



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Securities

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Regulation/Package Title (a general description of the rules' substantive content):

Five-year Rule Review 2021

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 of Submission for CSI Review: March 4, 2021

Public Comment Period End Date: March 22, 2021

Rule Type/Number of Rules:

- ☐ New/___ rules ☒ No Change/_3_ rules (FYR? ___)
☒ Amended/_6_ rules (FYR? ___) ☐ Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- ☐ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue.

Regulatory Intent

2. **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), 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 revise the list of federal requirements noted in the state rule to include the new Form CRS (a/k/a Regulation Best Interest, Form ADV Part 3), which became effective federally in June 2020.

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- 1301:6-3-14.2 – Ohio law allows, under limited circumstances, for a dealer to not be registered with the SEC. For those dealers (presently there are 2), 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 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, submission of financial statements. There are no proposed changes.
- 1301:6-3-15.1 – In 1999, states took over from the SEC the regulation of smaller investment adviser firms. This rule 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 several ways to modernize the filing process requirements, to modify existing exam requirements to align with majority state model rules, and to clarify existing record keeping requirements.
- 1301:6-3-16 – This rule sets out the licensing requirements and procedure for securities salespersons. The Division proposes amendments to reflect federal exam changes implemented by FINRA. FINRA revised exams to phase out obsolete exams and to require a new exam (SIE- Securities Industry Essentials) as a prerequisite to existing exams. The rule is also proposed to be amended to adopt a state-level exam, (with grandfathering to existing licensees) to align with the majority of other state rules (46 jurisdictions).
- 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 proposes amendments to reflect federal exam changes implemented by FINRA. FINRA revised exams to phase out obsolete exams and to require a new exam (SIE- Securities Industry Essentials) as a prerequisite to existing exams. The rule is also proposed to be amended to adopt a state-level exam, (with grandfathering to existing licensees) to align with a majority

state model rule. The revision will also modernize the fingerprint requirements for licensure.

- 1301:6-3-16.3 – This rule sets out the license process and procedure for state retirement system investment officers' license applications, terminations and renewals. It indicates what educational, experience or designation will meet the requirements of RC 1707.163. The Division proposes to amend this rule to update the language regarding the fingerprinting process to align the process with the modern practice of having fingerprints taken via electronic WebCheck facility (versus ink-rolled card) for Ohio residents.
- 1301:6-3-16.5 – RC 1707.16 requires a bureau of workers' compensation chief investment officer (BWCCIO) to be licensed 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. The Division proposes to amend this rule to update the language regarding the fingerprinting process to align the process with the modern practice of having fingerprints taken via electronic WebCheck facility (versus ink-rolled card) for Ohio residents.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

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.

4. Does the regulation implement a federal requirement? 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

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

Not applicable

6. 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, RC 1707.14 (D) 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

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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. OAC 1301:6-3-14.1 provides how a notice filing may be accomplished and renewed.
- 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. OAC 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. OAC 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 dealers 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 at a time when dealers were seeking such an arrangement.
- 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.
- 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 and clarity.

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- 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 directions and specificity required to give guidance to the applicant.
- 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 issue rules specifying the process and the examination requirements. The rule provides the applicant with the directions and specificity 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 directions and specifics needed to apply and maintain a bureau of workers' compensation chief investment officer license.

7. 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 Licensing and Examinations team provides updates and guidance to its licensees in its dedicated section of the Ohio Securities Bulletin (quarterly e-publication). 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 (over 30 per month) and e-mails (approximately 5 per week) on a regular basis from licensees and practitioners who wish to discuss an issue or the interpretation of a rule or statute. In all these avenues, the Division has an opportunity to measure how well the rules are achieving their respective goals.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

9. 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.

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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 February 8, 2021, and comments were requested by February 19, 2021.

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

No input was provided by stakeholders during the early outreach period.

11. 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 rules follow statutory requirements relating to the Revised Code and the applicable federal law. Since the general structure of the rules has been in place for decades, the Division has taken advantage of opportunities to revise the rules.

12. 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?

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.

13. 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.

14. 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.

15. 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.

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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

16. 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; and

All licensees of the Division will be impacted by their respective rules.

b. Identify the nature of all adverse impact (e.g., 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.

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 2 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 approximately \$5,000 to prepare and file all the licensing materials and provide a compliance manual and related supervisory materials. The Division speculates that it

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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 approximately \$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 (\$30-\$45). The competency requirement is imposed by statute. The revisions will involve the 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 SIE exam, \$60, together with the Series 7 exam, \$245, and the Series 66 exam, \$177). The competency requirement could alternatively be met by holding one of five recognized professional designations (costs vary depending on education requirement, testing, continuing education costs, renewal fees, etc.). All of the above fees are separately administered by the credentialing bodies/third-party vendors with no revenue to the agency. There should be no new costs for other revisions as they simply clarify existing requirements.
- 1301:6-3-16.3 - Obtaining and submitting a fingerprint card will cost a nominal amount of time and money (\$30-\$45). The competency requirement is imposed by statute. The rule involves a one-time fee associated with a competency examination (ranging from \$147 to \$187), or the cost to obtain one of five professional designations (vary depending on education requirement, testing, continuing education costs, renewal fees, etc.). These

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fees are separately administered by the third party vendors/credentialing bodies with no revenue to the agency.

- 1301:6-3-16.5 - Obtaining and submitting a fingerprint card will cost a nominal amount of time and money (\$30-\$45). The competency requirement is imposed by statute, and requires the Chartered Financial Analyst designation by the CFA Institute (credentialing body imposes its own education requirement, testing, continuing education costs, renewal fees, etc.).

17. 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

18. 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.

19. 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.

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20. 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 an 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.