



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Loretta Medved, Ohio Department of Insurance

FROM: Michael Bender, Business Advocate

DATE: July 15, 2024

RE: **CSI Review – Proxy Rules (OAC 3901-2-01, 3901-2-02, 3901-2-03, 3901-2-04, 3901-2-05, 3901-2-06, 3901-2-07, 3901-2-08, 3901-2-09, 3901-2-10, 3901-2-11, 3901-2-12, 3901-2-13, 3901-2-14, and 3901-2-15)**

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 fifteen amended rules proposed by the Ohio Department of Insurance (ODI) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on June 14, 2024, and the public comment period was held open through June 28, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on June 14, 2024.

Ohio Administrative Code (OAC) 3901-2-01 establishes the applicability of OAC Chapter 3901-2 to domestic stock insurance companies having at least fifty shareholders, with an exemption for those that file with the U.S. Securities and Exchange Commission. The rule is amended to update language. OAC 3901-2-02 contains definitions pertaining to proxies, consents, and authorizations of domestic stock insurance. The rule is amended to add a severability clause and add provisions related to the rule's purpose and authority. OAC 3901-2-03 identifies the instances in which specific rules apply to solicitations. The rule is amended to update language, add a severability clause, and add provisions

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related to the rule's purpose and authority. OAC 3901-2-04 identifies the information that issuers should furnish to security holders in solicitations. The rule is amended to update language, grammar, and citations, add a severability clause, and add provisions related to the rule's purpose and authority. OAC 3901-2-05 sets forth the information that should be included in a form of proxy, proxy statement, or solicitation. The rule is amended to update language, grammar, and citations, add a severability clause, and add provisions related to the rule's purpose and authority. OAC 3901-2-06 sets forth the manner in which information should be presented in a form of proxy, proxy statement, or solicitation. The rule is amended to update language and a citation, add a severability clause, and add provisions related to the rule's purpose and authority. OAC 3901-2-07 identifies the form of proxy, proxy statement, or solicitation material that should be filed with the Superintendent of Insurance (Superintendent). The rule is amended to update language and citations, reduce the required number of copies required to be filed from two to one, add a severability clause, and add provisions related to the rule's purpose and authority.

OAC 3901-2-08 sets forth the mailing communications requirements for security holders. The rule is amended to update language and grammar. OAC 3901-2-09 identifies the manner in which a proponent may present to security holders a proposal in a form of proxy or proxy statement. The rule is amended to update language, grammar, and a citation, add a severability clause, and add provisions related to the rule's purpose and authority. OAC 3901-2-10 prohibits false or misleading statements from a proxy statement, form of proxy, notice of meeting, information statement, or other communications. The rule is amended to update language, add a severability clause, and add provisions related to the rule's purpose and authority. OAC 3901-2-11 prohibits the solicitation of an undated or posted proxy statement. The rule is amended to update language, add a severability clause, and add provisions related to the rule's purpose and authority. OAC 3901-2-12 sets forth the manner and form of solicitations for election contests. The rule is amended to update language, grammar, and citations, reduce the required number of copies of soliciting materials and annual report portions required to be filed with the Superintendent from two to one, add a severability clause, and add provisions related to the rule's purpose and authority. OAC 3901-2-13 describes the information that must be included in a proxy statement. The rule is amended to update language, grammar, and citations as well as reduce the required number of copies of certain documents required to be filed with the Superintendent from three to one. Three appendices to the rule are also provided. The appendices contain the tabular formats regarding ownership of securities by directors and nominees for election as directors, remuneration of directors and officers, and options, warrants or rights. OAC 3901-2-14 sets forth the information that should be included in a proxy solicitation filed by or on behalf of a participant in an election contest. The rule is amended to update language, grammar, and a citation, add a severability clause, and add provisions related to the rule's purpose and authority. OAC 3901-2-15 describes the information that must be included in an information statement when no proxy is sought. The rule is amended to update language.

During early stakeholder outreach, ODI sent an email to various stakeholders in May 2024 requesting comments on the rules over a four-week period. The contacted stakeholders included the Association of Ohio Life Insurance Companies, the Ohio Insurance Institute, the American Council of Life Insurance, the National Association of Insurance and Financial Advisors, the Ohio Association of Health Plans, the National Association of Mutual Insurance Companies, and others. No comments were submitted during this time or during the CSI public comment period, although ODI revised the rules to make grammatical and technical corrections.

The business community impacted by the rules includes domestic stock insurance companies with at least fifty shareholders. The adverse impacts created by the rules include the requirements to submit information on proxy requests and meetings that seek shareholder votes. According to ODI, the total cost is conditional on how often voting is required as well as the time and resources needed to compile and distribute information. ODI states that the adverse impacts to business are justified to implement statutory requirements and ensure that shareholders receive adequate information to company actions that require shareholder votes.

Recommendations

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

Conclusion

The CSI Office concludes that ODI should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.