exchanges, according to RC 1707.02(E), shall be treated as exempt. It also describes how governmental obligations and commercial paper may be exempt according to RC 1707.02 (B) and (G). The Division proposes to simplify the rule and bring it into alignment with federal law by deleting names of specific national exchanges and substituting references to the (federal) Securities Act of 1933.
- 1301:6-3-03: This rule corresponds with RC 1707.03. Certain terms used in the statute are defined; provides directions and explanations of how to claim an exemption according to certain provisions of the statute as set forth; and additional exempt transactions are recognized. The Division proposes to revise the rule by deleting references to RC 1707.03(X) because the consent to service of process requirement was eliminated for that filing by legislation.
- 1301:6-3-04.1: Ohio securities law (RC 1707.041) prohibits the making of a control bid for the securities of an Ohio subject company pursuant to a tender offer or request or invitation for tenders unless the offeror files certain information with the Division of Securities, the subject company, and any other offeror. To provide "[c]omplete information on the organization and operations of the offeror," the offeror is required to file, among other things, financial statements for the current period and for the three most recent annual accounting periods. Under the act, these financial statements are not required if the Division by rule (1) determines that they are not material or (2) permits the filing of financial statements for less than the three most recent annual accounting periods. The rule describes when financial statements may not be required or may be incorporated by reference. The rule also states the conditions when the Division shall terminate a filing and permit the reinstitution of a control bid. No change is proposed.
- 1301:6-3-06: This rule describes the procedures to register a securities offering pursuant to RC 1707.06, including the forms to use, the materials that must accompany the filing and the requirements of an offering circular and registration. Section (B) requires the Division to promptly examine every registration by description filed. No change is proposed.
- 1301:6-3-08: This rule sets out the length of time an issuer may sell their securities pursuant to a registration by description filing – 16 months. The rule also allows the Division to permit an extended period up to 24 months. At the conclusion of the effectiveness period, the issuer may file another registration by description with updated information. No change is proposed.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- 1301:6-3-09: The rule concerns registrations by qualification. The rule sets out the alternate forms that may be used, some of the materials to be submitted and the period of effectiveness. The rule requires notice of any material changes in the information submitted and certain terms dealing with escrow requirements. No change is proposed.
- 1301:6-3-09.1: This rule concerns registration by coordination, pursuant to RC 1707.091. The rule sets forth the type of documents required to comply with the type of registration, permits the Division to reduce the time period the issuer must wait to go effective and permits the issuer to notify the Division by telephone of effectiveness with the SEC. A stop order, comparable to the federal power, is to provide a mechanism to halt a proposed offer if it would defraud or deceive. Once the issuer has taken corrective action, the rule sets out a procedure to terminate the stop order, retroactively to allow sales to continue. No change is proposed.
- 1301:6-3-09.3: The rule permits, but does not require, electronic filings for certain types of files and provides how electronic filing may be made. No change is proposed.
- 1301:6-3-12: This rule provides that documents otherwise confidential pursuant to RC 1707.12 may be shared with FINRA (formerly the NASD), the self-regulatory organization for broker-dealers to allow for concomitant regulation of securities salespersons and firms. No change is proposed.
- 1301:6-3-13: This is a ministerial rule which allows the Division to withdraw a file or a notice filing that has been on file for a year without becoming effective. No change is proposed.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code Section 1707.20. In addition, the rules amplify, respectively, RC 1707.02, 1707.03, 1707.041, 1707.06, 1707.08, 1707.09, 1707.091, 1707.12 and 1707.13.

3. Does the regulation implement a federal requirement?

No.

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

No.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)? **

The purposes of the rules are:

- 1301:6-3-02 – This rule adds to the exempt securities in RC 1707.02 and clarifies other exemptions, recognizing those situations where investor protection is provided by other means.
- 1301:6-3-03 – The purpose of this rule is to provide clarity and uniformity by defining terms used, and requirements, in the exemptions contained in RC 1707.03. The rule also provides further exemptions to issuers where protection of the public is not required because the issuer is already regulated, the type of offer is governed by, or exempt from, federal law or the purchasers do not need protection or are not in Ohio.
- 1301:6-3-04.1 – RC 1707.04.1 permits the Division to create a rule to further the purposes of the control bid statute (in 1707.041(A)(1)(g)) by delineating when financial statements would not be required to be filed. The two conditions are both situations where the public and the Division may already obtain the financial information from the SEC's electronic files and the where the public isn't relying on the financial condition of the offeror (an all-cash deal). These two conditions provide sufficient investor protection and fair treatment of the target Ohio company.
- 1301:6-3-06 – This rule provides the specific direction to issuers how a registration by description may be carried out. The rule describes what an offering circular must contain and when an offering circular is required. The \$250,000 threshold is intended to be a compromise between investor protection and the cost and burden of preparing and distributing an offering circular, although many issuers will prepare and distribute an offering circular to protect themselves against civil liability. The prohibitions and restrictions are intended to both provide investor protection, to promote more efficient securities markets and to provide a level field for the issuers. The obligation to advise the Division of any material changes is intended to insure that investors are given up to date information.
- 1301:6-3-08 – After a certain period of time, the materials, including financial statements, supplied to offerees are stale and the issuer should refresh by refiling. In addition, early investors would otherwise have their money tied up indefinitely until

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

sufficient proceeds are raised. The 16 months effective period has existed since at least 1983 and allows the issuer the 12 months under federal Reg A as well as four additional months to complete the offering. The rule allows the Division to grant additional time for the issuer to sell pursuant to the registration “for good cause” so that issuers trying to coordinate with other offerings or other jurisdictions may be accommodated provided there is no perceived harm to investors.

