

1301:6-3-39.1 Retroactive exemption, qualification or registration.

(A) An application may be made pursuant to section [1707.391](#) of the Revised Code to exempt, qualify or register securities when the only deficiency is a failure to timely file or a failure to properly file with the division the appropriate form due to excusable neglect and the issuer is not otherwise in violation of section [1707.13](#) of the Revised Code.

(1) For the purposes of this rule, "failure to timely file" means the failure to file an application to exempt, qualify or register securities within the time required by the applicable section of the Ohio Securities Act or the rules adopted thereunder.

(2) For the purposes of this rule, "failure to properly file" means the filing of an application to exempt, qualify or register securities which was not proper because the application was incomplete, because there was a clerical error made in completing the application, because an error was made regarding the facts underlying the application, or because the application was made on the wrong form.

(3) For the purposes of this rule, "date of sale," shall be the earlier of the date that a subscription agreement or its equivalent is signed by the purchaser or the date that the purchaser transfers or loses control of the purchase funds, or the date of disbursement of funds subject to an escrow agreement specifically approved by the division or established in accordance with the administrative rules of the division.

(B) For the purposes of section [1707.391](#) of the Revised Code, "excusable neglect" shall include, but not be limited to:

(1) The failure to file a form 3-Q with the division within six months of the earliest date of sale of securities for which exemption in reliance on division (Q) of section [1707.03](#) of the Revised Code is sought;

~~(2) The failure to file a form 3-W with the division within six months of the earliest date of sale of securities for which exemption in reliance on division (W) of section [1707.03](#) of the Revised Code is sought;~~

~~(3)~~ (23) The failure to file a form 3-Y with the division within six months of the earliest date of sale of securities for which exemption in reliance on division (Y) of section [1707.03](#) of the Revised Code is sought;

~~(34)~~ (34) The failure to file a form 6 with the division within one month of the earliest date of sale of securities for which registration by description in reliance on section [1707.08](#) of the Revised Code is sought;

(F) An issuer that has not timely or properly made a notice filing with the division under division (X) of section [1707.03](#) of the Revised Code shall ~~promptly~~ file with the division within six months of the earliest date of sale of securities for which exemption based upon division (X) of section [1707.03](#):

(1) A form D; and

(2) The fee required under division (X) of section [1707.03](#) of the Revised Code, unless previously submitted and the fee under section [1707.391](#) of the Revised Code.

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(G) An notice filer which has not timely submitted a notice filing under section 1707.092(C) of the Revised Code shall submit to the division not later than six months of the earliest date of sale for which the exemption is relied upon:

(1) A notice filing consisting of any document filed with the securities and exchange commission pursuant to the Securities Act of 1933, 15 U.S.C. §77a et seq., together with annual or periodic reports of the value of the securities sold or offered to be sold to persons located in this state;

(2) A consent to service of process, if required under section 1707.11 of the Revised Code, on either form 11 or form U-2, unless previously submitted; and

(3) The fees required under either division (A)(2)(a) or (A)(2)(b) of section 1707.092 of the Revised Code, unless previously submitted, and the required fees under section 1707.391 of the Revised Code.

~~(H)~~ An investment company which has not timely or properly submitted a notice filing under section [1707.092](#) of the Revised Code or that has sold securities in excess of the amount designated on an effective notice filing shall promptly submit to the division:

(1) A notice filing consisting of either:

(a) A copy of the issuer's federal registration statement as filed with the securities and exchange commission; or

(b) A form U-1 or form NF, and a copy of the issuer's prospectus and statement of additional information.

(2) A consent to service of process, if required under section [1707.11](#) of the Revised Code, on either form 11 or form U-2, unless previously submitted; and

(3) The fees required under either division (A)(2)(a) or (A)(2)(b) of section [1707.092](#) of the Revised Code, unless previously submitted, and the required fees under section [1707.391](#) of the Revised Code.