



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Kelly Kauffman, Ohio Department of Commerce

FROM: Joseph Baker, Regulatory Policy Advocate

DATE: April 28, 2021

RE: **CSI Review – Five-year Rule Review 2021 (OAC 1301:6-1-01; 1301:6-3-01; 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; and 1303:6-3-13)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of five amended rules and seven no change rules proposed by the Division of Securities (Division) at the Ohio Department of Commerce. This rule package was submitted to the CSI Office on March 4, 2021, and the public comment period was held open through March 22, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 4, 2021.

The rules in this package address the issuance of securities, specifying reporting requirements for security issuers and entities engaged in control bids, outlining registration responsibilities for security offerings, stipulating exemptions, permitting electronic submission for certain types of filings, and establishing related definitions.

OAC 1301-6-1-01 states that the Division of Securities will not make any statements or opinions about the value or merit of securities. OAC 1301:6-3-01 outlines definitions relevant to the chapter. OAC 1301:6-3-02 addresses the exemption of certain securities and obligations, per ORC

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1707.02(B), 1707.02(G) and 1707.02(E). OAC 1301:6-3-03 outlines exempt transactions described in ORC 1707.03 and has been amended to delete a reference to ORC 1707.03(W) in accordance with the Security and Exchange Commission's (SEC) elimination of the federal rule corollary, Rule 505. OAC 1301:6-3-04 requires the Division to terminate or control bids if certain conditions are met, permits the offeror to reinstitute the control bid by filing new information with the Division, and outlines situations when certain financial statements do not need to be filed. The rule has been amended to update a statutory reference. OAC 1301:6-3-06 outlines the procedures and forms to register securities offerings under ORC 1707.06, outlines information that must be contained in a circular or prospectus, and mandates review of the circular or prospectus by the Division. The section further requires the Division to examine every registration and acknowledge whether it conforms to requirements. OAC 1301:6-3-08 permits issuers to sell securities in accordance with a registration by description filing for up to 16 months but permits the Division to extend the period for up to 21 months upon good cause.

OAC 1301:6-3-09 permits registration by qualification to be effective for 13 months from the date of authorization by the Division but permits the Division to authorize an extension for up to 24 months upon good cause. The rule additionally outlines necessary forms that must be completed and information that must be provided by the issuer, and states that the Division may require the escrow of any portion of the securities of an issuer for the protection of investors. OAC 1301:6-3-09.1 describes the requirements for registration by coordination, including information that the issuer must provide to the Division, and authorizes the Division to issue a stop order if it finds that the business of the issuer is fraudulent, the offer of securities is grossly unfair, or that the issuance and sale would tend to defraud or deceive purchasers. The rule is amended to remove a reference to the Division providing notice to the issuer by telegram, and in its place permits the Division to provide notice by electronic mail.

OAC 1301:6-3-09.3 permits issuers to file electronically for certain types of documents and outlines relevant procedures. OAC 1301:6-3-12 states that certain types of information in the possession of the Division may be made available for inspection by the Financial Industry Regulatory Authority. The rule is amended to remove a reference in accordance with the changes to OAC 1301:6-3-03. Lastly, OAC 1301:6-3-13 permits the Division to withdraw an application to register securities if it has been on file for more than one year and to refund the filing or qualification fee accordingly.

During early stakeholder outreach, the Division sent the proposed rules to the Financial Industry Regulatory Authority, the Ohio State Bar Association Corporation Law Committee, the Public Industry Arbitration Bar Association, the Securities Industry and Financial Markets Association, the National Association of Personal Financial Advisors, the Financial Services Institute, the

Financial Planning Association, the Central Ohio Compliance Association, the Certified Financial Planning Board of Standards, the Consumer Federation of America, and AARP Ohio. No early stakeholder comments were provided. One comment was received during the CSI public comment period from the Institute for Portfolio Alternatives relating to the Division's application of regulatory authority with respect to non-listed Real Estate Investment Trusts and Business Development Companies. The stakeholder did not identify any adverse impacts to business imposed by this specific rule package. The Division responded to the comment but did not make any changes to the proposed rules.

According to the BIA, the business community impacted by the rules includes entities that issue securities and their associated legal representatives. The adverse impact to business includes administrative effort necessary to comply with financial reporting requirements and maintain necessary records, which varies based on the registration process followed by the issuer, and the complexity of the issuer's balance sheet and the size of an offering. Additionally, issuers that file advertising with the Division are required to prepare a cover letter to explain how it will be used. The Division reports that elements of the proposed rules relating to electronic filing and allowing additional time for effectiveness should reduce the time issuers spend filing or renewing registrations. The Division states in the BIA that the adverse impact to business created by the rules is justified to ensure investor protection, disclose necessary financial information, and promote fair and efficient market operations.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Division of Securities at the Ohio Department of Commerce should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.