- 1301:6-3-09 – The rule provides specific directions regarding the filing of a registration by qualification under RC 1707.09. The period of effectiveness runs for 13 months to allow the filing to be coordinated with any other jurisdiction so the issuer may be able to refile, if they choose, with all the states simultaneously. The obligation to advise the Division of any material changes is intended to insure that investors are given up to date information. The forms to be filed are in the alternative, allowing the issuer to coordinate filings with other jurisdictions, and the Form U-7 is the “Small Company Offering Registration Form” that was developed to simplify the filing requirements for small businesses (adopted in 1999).
- 1301:6-3-09.1 – Registration by coordination is established for registrations that are simultaneously filed with the SEC. The materials requested are comparable to the materials required to be filed with the SEC. The procedures, and the capability of the Division to shorten the waiting time for effectiveness all relate to trying to allow the issuer to coordinate the registrations going effective in multiple jurisdictions, including federally, allowing sales to take place simultaneously. The purpose is to provide speed and efficiency to allow the Ohio filings to be coordinated with the same registration going effective with the SEC.
- 1301:6-3-09.3 – In an effort to simplify the process of certain filings, the Division permits, but does not require, that those filings may be made electronically. There are two types of notice filings that, with the external systems presently available, lend themselves to electronic filings: Reg. D and mutual funds. Both are simplistic and there is a vendor that will handle the filings and payments for these types of filings. To provide for unintentional errors due to the transmission process, the rule allows for corrective actions without penalties.
- 1301:6-3-12 – In order to share otherwise confidential documents with other regulators, specifically the self-regulatory organization for dealers, the rule allows FINRA access. The sharing of information allows more accurate and efficient regulation.
- 1301:6-3-13 – Although it happens infrequently, there are registration filings that, for various reasons, do not go forward and never become effective (e.g.: the deal falls through; the issuer cannot or will not respond to comments by the Division or the

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

SEC) and are abandoned by the issuer. To avoid having an increasing number of files that are not either becoming effective or being withdrawn by the issuer, thereby clogging up the system, the rule allows the division to withdraw a file. Filings are usually effective in a much shorter period. In addition, over time, the financial and other information will become stale. The Division always contacts the issuer or counsel multiple times before a file is withdrawn.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Division interacts with members of the industry on a regular basis, including at the annual Securities Conference, email and telephone inquiries. Feedback from that interaction provides information for review and revision of rules, as has been the case over the multiple decades these rules have been in existence. In addition, changes in federal securities laws may require changes to Division rules and federal law will be monitored. The rules are considered successful because they achieve the dual missions of the Division: investor protection and fostering capital formation.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

See attached list. Stakeholders were emailed a package of the rules with a cover letter indicating which rules were No Change and which were amendments. The email was sent Oct. 3, 2014, and comments were requested by Oct. 31. Prior to that, conversations were held individually with representatives of stakeholders for input on various rule changes.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

One stakeholder responded and indicated they did not have any comments.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Generally, these rules are meant to clarify, or provide specificity to, the statutes to which they refer. They also provide exemptions to registration where research and discussions with industry or members of the bar have demonstrated that investor protection would not be compromised, and the market would be more efficient, by such exemptions.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No other regulations were considered because these follow statutory requirements. Other than corrective changes and updating the rules to provide for changes in state law and coordinating with the federal national exchange lists, these rules have remained consistent for many years.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

The statutes that the rules augment provide specific requirements relating to registrations. The rules are intended to provide clarification of the statutory scheme and to provide exceptions to registration, where warranted.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Division is the only Ohio agency regulating in this area. All statutes and rules governing, or enforced by, the Division were reviewed to ensure there were no duplications or conflicts.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

While there is some updating to rules, all these rules have been in place for many years, some dating back to 1970's. The Division does not anticipate any change in applying the rules in a consistent and predictable manner. The industry and the Bar will have access to the Division's rules to promote compliance and the Division regularly receives, and responds to, phone and written questions seeking guidance. The Division's Ohio Securities Conference annually encourages interactions between the Division and industry and the Bar.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
Securities issuers and the securities Bar.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

The rules do not impose fines or penalties. There will be some additional time added to the time to comply with the statute for the rules dealing with the different registration processes. However, some rules – e.g. 1301:6-3-09.3, dealing with electronic filings and 1301:6-3-08, allowing additional time for effectiveness – should reduce the amount of time issuers spend filing, or renewing, a registration. The exemptions under 1301:6-3-02 and -03 allow issuers to avoid registration. 1301:6-3-04.1 provides for a reduction in the financial statements required to be filed under certain conditions.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The balance sheets required will necessitate an amount of time to prepare proportionate to the complexity of the issuer’s financials and the type of registration.

Where an issuer is registering by description a large dollar amount of securities or for an oil and gas offering, the preparation of an offering circular will take a significant amount of time, depending of the complexity of the offering and the need for full and fair disclosure.

If advertising is filed with the Division, it will require the time to prepare a cover letter describing how it will be used. In addition, it will take a minimal amount of time to create a system to store all the materials that must be retained for a sufficient period to comply with rule or statute. The time needed will be dependent on the size and complexity of the offering.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The overall responsibility of the Division is both investor protection and to ensure and allow the markets to operate fairly and efficiently. If all regulations are applied equally, then all issuers have an equal opportunity to bring their offering to the public for the public to determine if the offering merits investment dollars. A key component of investor protection and equality in the market is full and adequate disclosure, providing investors with sufficient information to compare issues of securities as investments. The rules intend to provide disclosure and equality of treatment, promoting a fair and efficient securities market.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rules, specifically 1301:6-3-06 and -09 provide for alternatives for small issuers, as do the comparable statutes upon which the rules are based. Registration by description provides that smaller issuers need not prepare an offering circular. Registration by description allows for the filing of a U-7 (Small Company Offerings Registration) in lieu of an offering circular.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fines or civil penalties for paperwork violation of these rules. There is the possibility of a refusal, suspension or stop order if the offering or the business is found to be fraudulently conducted or the offering is grossly unfair or tends to defraud or deceive, but that would not be a paperwork violation, as defined.

18. What resources are available to assist small businesses with compliance of the regulation?

The Division regularly responds to phone or personal inquiries, for small or large businesses or their counsel. Division forms provide instructions for filers. Generally, counsel is retained because of the inherent civil liabilities in securities offerings. In addition to the rules being readily available, the Division publishes a quarterly Bulletin, available to anyone on our web page, discussing relevant issues.

ATTACHMENT
SECURITIES STAKEHOLDER'S LIST

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

1735 K Street Northwest
Washington, DC 20006
202-728-8000
Call Center (301) 590-6500
finra.org
Scott Borchert – State Government Liaison - (202) 728-8278
scott.borchert@finra.org

OSBA Corporation Law Committee
Securities Law Subcommittee
Professor Geoffrey Rapp (Geoff)
University of Toledo, College of Law
280 West Bancroft, MS 507
Toledo, OH 43606-3390
grapp@utnet.utoledo.edu
phone: (419) 530-2856

Thomas Geyer (Former Division Commissioner 1996-2000)
Bailey Cavalieri LLC
One Columbus
10 West Broad Street
Suite 2100
Columbus, OH 43215
phone: (614) 229-3206
(614) 221-0479
Thomas.Geyer@baileycavalieri.com

fax:

Industry

SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

Local contact:
Anthonio (Tony) C. Fiore
Kegler Brown Hill & Ritter
65 East State Street

