

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Securities

Regulation/Package Title: 2014 Five Year Review / 123437

Rule Number(s): 1301:6-1-01; 1301:6-1-03; 1301:6-3-01

Date: October 14, 2014

Rule Type:

<input type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input checked="" type="checkbox"/> Amended	<input checked="" type="checkbox"/> Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments

These are ministerial and definitional rules of the Division of Securities.

- 1301:6-1-01 – This rule states that the Division will not give an opinion regarding the value of a security or endorse any security. No change is proposed.

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- 1301:6-1-03 – This rule provides how the Division will give notice of adopting amending or rescinding rules. Proposed to be rescinded as redundant with statutes.
- 1301:6-3-01 - Definitions: This rule defines terms used in the Securities Act that are not otherwise defined. The definitions are consistent with the use of those terms throughout the securities industry. The only change proposed is to correct a citation to federal law.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code Section 1707.20.

3. Does the regulation implement a federal requirement?

No.

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.

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

Not applicable

**5. 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)? **

- 1301:6-1-01 – Persons selling securities should be treated uniformly and the Division will not give recommendations, good or bad, regarding any security or offering. This also precludes someone using the Division’s name to encourage sales, thereby fraudulently enticing investors.
- 1301:6-1-03 - The purpose of the rule is to assure the public that notice and hearing will be provided upon new regulations. Because the rule mirrors statutory requirements, the rule is unnecessary and its elimination will not adversely impact the public or industry.
- 1301:6-3-01 - Certain terms used in the Revised Code require clarification, for the sake of uniformity and notice, even if regularly used in the securities industry.

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6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The Division encourages feedback, during Advisory group meetings at its Annual Conference and throughout the year. The definitional rule will be revisited any time a new term arises that requires consistent definition. Communications will be reviewed to ensure Division personnel refrain from recommending a security. Representations by others that the Division has recommended a security will be pursued by our enforcement section.

Development of the Regulation

7. 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.

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 Oct. 3, 2014, and comments were requested by Oct. 31. Prior to that, conversations were held individually with representatives of stakeholders for input on various rule changes.

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

One stakeholder responded and indicated they did not have any comments.

9. 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 rule follows statutory provisions (R.C. Chapter 1707) and concepts and terms common to the industry. The rules have been in existence since 1975 and have undergone revisions and additions as appropriate. The definitional rule defines terms used in the Securities Act and other rules of OAC Chapter s1301:6-1 and 1301:6-3.

10. 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?

No other regulations were considered because these follow statutory requirements.

11. 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 performance required by the prohibition rule is intended to foster equal treatment by the Division and non-misleading statements by the industry. Both rules promote transparency in the Division's activities and the actions and expectations of those regulated.

12. 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 the Division were reviewed to ensure there were no duplications or conflicts.

13. 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.

The Division will be bound by the rules just as those regulated are bound. These are long-standing rules and, as the area of law has developed, the definitional rule has been changed a number of times to accommodate new terms or terms that required to be defined.

Suggestions may originate internally or externally – any suggestions for changes may be brought to the Division's attention. The purpose of the rules is to provide consistency and predictability.

Adverse Impact to Business

14. 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;

There is not anticipated to be costs associated with these rules.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

There will be no adverse impact imposed by the rules. One is a prohibition that is imposed on the Division and, by extension, the public. The other is a definitional rule that brings consistency to the interpretation of the statutes that utilize the terms defined. The rule to be rescinded, dealing with notices given in the rulemaking process, imposes no obligation on anyone other than the Division.

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.

These rules do not impose any adverse impact.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The rules are required of the Division to provide transparency and consistency in the application of the statutory scheme. There will be no adverse impact on the regulatory community or the public.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rules provide for uniformity and transparency. Small businesses will benefit from the Division not taking a position regarding the value or merit of a security. Small businesses will benefit from definitions being readily available without the need to hire legal counsel to interpret statutory language.

17. 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 will not be violations of these rules by industry. They are internal ministerial rules.

18. What resources are available to assist small businesses with compliance of the regulation?

The Division has always fielded calls and emails requesting assistance or direction. However, these rules do not impose duties on the industry and, thus, do not impose duties on small business.

ATTACHMENT

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