

NEW RULES GOVERNING INVESTMENT ADVISERS – EFFECTIVE 9/30/21

On September 30, 2021, new laws and rules governing Ohio licensees take effect. Please review the following highlighting some of the key changes impacting investment advisers. Links to the laws and rules are provided below. The Division strongly encourages you to familiarize yourself with all applicable statute and rule changes promptly.

Revised Code full text: <https://codes.ohio.gov/ohio-revised-code/chapter-1707>

Administrative Code full text: *proposed rules* <https://www.com.ohio.gov/ProposedRules.aspx>
current rules – to be updated <https://codes.ohio.gov/ohio-administrative-code/chapter-1301:6-3>

- I. **Victim Assistance (Revised Code 1707.47 and 1707.471)** – Provides restitution assistance awards for certain victims of securities violations.

- II. **Elder Abuse Reporting (Revised Code 1707.49)** – Requires additional elder abuse reporting by licensees, as a supplement to the current APS requirements; allows for transaction holds in some circumstances.

- III. **Adviser Books and Records Requirements (Administrative Code 1301:6-3-15.1)**
 - (E)(1)(g) and (k) – incorporates electronic, digital, and internet communications in records to be retained; incorporates definition of advertising from OAC 1301:6-3-44; requires any advertisement sent to two or more persons must be retained
 - (E)(1)(q) – clarifies that client lists to be retained includes current and former clients, and shall contain all contact information the adviser has for purposes of communicating with the client, including addresses, telephone numbers, and electronic mail addresses
 - (E)(1)(s) – requires the adviser retain records relating to complaints, arbitrations, civil litigation, and unsatisfied judgments or liens, involving the investment adviser or any investment adviser representative.
 - (E)(1)(t) – requires the adviser retain written information about each investment advisory client and each security that forms the basis for making any recommendation or providing any investment advice to such client.
 - (E)(1)(u) – requires written physical security and cybersecurity policies and procedures as outlined in the rule
 - (E)(1)(v) – requires advisers to establish, implement, and maintain written procedures relating to a Business Continuity and Succession Plan.
 - (H) – requires the adviser to deliver upon the investment adviser’s engagement by a client, and on an annual basis thereafter, a privacy policy to each client.
 - (I)(d) – prohibits use of mandatory arbitration clauses in advisory agreements with clients.

- IV. **Adviser Prohibited Conduct (Administrative Code 1301:6-3-44)**
 - (B)(3)(a) – clarifies definition of “custody” to include a standing letter of instruction, or other similar asset transfer authorization arrangement.
 - (E)(1)(f) – clarifies fiduciary duty owed, by identifying nine types of prohibited conduct relating to: reasonable basis recommendations; conflicts of interest; borrowing money

or securities from a client; loaning money to a client; charging a client an unreasonable advisory fee; prohibited use of client passwords; failing to employ reasonable care to avoid misleading clients; and any other act or practice declared to be a breach of fiduciary duty.

V. IAR Applicants (Administrative Code 301:6-3-16.1(A)(1)(c) and (B)); and Sole Proprietor IA Applicants (Administrative Code 1301:6-3-15.1(B)(1)(c) and (C))

- Requires submission of fingerprint results, unless the applicant has current fingerprints on file due to current FINRA licensure.
- Requires a passing score within the past two years on the S65 exam or the S66 + S7 + SIE, unless the applicant is eligible for grandfathering.
- Grandfathering: permitted where the applicant has been licensed by the Division or another US jurisdiction in this capacity within the past two years immediately preceding the application.
- The professional designation minimum competency options remain unchanged.

You may contact Anne M. Followell, Division Licensing Chief, at anne.followell@com.state.oh.us with any questions regarding this Notice.