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Columbus, Ohio 43215-4294

afiore@keglerbrown.com

Phone: (614) 462-5428

Fax: (614) 464-2634

NATIONAL ASSOCIATION OF PERSONAL FINANCIAL ADVISORS (NAPFA)

- SEC and State-registered IAs

Local Point of Contact:

Paul J. Dolce, CFP

NAPFA Registered Financial Advisor

Financial Solutions LLC

4946 Donegal Cliffs Drive

Dublin, Ohio 43017

Phone: 614-604-3551 Fax: 866-326-0396

PDolce@FinancialSols.com

Web: www.FinancialSols.com

FINANCIAL SERVICES INSTITUTE

(Independent financial services firms and advisors)

Dale Brown, President and CEO

Mr. Jigar Gandhi, State Regulatory Affairs Counsel

jigar.gandhi@financialservices.org

Financial Services Institute

607 14th St. NW

Suite 750

Washington, D.C. 20005

FINANCIAL PLANNING ASSOCIATION

- SEC and State-registered IAs

Local Point of Contact:

Mike Mulhern (mike.mulhern@LFG.com)

CENTRAL OHIO COMPLIANCE ASSOCIATION (COCA) (May, 2014)

Christy Baker- President

Bev Langley- Vice President

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Parker Bridgeport- Secretary
Parker.Bridgeport@thompsonhine.com

at

Christy L. Baker
Director- Broker Dealer Services
Beacon Hill Fund Services, Inc.
4041 N High Street, Suite 402
Columbus, OH 43214
614.255.5547 (phone)
614.784.0211 (fax)
cbaker@b-hill.com

EDWARD JONES
Jesse Hill
Legal-Government & Regulatory Relations
12555 Manchester Road
St. Louis, MO 63131
Jesse.hill@edwardjones.com
314-515-9711

CONSUMER GROUPS

AARP Ohio
William Sundermeyer, State Director for Advocacy at AARP Ohio
AARP Ohio Office 17 S. High Street, Suite 800 Columbus, OH 43215
wsundermeyer@AARP.org
866-389-5653 Toll-free 614-224-9801 Fax ohaarp@aarp.org

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Securities

Regulation/Package Title: 2014 Five Year Review / 123437 and 124337

Rule Number(s): 1301:6-1-01; 1301:6-1-03; 1301:6-3-01

Date: October 14, 2014

Rule Type:

New
☒ Amended

☒ 5-Year Review
☒ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments

These are ministerial and definitional rules of the Division of Securities.

- 1301:6-1-01 – This rule states that the Division will not give an opinion regarding the value of a security or endorse any security. No change is proposed.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- 1301:6-1-03 – This rule provides how the Division will give notice of adopting amending or rescinding rules. Proposed to be rescinded as redundant with statutes.
- 1301:6-3-01 - Definitions: This rule defines terms used in the Securities Act that are not otherwise defined. The definitions are consistent with the use of those terms throughout the securities industry. The only change proposed is to correct a citation to federal law.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code Section 1707.20.

3. Does the regulation implement a federal requirement?

No.

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)? **

- 1301:6-1-01 – Persons selling securities should be treated uniformly and the Division will not give recommendations, good or bad, regarding any security or offering. This also precludes someone using the Division's name to encourage sales, thereby fraudulently enticing investors.
- 1301:6-1-03 - The purpose of the rule is to assure the public that notice and hearing will be provided upon new regulations. Because the rule mirrors statutory requirements, the rule is unnecessary and its elimination will not adversely impact the public or industry.
- 1301:6-3-01 - Certain terms used in the Revised Code require clarification, for the sake of uniformity and notice, even if regularly used in the securities industry.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The Division encourages feedback, during Advisory group meetings at its Annual Conference and throughout the year. The definitional rule will be revisited any time a new term arises that requires consistent definition. Communications will be reviewed to ensure Division personnel refrain from recommending a security. Representations by others that the Division has recommended a security will be pursued by our enforcement section.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

See attached list. Stakeholders were emailed a package of the rules with a cover letter indicating which rules were No Change and which were amendments. The email was sent Oct. 3, 2014, and comments were requested by Oct. 31. Prior to that, conversations were held individually with representatives of stakeholders for input on various rule changes.

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

One stakeholder responded and indicated they did not have any comments.

9. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

The rule follows statutory provisions (R.C. Chapter 1707) and concepts and terms common to the industry. The rules have been in existence since 1975 and have undergone revisions and additions as appropriate. The definitional rule defines terms used in the Securities Act and other rules of OAC Chapter s1301:6-1 and 1301:6-3.

10. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

No other regulations were considered because these follow statutory requirements.

11. **Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

The performance required by the prohibition rule is intended to foster equal treatment by the Division and non-misleading statements by the industry. Both rules promote transparency in the Division's activities and the actions and expectations of those regulated.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Division is the only Ohio agency regulating in this area. All statutes and rules governing the Division were reviewed to ensure there were no duplications or conflicts.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Division will be bound by the rules just as those regulated are bound. These are long-standing rules and, as the area of law has developed, the definitional rule has been changed a number of times to accommodate new terms or terms that required to be defined.

Suggestions may originate internally or externally – any suggestions for changes may be brought to the Division's attention. The purpose of the rules is to provide consistency and predictability.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

There is not anticipated to be costs associated with these rules.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

There will be no adverse impact imposed by the rules. One is a prohibition that is imposed on the Division and, by extension, the public. The other is a definitional rule that brings consistency to the interpretation of the statutes that utilize the terms defined. The rule to be rescinded, dealing with notices given in the rulemaking process, imposes no obligation on anyone other than the Division.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

These rules do not impose any adverse impact.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The rules are required of the Division to provide transparency and consistency in the application of the statutory scheme. There will be no adverse impact on the regulatory community or the public.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rules provide for uniformity and transparency. Small businesses will benefit from the Division not taking a position regarding the value or merit of a security. Small businesses will benefit from definitions being readily available without the need to hire legal counsel to interpret statutory language.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There will not be violations of these rules by industry. They are internal ministerial rules.

18. What resources are available to assist small businesses with compliance of the regulation?

The Division has always fielded calls and emails requesting assistance or direction. However, these rules do not impose duties on the industry and, thus, do not impose duties on small business.

