



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 1301:6-3-14; 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; and 1301:6-3-16.5)**

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 six amended rules and three 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 regulations for securities dealers, including background checks as well as licensing, registration, recordkeeping, and reporting requirements. The rules also outline requirements for security salespersons, investment adviser representatives, state retirement system investment officers, and Bureau of Workers' Compensation chief investment officer licenses.

OAC 1301:6-3-09 outlines permissible activities that individuals may engage in without being licensed as a securities dealer. OAC 1301:6-3-14.1 requires investment advisers who are federally registered to notify the Division and has been amended in accordance with a new federal form

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requirement. OAC specifies requirements for securities dealers who are not registered with the Securities and Exchange Commission (SEC), and specifies requirements for recordkeeping, auditing and financial management, and practices for communicating with the public. The rule also requires dealers, who choose not to register with the SEC, to register with the Division and to make records or information available to the Division upon request.

OAC 1301:6-3-15 species the application process for a securities dealer license and the associated legal responsibilities for dealers licensed under the section. The section also requires dealers not registered with the Financial Industry Regulatory Authority (FINRA) to submit financial statements to the Division. OAC 1301:6-3-15.1 specifies the licensing requirements for investment advisors, including passage of an examination, the completion of background check, and required forms. The rule additionally specifies requirements that investment advisers must follow with respect to business practices and records collection and maintenance. The rule has been amended to specify that the Ohio Bureau of Criminal Investigation's (BCI) WebCheck system shall be used for background checks, update examination requirements with new federal exam changes by FINRA, reflect updates in communications technology, require maintenance of written communications regarding complaints or legal actions, mandate the establishment of cybersecurity and physical security policies and procedures, necessitate the creation of a business continuity and succession plan in the case of business interruption or personnel unavailability, and direct the provision of an annual privacy policy to each client of the investment adviser.

OAC 1301:6-3-16 sets forth requirements for a salesperson's license, and has been amended to align examination requirements with updated federal exam requirements established by FINRA and to grandfather in existing licensees who have been licensed within the two years immediately preceding the filing of an application with the Division. OAC 1301:6-3-16.1, 1301:6-3-16.3, and 1301:6-3-16.5 outline the application process for investment adviser representative licenses, state retirement system investment officer licenses, and Bureau of Workers' Compensation chief investment officer licenses. Each rule has been amended to utilize the BCI WebCheck background check system.

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. No comments were received during the CSI public comment period.

According to the BIA, the business community impacted by the rules includes individuals and businesses licensed as investment advisers, securities dealers, securities salespersons, investment adviser representatives, state retirement system investment officers, and Bureau of Workers' Compensation chief investment officers. The adverse impact includes licensing requirements such as passing the requisite exams and paying the relevant fees as well as submitting a fingerprint card in accordance with the background check requirements for each license and completing continuing education requirements for each license. The fees vary by exam, but range from \$60 to \$245, while the cost of the fingerprint requirement ranges from \$30 to \$45, according to the Division. The costs of continuing education vary by third party vendor. Such adverse impact also encompasses the administrative effort necessary to report various information to the Division, maintain financial records and documents, and prepare financial statements. There are no fines associated with these rules. The Division states in the BIA that these rules are necessary to protect the investing public, maintain an orderly marketplace, and ensure that all licensees are treated equally. In addition, the Division reports that maintaining necessary books, records and reports provides evidence of fair dealing and enhances confidence in the investment marketplace.

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.