



Department  
of Commerce

Division of Securities

Sheryl Maxfield, Director

Mike DeWine, Governor  
Jon Husted, Lt. Governor

April 25, 2022

Re: Ohio Division of Securities Rule 1301:6-3-09 Registration by qualification

Dear Interested Parties:

You are receiving this message as a stakeholder of the Division of Securities. The Division proposes to file attached, revised rule 1301:6-3-09 Registration by qualification. The Division seeks to amend the rule to formally adopt existing industry standards by incorporating NASAA statements of policy and the Division's Merit Standards for Securities Offerings into Division rules.

Pursuant to the requirements of Executive Order 2011-01K and Senate Bill 2 of the 129th General Assembly, state agencies like the Division must draft rules in collaboration with stakeholders, assess and justify any adverse impact on the business community, and provide opportunity for the affected public to provide input on the rules. In an effort to confirm that the rules not only achieve their goals, but to ensure that they do so fairly and with the least effect to the persons impacted, we ask that you review the proposed rules and offer any comments before we file with Ohio's Common Sense Initiative.

We appreciate your assistance in this endeavor and look forward to any comments that you may wish to bring to our attention. In order to adopt the rules, please communicate your comments to us, in writing, no later than Monday, May 9, 2022. Please address your comments to:

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or

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Very truly yours,

Andrea L. Seidt  
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## Rule 1301:6-3-09 | Registration by qualification.

[Ohio Administrative Code](#)

[/1301:6](#)

[/Chapter 1301:6-3 | Registration of Securities; Licensing](#)

**Effective:**

January 15, 2009

**Promulgated Under:**

119.03

**PDF:**

[Download Authenticated PDF](#)

### (A) Application.

(1) An application to register securities by qualification in accordance with section [1707.09](#) of the Revised Code shall be made on a form 9 of the division or on form U-1 of the North American securities administrators association, and shall, as applicable, be accompanied by a division form 11 or a form U-2, and a form U-2(A) of the North American securities administrators association.

(2) Whenever any statement or report, however characterized, prepared by an independent accountant is to be used in connection with an offering circular, prospectus, or other advertising, the issuer shall furnish the division a letter from the accountant consenting to the use of the statement or report by the issuer.

### (3) Absent good cause shown, the following guidelines apply:

(a) Standards and statements of policy as adopted by the membership of the North American Securities Administrators Association and available on its webpage, including but not limited to guidelines for: asset backed offerings, church bonds, church extension funds, commodity pool programs, equipment leasing programs, mortgage programs, oil and gas programs, omnibus programs, real estate investment trusts, real estate programs;

(b) Division “Merit Standards for Securities Offerings” as listed on the Division’s webpage, including but not limited to standards on: underwriter compensation; cheap stock; insolvent issuer; blind pool and blank check offerings; insider loan; future transactions with affiliates; dilution; misleading issuer names; options and warrants; selling security holders; use of proceeds; subordinate voting rights; blank-check preferred; debt service; debt-to-equity ratio; organizational and offering expense; and varying terms.

**Deleted:** (3) The division may require that an appropriate cross reference sheet of the North American securities administrators association be submitted with any application.

### (B) Period of effectiveness.

(1) Unless otherwise specified by division order, a registration by qualification shall have a period of effectiveness of thirteen months from the effective date of the division order. Upon good cause shown, the division may establish a period of effectiveness for a registration by qualification of not more than twenty-four months.

(2) During the period of effectiveness of a registration by qualification, the issuer shall advise the division of:

- (a) Any adverse material change in the financial status of the issuer;
- (b) Any material change in the compensation agreement between the issuer and a dealer licensed to sell its securities;
- (c) Any material change in the proposed use of the proceeds of an issue;
- (d) Any change in the identity of the principals, general partners or officers of the issuer;
- (e) Any change in the stated investment policies, objectives, or restrictions of the registration; and
- (f) The occurrence of any event or series of events which have caused any statement contained in a prospectus or circular to be false or misleading in any material respect.

(C) Escrow of securities or proceeds from sale of securities.

(1) The division may, for the protection of investors, require the escrow of all or a portion of the securities of an issuer or of the proceeds of sale of securities registered by qualification under terms and conditions of an escrow agreement established by the division in the order qualifying the securities. The division shall have continuing jurisdiction over the escrow agreement so long as the escrow agreement is in effect.

(2) No person shall sell securities in violation of the provisions of an escrow agreement entered into in accordance with paragraph (C)(1) of this rule.

(D) An issuer relying on rule 504 of regulation D of the securities and exchange commission as amended or section 3(a)(11) of the Securities Act of 1933, 15 U.S.C.A. 77a, as amended shall deliver an offering circular or other disclosure document or documents as required by rule [1301:6-3-06](#) of the Administrative Code prior to the earlier of the date that a subscription agreement or its equivalent is signed by a purchaser or the purchaser transfers or loses control of the purchase funds. Notwithstanding the foregoing, an issuer relying on rule 504 of regulation D of the securities and exchange commission as amended may use a form U-7 of the North American securities administrators association in lieu of the offering circular or other disclosure document or documents required by rule [1301:6-3-06](#) of the Administrative Code.