ATTACHMENT

SECURITIES STAKEHOLDER'S LIST

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

1735 K Street Northwest

Washington, DC 20006

202-728-8000

Call Center (301) 590-6500

finra.org

Scott Borchert – State Government Liaison - (202) 728-8278

scott.borchert@finra.org

OSBA Corporation Law Committee

Securities Law Subcommittee

Professor Geoffrey Rapp (Geoff)

University of Toledo, College of Law

280 West Bancroft, MS 507

Toledo, OH 43606-3390

grapp@utnet.utoledo.edu

phone: (419) 530-2856

Thomas Geyer (Former Division Commissioner 1996-2000)

Bailey Cavalieri LLC

One Columbus

10 West Broad Street

Suite 2100

Columbus, OH 43215

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

phone: (614) 229-3206
(614) 221-0479

fax:

Thomas.Geyer@baileycavalieri.com

Industry

SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

Local contact:

Anthonio (Tony) C. Fiore
Kegler Brown Hill & Ritter
65 East State Street
Columbus, Ohio 43215-4294
afigore@keglerbrown.com
Phone: (614) 462-5428
Fax: (614) 464-2634

NATIONAL ASSOCIATION OF PERSONAL FINANCIAL ADVISORS (NAPFA)

- SEC and State-registered IAs

Local Point of Contact:

Paul J. Dolce, CFP
NAPFA Registered Financial Advisor
Financial Solutions LLC
4946 Donegal Cliffs Drive
Dublin, Ohio 43017
Phone: 614-604-3551 Fax: 866-326-0396
PDolce@FinancialSols.com
Web: www.FinancialSols.com

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

FINANCIAL SERVICES INSTITUTE

(Independent financial services firms and advisors)

Dale Brown, President and CEO

Mr. Jigar Gandhi, State Regulatory Affairs Counsel

jigar.gandhi@financialservices.org

Financial Services Institute

607 14th St. NW

Suite 750

Washington, D.C. 20005

FINANCIAL PLANNING ASSOCIATION

- SEC and State-registered IAs

Local Point of Contact:

Mike Mulhern (mike.mulhern@LFG.com)

CENTRAL OHIO COMPLIANCE ASSOCIATION (COCA) (May, 2014)

Christy Baker- President

Bev Langley- Vice President

Parker Bridgeport- Secretary

Parker.Bridgeport@thompsonhine.com

at

Christy L. Baker

Director- Broker Dealer Services

Beacon Hill Fund Services, Inc.

4041 N High Street, Suite 402

Columbus, OH 43214

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

614.255.5547 (phone)

614.784.0211 (fax)

cbaker@b-hill.com

EDWARD JONES

Jesse Hill

Legal-Government & Regulatory Relations

12555 Manchester Road

St. Louis, MO 63131

Jesse.hill@edwardjones.com

314-515-9711

CONSUMER GROUPS

AARP Ohio

William Sundermeyer, State Director for Advocacy at AARP Ohio

AARP Ohio Office 17 S. High Street, Suite 800 Columbus, OH 43215

wSundermeyer@AARP.org

866-389-5653 Toll-free 614-224-9801 Fax ohaarp@aarp.org

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Securities

Regulation/Package Title: 2014 Five Year Review / 123437 and 124337

Rule Number(s): 1301:6-3-14; 1301:6-3-14.1; 1301:6-3-14.2; 1301:6-3-15; 1301:6-3-15.1; 1301:6-3-16; 1301:6-3-16.1; 1301:6-3-16.3; 1301:6-3-16.5

Date: August 11, 2014

Rule Type:

New

☒ 5-Year Review

☒ Amended

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments

These rules relate to the statutes that provide for the various licenses issued by the Division. Those licenses are securities dealers, securities salespersons, investment advisers (IAs),

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

investment adviser representatives (IARs), state retirement system investment officers and the bureau of workers' compensation chief investment officer. The rules set out how a license may be obtained, exceptions to licensing, notice filing requirements for federally registered IAs and, in the case of those dealers and IAs not registered federally, also set out the books and records requirements.

- 1301:6-3-14 – This rule provides exceptions from the general licensing requirement of RC 1707.14. There are no proposed changes.
- 1301:6-3-14.1 – IAs that are registered federally must “notice file” with the Division. This rule provides the procedure to file the notice by those IAs. This rule is proposed to be amended to correct the reference to the federally chartered SRO from NASD to FINRA; to correct a citation to Form ADV and OAC 1301:6-3-15.1; and to require notice filers to submit part 2 of Form ADV, as do state-registered IAs.
- 1301:6-3-14.2 – Ohio law allows, under very limited circumstances, for a dealer to not be registered with the SEC. For those dealers (presently there are 4), there needs to be requirements, similar to the federal law, to keep and maintain certain books and records, communications with customers, and maintain financial records and soundness. This rule sets out those requirements and also provides how a dealer may operate on the premises of a bank in such a way that the public understands the difference between FDIC insured deposits and the uninsured securities sales. There are no proposed changes.
- 1301:6-3-15 – This rule specifies how a license application for a dealer is filed and the attendant requirements. The rule sets out the same provisions for a broker selling on bank premises, for those brokers not covered by the language in 1301:6-3-14.2, and, comparable to federal law, requires notice of the establishment of branch offices and, unless done with FINRA, submit financial statements. The Division proposes to amend the rule so that the designated principals, required by statute, are the ones identified on federal form BD.
- 1301:6-3-15.1 – In 1999, states took over from the SEC the regulation of smaller investment adviser firms. This rule, put in place in 1999, mirrors the federal requirements for IAs and defines terms and provides: how to become licensed (augmenting RC 1707.151), supervisory responsibilities, books and records requirements, custodial (i.e. holding clients' money) requirements and communications with clients. The Division proposes to amend this rule in a number of ways to clarify and modernize the requirements. The definition of qualified client has been changed for federal purposes and should be changed to allow dollar thresholds to be increased. Federal form ADV, to which the rule refers, was changed in 2011 and references to parts of the previous Form ADV need to be changed to accurately cite to the current Form. Financial terminology is proposed to be changed for accuracy (“cash reconciliations” to “bank reconciliations” and “financial

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

statements to "income statement and balance sheet"). Records to be maintained would be amended to include social media and other forms of internet communications, advisory contracts to be signed by the parties and a reduction of the time a deficient application may remain pending without action from over one year to 180 days in parity with the current dealer rule.

- 1301:6-3-16 – This rule sets out the licensing requirements and procedure for securities salespersons. The Division proposes to amend this rule by allowing the withdrawal of a deficient application if it remains in the pending category with the CRD for 180 days, in parity with the current dealer rule. The rule is also proposed to be amended to allow for salespersons to be licensed with two affiliated dealers.
- 1301:6-3-16.1 – RC 1707.161 provides that the Division will, by rule, set out the procedures and conditions for an investment adviser representative (IAR) to become licensed. This rule provides for the procedures and the alternative examinations the applicant may pass to become licensed. The rule also allows for an IAR to be affiliated with two different IAs. The Division is proposing that this rule be amended to correct a reference to the NASD (change to the new name FINRA) and also to parity the current dealer rule and allow deficient applications for licensing that have been pending in the CRD for 180 days to be withdrawn.
- 1301:6-3-16.3 – This rule sets out the license process and procedure for state retirement system investment officers' licenses applications, terminations and renewals. It indicates what educational, experience or designation will meet the requirements of RC 1707.163. There are no proposed changes.
- 1301:6-3-16.5 – RC 1707.164 requires a bureau of workers' compensation chief investment officer (BWCCIO) to be license by the Division. RC 1707.165 provides for the Division to create a process and procedure for a BWCCIO to become licensed. This rule sets out the procedures to apply, terminate and renew the license. There are no proposed changes.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code Section 1707.20. The rules amplify, respectively, RC 1707.14; 1707.141; 1707.142; 1707.15; 1707.151; 1707.16; 1707.161; 1707.163; 1707.165.

3. Does the regulation implement a federal requirement?

No.

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

If yes, please briefly explain the source and substance of the federal requirement.

No.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)? **

- 1301:6-3-14 – In addition to the exceptions to the general rule that all dealers must obtain a license, contained in RC 1707.14, section (D) of that statute provides that the Division may, by rule, exempt any dealer if licensing or registration is not necessary for the protection of investors or in the public interest. Rule 1301:6-3-14 sets out exceptions to the licensing and registration requirements that meet that test. Many of these exceptions were enacted after the Division investigated a request by industry.
- 1301:6-3-14.1 – The regulation of investment advisers (IAs) is preempted by the SEC for IAs with assets under management of \$100 million or more. Below that amount, the states are the primary regulators. However, SEC IAs are required to “notice file” with states that impose such a requirement and RC 1707.141(B) requires SEC registered IAs to notice file with the Division. 1301:6-3-14.1 provides how a notice filing may be accomplished and renewed. The proposed changes to this rule are to correct citations and to align the submissions for a notice filer with the filings from state-registered IAs.
- 1301:6-3-14.2 – RC 1707.14 provides that certain dealers need not register with the SEC. RC 1707.142 requires all dealers licensed by the Division to comply with all capital, custody, margin, financial responsibility, record-making, record-keeping, bonding, financial reporting and operational reporting mandates required of SEC registered dealers. In the alternative, the statute allows the non-SEC registered dealer to comply with rules, created by the Division, relating to the same types of financial, operational and record-keeping requirements. 1301:6-3-14.2 sets out the Division’s rules relating to capital, custody, margin, financial responsibility, record-making, record-keeping, bonding, financial reporting and operational reporting provisions. This provides smaller dealers with an alternative to the SEC requirements.
- 1301:6-3-15 – RC 1707.15 requires the Division to create rules relating to applying for a dealer’s license. 1301:6-3-15 is the rule setting out the procedures for a license application and some of the attendant obligations. The rule creates a safe harbor for dealer’s wishing to partner with depository institutions to offer securities dealer’s services within the bank. When the rule was changed to create this safe harbor it was

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

at a time when dealers were seeking such an arrangement. The amendment proposed would align the list of persons who may be a designated principal to the list identified on federal form BD, so that the designated principals, required by statute, have sufficient supervisory capabilities to protect the firm and the investing public.

- 1301:6-3-15.1 – In 1999, when federal law mandated the states create their own regulations of IAs or permit a situation where IAs would not be regulated by the states, Ohio created RC 1707.151 and, in conjunction, OAC 1301:6-3-15.1. These statutory and administrative regulations were based on the federal law: the Investment Advisers Act of 1940. This rule is intended to require comparable, albeit reduced, record-keeping, financial responsibility and operational supervision and reporting, both for the protection of clients and to create a system that allows all IAs to operate equally. The reduction of the period to withdraw an inactive application is to provide parity by bringing the treatment of IAs in line with the current treatment of dealers.
- 1301:6-3-16 – RC 1707.16 requires the Division to promulgate rules to establish how a person may obtain a securities salesperson's license. This rule sets forth the procedure and the specific examinations that will qualify for the application so the applicant has specific directions. The amendment to limit a deficient pending application to 180 days is proposed because presently, without such a mechanism to withdraw a deficient application, the CRD has become cluttered with applications that were abandoned. The Division presently, and will continue to, contact applicants to encourage the application process to move forward or request that the application be withdrawn. There are instances where applicants choose to not continue with the application and, because there is no penalty, inaction is not a concern. Because the CRD contains hundreds of thousands of individuals, abandoned applications interfere with the system's integrity. The intent is to provide for the same withdrawal period for all licensees. Allowing dual licensing with affiliated dealers recognizes a business need involving firms under common control that will not lessen investor protection because the parent firm and subsidiaries are jointly responsible for supervision.
- 1301:6-3-16.1 – RC 1707.161 provides for the Division to promulgate rules relating to the licensure of an investment adviser representative. This rule sets out the process and the examination and qualification requirements, the details of which the statute does not describe. The rule provides the specificity required to give guidance to the applicant. The purpose of the amendment regarding withdrawals is the same as discussed in 1301:6-3-16, above.
- 1301:6-3-16.3 – This rule sets out the procedure for applying for a state retirement system investment officer's license because RC 1707.163 provides that the Division

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

issue rules specifying the process and the examination requirements. The rule provides the applicant with the direction needed to comply with the statute.

- 1301:6-3-16.5 – RC 1707.165 provides that the Division issue rules implementing the statutory scheme. This rule sets out the specifics needed to apply and maintain a bureau of workers' compensation chief investment officer license.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Division's licensing and field examination staff will have constant contact with licensees to discern the impact and success of the rules and any rules that need to be revisited. The Division's annual Securities Conference provides for meetings with advisory groups to begin or continue conversations regarding the Division's rules. The Division receives, and responds to, phone calls and e-mails on a regular basis from licensees and practitioners who wish to discuss a situational issue or the interpretation of a rule or statute. In all of these avenues, the Division has an opportunity to measure how well the rules are achieving their respective goals.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

See attached list. Stakeholders were emailed a package of the rules with a cover letter indicating which rules were No Change and which were amendments. The email was sent Oct. 3, 2014, and comments were requested by Oct. 31. Prior to that, conversations were held individually with representatives of stakeholders for input on various rule changes.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

One stakeholder responded, indicating they did not have any comments.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The rule follows statutory requirements relating to the Revised Code and the applicable federal law. Since the general structure of the rules has been in place for a number of years, the Division has taken advantage of opportunities to revise the rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

The rules herein are based on long-standing state and federal regulation. No other alternatives were required, either because it would cause conflict with the federal requirements or case law, or alter the expectations of the industry and the public.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules promote transparency and equality. Inasmuch as the rules mandate certain actions, the specificity relates to the outcomes. The rules, generally, are intended to provide guidance how an applicant may obtain a license and a licensee may operate. Where different alternatives are available, such as the examination or accreditation required, alternatives are offered.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Division is the only Ohio agency regulating in this area. All statutes and rules governing, or enforced by, the Division were reviewed to ensure there were no duplications or conflicts. As applicable, federal law is reviewed to avoid duplication or conflict.

- 13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

These rules have been in place for a significant number of years, providing industry and the investing public notice. The general application of the rules will not change. Those changes that are proposed will be widely disseminated and discussed before application. Because the rules are widely distributed, and the Division staff is accessible, transparency of implementation provides predictable application.

Adverse Impact to Business

- 14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**
All licensees of the Division will be impacted by their respective rules.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
The respective statutes require the licenses. There are no fines imposed by the rules, but the rules do require various types of recordkeeping to be completed and maintained, which will impose a burden on the licensee to which the rule applies, some more than others.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

- 1301:6-3-14 – There are no adverse impacts anticipated from this rule. This rule provides exceptions to the general requirement that all persons must be licensed to sell securities.
- 1301:6-3-14.1 – The statute requires that federally registered investment advisers must file with the Division. The rule does not impose additional adverse impact but clarifies procedure.
- 1301:6-3-14.2 – RC 1707.142 provides that certain small dealers may elect to follow alternative rules, developed by the Division, rather than comply with the federal rules for registration. The adverse impact imposed by this rule is one that the dealer chooses as less of an adverse impact than complying with the federal requirements. There are only 4 firms that fit this exemption and no new requests in many years. If an application was made, the Division has been told by an outside vendor that, for IAs, they would charge between \$3- and 5,000 to prepare and file all the licensing materials and provide a compliance manual and related supervisory materials. The Division speculates that it would be comparable. Daily recordkeeping and maintaining those records for the required periods will entail some additional time each day. However, those requirements would be no more extensive than for a federally registered dealer.
- 1301:6-3-15 – The licensing requirements are statutorily imposed, including the examination. The Form BR is required at the federal and SRO level and, according to the SEC, whose form it is, will require 2.75 hours to complete. Financial statements will require time to prepare or the services of an accountant, depending on the complexity of the business and would be the same that the dealer would have to be completed to comply with their federal requirements.
- 1301:6-3-15.1 – This rule requires specific business recordkeeping by IAs. The Division has been told by an outside vendor that they would charge between \$3- and 5,000 to prepare and file the license application, provide a compliance manual and assist in setting up the IA. Once established, the IA will be required to maintain books and records which will take an hour or two a day, depending on the complexity of the business and the number of clients. If the IA maintains custody of customer funds and securities, there will be

additional requirements, including communications to clients, which will add some time to the recordkeeping.

- 1301:6-3-16 – Obtaining and submitting a fingerprint card will cost a nominal amount of time and money. Updating a U-4 will require no more time than is imposed by the same federal requirement. . The examination is imposed by statute.
- 1301:6-3-16.1 - Obtaining and submitting a fingerprint card will cost a nominal amount of time and money. . The examination is imposed by statute.
- 1301:6-3-16.3 - Obtaining and submitting a fingerprint card will cost a nominal amount of time and money. The examination is imposed by statute.
- 1301:6-3-16.5 - Obtaining and submitting a fingerprint card will cost a nominal amount of time and money. The examination is imposed by statute.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Division's mission is to protect the investing public and to maintain an orderly marketplace. These rules are intended to accomplish both. When all licensees are treated equally, no licensee has an advantage over another. At the same time, when the investing public has confidence in the securities market, confidence created by known and predictable regulation, the securities marketplace benefits through the willingness of investors to participate in the market. Maintaining the books and records provides evidence of fair dealing and allows regular communications with clients who depend upon the advice of the professional.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

There are various exemptions and carve-outs that encompass small business.

1301:6-3-14 contains exceptions to the requirement to obtain a dealer's license.

1301:6-3-14.1 only applies to SEC registered IAs, which, by definition, are not small businesses.

1301:6-3-14.2 is an entire rule structured so that certain small dealers need not be federally registered.

1301:6-3-15.1 provides a specific method for a sole proprietor to become licensed as an IA. That rule also permits records to be maintained and preserved electronically or hard copy and contains language to avoid the licensee keeping duplicate records.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no administrative fines or civil penalties associated with these rules.

18. What resources are available to assist small businesses with compliance of the regulation?

The Division receives, and responds to, phone calls on a regular basis from issuers and practitioners that wish to discuss a situational issue or the interpretation of a rule or statute. The Division's annual Securities Conference provides for meetings with the industry and the Bar to begin or continue conversations regarding the Division's rules. The rules are widely disseminated and changes are typically noted in the Ohio Securities Bulletin.

ATTACHMENT
SECURITIES STAKEHOLDER'S LIST

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

1735 K Street Northwest
Washington, DC 20006
202-728-8000
Call Center (301) 590-6500
finra.org
Scott Borchert – State Government Liaison - (202) 728-8278
scott.borchert@finra.org

OSBA Corporation Law Committee
Securities Law Subcommittee
Professor Geoffrey Rapp (Geoff)
University of Toledo, College of Law
280 West Bancroft, MS 507
Toledo, OH 43606-3390
grapp@utnet.utoledo.edu
phone: (419) 530-2856

Thomas Geyer (Former Division Commissioner 1996-2000)
Bailey Cavalieri LLC
One Columbus
10 West Broad Street
Suite 2100
Columbus, OH 43215
phone: (614) 229-3206
(614) 221-0479
Thomas.Geyer@baileycavalieri.com

fax:

Industry

SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

Local contact:
Anthonio (Tony) C. Fiore
Kegler Brown Hill & Ritter
65 East State Street

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Columbus, Ohio 43215-4294

afiore@keglerbrown.com

Phone: (614) 462-5428

Fax: (614) 464-2634

NATIONAL ASSOCIATION OF PERSONAL FINANCIAL ADVISORS (NAPFA)

- SEC and State-registered IAs

Local Point of Contact:

Paul J. Dolce, CFP

NAPFA Registered Financial Advisor

Financial Solutions LLC

4946 Donegal Cliffs Drive

Dublin, Ohio 43017

Phone: 614-604-3551 Fax: 866-326-0396

PDolce@FinancialSols.com

Web: www.FinancialSols.com

FINANCIAL SERVICES INSTITUTE

(Independent financial services firms and advisors)

Dale Brown, President and CEO

Mr. Jigar Gandhi, State Regulatory Affairs Counsel

jigar.gandhi@financialservices.org

Financial Services Institute

607 14th St. NW

Suite 750

Washington, D.C. 20005

FINANCIAL PLANNING ASSOCIATION

- SEC and State-registered IAs

Local Point of Contact:

Mike Mulhern (mike.mulhern@LFG.com)

CENTRAL OHIO COMPLIANCE ASSOCIATION (COCA)

Christy Baker- President

Bev Langley- Vice President

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Parker Bridgeport- Secretary
Parker.Bridgeport@thompsonhine.com

at

Christy L. Baker
Director- Broker Dealer Services
Beacon Hill Fund Services, Inc.
4041 N High Street, Suite 402
Columbus, OH 43214
614.255.5547 (phone)
614.784.0211 (fax)
cbaker@b-hill.com

EDWARD JONES
Jesse Hill
Legal-Government & Regulatory Relations
12555 Manchester Road
St. Louis, MO 63131
Jesse.hill@edwardjones.com
314-515-9711

CONSUMER GROUPS

[AARP Ohio](#)
William Sundermeyer, State Director for Advocacy at AARP Ohio
AARP Ohio Office 17 S. High Street, Suite 800 Columbus, OH 43215
wSundermeyer@AARP.org
866-389-5653 Toll-free 614-224-9801 Fax ohaarp@aarp.org

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Securities/ Commerce

Regulation/Package Title: 2014 Five Year Review / 123437 and 124337

Rule Number(s): 1301:6-3-19; 1301:6-3-23; 1301:6-3-39.1; 1301:6-3-44; 1301:6-3-48

Date: October 28, 2014

Rule Type:

New

☒ Amended

☒ 5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments

These rules contain prohibited activity; limitations on the Division; procedure to qualify for a retroactive exemption, qualification or registration; and records retention.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- 1301:6-3-19 – This rule accomplishes two needs. It defines prohibited activity for dealers and salespersons. Also, to obtain and maintain a license pursuant to RC Chapter 1707 the person must be found to be of good business repute. This rule provides a definition of what constitutes good business repute. The proposed change is to correct a citation in section (D).
- 1301:6-3-23 – RC 1707.23 gives the Division the authority to conduct investigative hearings. This rule creates certain parameters for the Division and rights for the respondent, in conducting such a hearing. No change is proposed.
- 1301:6-3-39.1 – RC 1707.391 states there are occasions where neglect to timely file is considered excusable and this rule sets out the mechanism for an applicant to apply, pursuant to RC 1707.391, for retroactive filing and, upon compliance, to have the file considered as though timely filed. The proposed amendments are to omit a reference to a consent to service of process form that is no longer required and to add language to allow for a filer to be credited for any previously paid fee.
- 1301:6-3-44 – This rule was created in 1999, in conjunction with the other rules relating to Investment Advisers and representatives, to provide for general prohibitions, comparable to those that exist for dealers and salespersons, and dealing with advertisements; how customer funds are held in custody; under what circumstances a solicitor may be used; information to be disclosed to clients; and compliance practices. The proposed changes will add social media sites to advertising; revise the solicitor rule to include state securities regulatory violations as a disqualifying provision; and add a specific prohibition against any IA or IAR breaching their fiduciary duty to their client.
- 1301:6-3-48 – This rule supplements the Division's records retention statute, RC 1707.48. The rule provides for specific types of records that the Division receives or creates and sets a minimum time for the retention of those records. The proposed amendments allow the creation, transmittal and storage of electronic records and to dispose of the hard copies once the records are converted to digital form.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code Section 1707.20: The rules amplify: RC 1707.19, 1707.23, 1707.391, 1707.44 and 1707.48, respectively.

3. Does the regulation implement a federal requirement?

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

No.

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No.

- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable

- 5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)? **

- 1301:6-3-19 – The term “good business repute” is used in RC 1707.19 without being defined. In addition, rules prescribing fraudulent, evasive, deceptive and grossly unfair practices or devices are to be defined by the Division. The rule provides notice to the licensees, and the public, what conduct is prohibited and what constitutes good business repute, or lack thereof.
- 1301:6-3-23 – To investigate violations of the Ohio Securities Act, the Division is given the authority to conduct investigative hearings. The rule sets out how a hearing will be conducted and what limitations are placed on the Division and the outcome of the hearing to comply with due process and provide transparency in the hearing process.
- 1301:6-3-39.1 - RC 1707.391 was created to excuse a late filing. There are statutory exemptions and registrations that require a filing be made within a certain time-frame (e.g.: within 60 days of the last sale – RC 1707.03(Q)) and failure to timely file, even by one day, causes a violation of the Securities Act by selling unregistered securities. It was recognized that such strict liability was, under some circumstances, overly harsh. This rule defines “excusable neglect” and provides a mechanism for an issuer who has filed late to have the late filing excused and the securities sold considered not in violation of the Act.
- 1301:6-3-44 – RC 1707.19(C) gives the Division the responsibility to prescribe rules relating to investment advisers and investment adviser representatives. RC 1707.44(M) contains prohibited conduct and states the Division may create rules reasonably designed to prevent acts, practices, or courses of business that are fraudulent, deceptive, or manipulative. 1301:6-3-44 is intended to work in conjunction with the other IA and IAR rules to create a system comparable with the

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

federal regulation of IAs and IARs for the protection of the public and the marketplace. Federal law (Investment Advisers Act of 1940) and case law have long imposed a fiduciary obligation on investment advisers and their representatives. The purpose of the proposed specific Ohio prohibition is to explicitly state that such fiduciary duty is an Ohio requirement for the protection of the investing public.

- 1301:6-3-48 – This rule provides more detail relating to specific records created or received by the Division. It puts the public on notice how long those records will be maintained, promoting transparency. The proposed amendments are to allow the recordkeeping to keep pace with the industry and public's expectations of electronic access. Eventually, it is hoped that the use of electronic recordkeeping will reduce the economic and manpower burdens imposed by paper records.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

These rules cover a range of areas within the securities field, but success will be measured generally by how well the regulations balance the goal of investor protection and the goal of a fair and strong market. The Division encourages feedback, during Advisory group meetings at its Annual Conference and throughout the year.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

See attached list. Stakeholders were emailed a package of the rules with a cover letter indicating which rules were No Change and which were amendments. The email was sent Oct. 3, 2014, and comments were requested by Oct. 31. Prior to that, conversations were held individually with representatives of stakeholders for input on various rule changes.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

One response was received indicating the organization had no comments.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The prohibitions contained in the rules are generally similar to the prohibitions at the federal level and have existed and developed over a long period. The concept of "excusable neglect"

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

was developed in response to inequities perceived in the strict application of the filing time requirements. The extension limitations were developed by examining a wide variety of late filings and determining what the general average.

10. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

Strictly applying the filing deadlines was considered and latitude for inadvertent mistake was determined to be more appropriate. In imposing the prohibitions and duties, consistency with the prevalent federal and other state language was a guiding factor.

11. **Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

These rules generally limit actions, or require disclosure, that will act in the best interest of the market and for the protection of the public. Specific actions are only required in the preparation or dissemination of information.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

All statutes and rules governing, or enforced by, the Division were reviewed to ensure there were no duplications or conflicts. The Division is the only Ohio agency regulating in this area.

13. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

These are long-standing rules of the Division and the industry has access to, and input into, the rules. To promote a fair and equal marketplace, the requirements are imposed on all regulated persons. Questions dealing with the interpretation or application of the rules may be directed to any staff member at any time by those impacted, including the public.

Adverse Impact to Business

14. **Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. **Identify the scope of the impacted business community;**

The rules will impact all licensees and other regulated persons, including persons acting in violation of the Securities Act.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

There could be time spent planning to prevent a prohibited activity. IAs will spend time and costs associated with providing clients with the necessary communications. To apply for a retroactive exemption, qualification, or registration an issuer will have to prepare a sworn statement to comply with the requirements of RC 1707.391.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

- 1301:6-3-19 – There will be time and cost associated with establishing procedures to avoid prohibited activity. The cost will depend on the size of the business and the level of outsourcing.
- 1301:6-3-23 – the only costs will be to the Division
- 1301:6-3-39.1 – The time to prepare the form 391 and the sworn statement should be less than one hour.
- 1301:6-3-44 – In setting up an IA business, various bookkeeping and systems will have to be established. The size of the business, and the type and volume of clients will make the costs associated with the business vary as will the amount, if any, of compliance work that is outsourced. As a general guide, we have been given the estimate by an outside vendor of a one-time cost of \$3-to 5,000 to file the license applications and set up all the internal procedures and compliance manuals to begin the business. Once operational, the ongoing bookkeeping time will be an hour or more each day, as in any business, plus the mandatory client communications.
- 1301:6-3-48 – this is an internal rule to the Division and the only costs will be incurred by the Division.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The compliance requirements mirror the federal requirements which were in place prior to the states taking over regulation of the smaller IAs. These rules promote safety and equality in the market by imposing the same recordkeeping and disclosure expectations on all firms. The rules protect the investing public and promote efficiency and confidence in the market.

Regulatory Flexibility

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

1301:6-3-39.1 is primarily for smaller issuers. Smaller issuers, including those who act without counsel, are more likely to fail to timely file. The provision allowing solicitors in 1301:6-3-44(C) was created to permit smaller IAs to utilize unlicensed assistance under limited circumstances. This particularly assists solo practitioners.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There will not be fines or civil penalties for violations. When the Division examines a licensee and determines there are deficiencies, communications begin in an effort to bring the licensee into compliance. For violations such as recordkeeping, there are frequently multiple communications between the Division and the licensee.

18. What resources are available to assist small businesses with compliance of the regulation?

The rules are widely available. The staff is readily available for discussions and responds to phone and email inquiries. Reoccurring issues relating to rules are addressed in the quarterly bulletin by the Division and at the annual Securities Conference. In addition, the Division conducts training and pre-licensing examinations for newly licensed or soon-to-be-licensed IAs, to which current licensees may attend.

ATTACHMENT
SECURITIES STAKEHOLDER'S LIST

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

1735 K Street Northwest
Washington, DC 20006
202-728-8000
Call Center (301) 590-6500
finra.org
Scott Borchert – State Government Liaison - (202) 728-8278
scott.borchert@finra.org

OSBA Corporation Law Committee
Securities Law Subcommittee
Professor Geoffrey Rapp (Geoff)
University of Toledo, College of Law
280 West Bancroft, MS 507
Toledo, OH 43606-3390
grapp@utnet.utoledo.edu
phone: (419) 530-2856

Thomas Geyer (Former Division Commissioner 1996-2000)
Bailey Cavalieri LLC
One Columbus
10 West Broad Street
Suite 2100
Columbus, OH 43215
phone: (614) 229-3206
(614) 221-0479
Thomas.Geyer@baileycavalieri.com

fax:

Industry

SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

Local contact:
Anthonio (Tony) C. Fiore
Kegler Brown Hill & Ritter
65 East State Street.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Columbus, Ohio 43215-4294

afiore@keglerbrown.com

Phone: (614) 462-5428

Fax: (614) 464-2634

NATIONAL ASSOCIATION OF PERSONAL FINANCIAL ADVISORS (NAPFA)

- SEC and State-registered IAs

Local Point of Contact:

Paul J. Dolce, CFP

NAPFA Registered Financial Advisor

Financial Solutions LLC

4946 Donegal Cliffs Drive

Dublin, Ohio 43017

Phone: 614-604-3551 Fax: 866-326-0396

PDolce@FinancialSols.com

Web: www.FinancialSols.com

FINANCIAL SERVICES INSTITUTE

(Independent financial services firms and advisors)

Dale Brown, President and CEO

Mr. Jigar Gandhi, State Regulatory Affairs Counsel

jigar.gandhi@financialservices.org

Financial Services Institute

607 14th St. NW

Suite 750

Washington, D.C. 20005

FINANCIAL PLANNING ASSOCIATION

- SEC and State-registered IAs

Local Point of Contact:

Mike Mulhern (mike.mulhern@LFG.com)

CENTRAL OHIO COMPLIANCE ASSOCIATION (COCA)

Christy Baker- President

Bev Langley- Vice President

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Parker Bridgeport- Secretary
Parker.Bridgeport@thompsonhine.com

at

Christy L. Baker
Director- Broker Dealer Services
Beacon Hill Fund Services, Inc.
4041 N High Street, Suite 402
Columbus, OH 43214
614.255.5547 (phone)
614.784.0211 (fax)
cbaker@b-hill.com

EDWARD JONES
Jesse Hill
Legal-Government & Regulatory Relations
12555 Manchester Road
St. Louis, MO 63131
Jesse.hill@edwardjones.com
314-515-9711

CONSUMER GROUPS

AARP Ohio

William Sundermeyer, State Director for Advocacy at AARP Ohio
AARP Ohio Office 17 S. High Street, Suite 800 Columbus, OH 43215
wSundermeyer@AARP.org
866-389-5653 Toll-free 614-224-9801 Fax ohaarp@aarp.org

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov