February 28, 2023

VIA ELECTRONIC SUBMISSION: Roger.Patrick@com.ohio.gov and
csipubliccomments@governor.ohio.gov

Ohio Common Sense Initiative
77 S. High St., 30th Floor
Columbus, OH 43215-6117
csipubliccomments@governor.ohio.gov

RE: Ohio Division of Securities Rule 1301:6-3-09 Registration by Qualification

Dear Sir or Madam,

The undersigned associations ("Associations") appreciate the opportunity to comment on the proposal of the Ohio Division of Securities Division (the "Division") to amend Rule 1301:6-3-09 (the "Proposal"). Our organizations represent a broad spectrum of businesses and investment professionals across the financial services sector.

We appreciate the Division's willingness to open a second comment period on the Proposal.

1. The Division Should Submit a Full Business Impact Analysis.

As we stated in our first joint association comment letter on February 3, which supplements this letter and is incorporated by reference herein as Exhibit A, a pivotal element of the rulemaking process is a thoughtful business impact analysis of a proposed rule. Section 107.53 of the Ohio Revised Code requires the Division to conduct a Business Impact Analysis of any new legislative rule, including this Proposal. When rules are not appropriately tailored to consider their business impact, regulatory obstacles may hamper business and potentially harm Ohio as an innovative and entrepreneurial state.

An appropriate business impact analysis that meets the statutory and policy obligations of the Ohio Common Sense Initiative ("CSI") necessarily requires meaningful input from the public, including subject-matter experts, businesses and investors. Without this public input, the Division runs the risk of drafting, implementing, and enforcing rules that may have a direct impact on Ohio's business growth, investment opportunities and job creation.

Failure to provide a meaningful economic impact of this Proposal, including of each individual policy and standard addressed in the Proposal, for a BIA may result in a direct, negative impact on the Division's obligations to facilitate capital formation and protect investors. The Division should be required to resubmit a Business Impact Analysis that takes this impact on businesses in Ohio into account and fully addresses the questions, as required by the CSI and the Joint Committee on Agency Rule Review ("JCARR") order.

The Associations respectfully request that the CSI require the Division to submit a detailed and thorough Business Impact Analysis.

2. *The Associations Recommend that a Specific Business Impact Analysis be Performed on the Proposed Concentration Limit, and that any Emerging Concentration Limit Include an Accredited Investor Exemption.*

As we stated in our February 3rd letter, the federal government does not impose a concentration limit on investors and Ohio is in the minority of states that impose a concentration limit. It is critical that the Division conduct a specific business impact analysis on the benefit versus cost to Ohio of a concentration limit that restricts investment opportunities. Market volatility and economic factors are important considerations for investors seeking portfolio diversification. These factors, along with the impact on economic and business activity in Ohio, should be considered in the context of a limitation on investment.

If, after conducting a thorough business impact analysis, the Division moves forward with adoption of a concentration limit, we urge the Division to adopt an accredited investor exemption, as defined in Rule 501 of Regulation D under the Securities Act of 1933. By doing so, the Proposal would ensure that wealthy and sophisticated investors maintain investment choice when they are advised by their federally regulated broker-dealer or investment adviser. These investors may need to follow portfolio diversification strategies like those employed by large institutions.

The Associations respectfully recommend that the Division conduct a detailed Business Impact Analysis of the concentration limit before any adoption, and if the Division moves forward, to amend any concentration limit to include an exemption for accredited investors.

3. The Division Should Submit All Registration and Advertising Comments.

The JCARR requested that the Division submit all comments to registration and advertising materials to the CSI and JCARR. This process is important to ensure that stakeholders have an opportunity to comment on mandates that the Division enforces or intends to enforce.

Submitting all of the Division's registration and advertising comments to the CSI and JCARR provides the public with much-needed certainty. When the Division issues new and unanticipated comments outside of CSI and JCARR, the result is significant legal expenditures imposed on compliance officers and other industry participants. Members of the public should know and have certainty on the rules that they must follow and rely upon in codified text.

The Associations respectfully request that the CSI notify the Division that it must submit all comments on registration filings and related advertising materials that it is enforcing or intends to enforce to the CSI and JCARR.

* * *

The undersigned appreciate the opportunity to comment on the Proposal. We are ready and willing to work with the CSI and the Division on this important rulemaking.

Sincerely,

American Investment Council
The AIC, based in Washington, D.C., is an advocacy, communications, and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. In this effort, the AIC develops, analyzes, and distributes information about private equity and private credit industries and their contributions to the US and global economy. Established in 2007 and formerly known as the Private Equity Growth Capital Council, the AIC's members include the world's leading private equity and private credit firms which have experience with the investment needs of insurance companies. As such, our members are committed to growing and strengthening the companies in which, or on whose behalf, they invest, to helping secure the retirement of millions of pension holders and to helping ensure the protection of insurance policyholders by investing insurance company general accounts in appropriate, risk-adjusted investment strategies. For further information about the AIC and its members, please visit our website at http://www.investmentcouncil.org.

Coalition for Business Development
CBD is a member-driven, Washington-based trade association that advocates exclusively on behalf of business development companies (BDCs) to expand their ability to provide necessary growth capital to small- and middle-market Main Street businesses so they can expand, invest, and create jobs. The CBD is the successor to the Coalition for Small Business Growth, an ad-hoc coalition of BDCs that in 2018 secured passage of the Small Business Credit Availability Act, produced research and data on the BDC industry, and championed modernization of decades-old BDC regulation.

Driven by the vision and input of our members, the CBD's mission is to increase awareness of the value of BDCs to Main Street businesses among legislators, regulators, and media; to promote federal policy changes that enable BDCs to expand their lending; and to conduct and publish research on the efficacy of BDC activities and regulation.

Defined Contribution Alternatives Association

DCALTA is the retirement industry's collective voice of asset managers, plan sponsors, and service providers seeking to enhance and secure DC plan saver's outcomes through education, research, and advocacy on the benefits of including alternative investments within a DC framework. We are dedicated to finding solutions to help overcome the market bias and operational impediments that may limit the use of alternative investments within DC plans.

Defined Contribution Real Estate Council

DCREC is an organization of investors, consultants, investment managers, attorneys, recordkeepers, and other businesses dedicated to improving outcomes for defined contribution plan participants through the investment of retirement assets in direct or securitized real estate. DCREC member firms represent over $1.5 trillion in total real estate assets including an estimated $40 billion invested in 16 daily valued real estate products. DCREC focuses its efforts on advocacy and education while acting as a clearinghouse for industry best practices and is committed to engaging in a robust, open, and candid debate to seek creative and innovative solutions to meet the needs of retirement investors.

Our mission is to promote the inclusion of investments in direct commercial real estate and real estate securities within defined contribution plans in order to improve participant outcomes by furthering education about, advocacy for, and best practices of such investments.

Financial Services Institute

FSI is an advocacy association comprised of members from the independent financial services industry and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environmentfor these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

Institute for Portfolio Alternatives

For over 35 years, the IPA has advocated for increased investor access to alternative investment strategies with low correlation to equity markets, as part of a diversified portfolio. Such strategies include real estate, public and private credit and other real assets through investment vehicles such as non-traded publicly registered real estate investment trusts, business development companies, closed-end funds, interval funds and private placements, among others. With nearly $300 billion in capital investments, these portfolio diversifying investments are a critical component of an effectively balanced investment portfolio and serve an essential capital formation function for our national, state and local economies.

Insured Retirement Institute

IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

National Association of Insurance and Financial Advisors

Founded in 1890, NAIFA is the preeminent membership association for the multigenerational community of financial professionals in the United States. NAIFA members subscribe to a strong Code of Ethics and represent a full spectrum of financial services practice specialties. We work with families and businesses to help Americans improve financial literacy and achieve financial security. NAIFA provides producers a national community for advocacy, education and networking along with awards, publications and leadership opportunities to allow NAIFA members to differentiate themselves in the marketplace. NAIFA has 50 state chapters and members in every congressional district advocate on behalf of producers and consumers at the state, interstate and federal levels.

Nareit

Nareit serves as the worldwide representative voice for real estate investment trusts (REITs) and non-REIT public companies that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses. Nareit's member REITs include both Listed REITs, which are registered with the SEC and listed on an established stock exchange and Public Non-listed REITs, or PNLRs, which are public, SEC-registered real estate companies whose securities are not listed on an established stock exchange. Through the diverse array of properties they own, finance, and operate, REITs help provide the essential real estate that revitalize neighborhoods, enable the digital economy, power community essential services, and build the infrastructure of tomorrow, while creating American jobs and economic activity along the way. REITs of all types collectively own more than $3.5 trillion in gross assets across the U.S., with public REITs owning approximately $2.5 trillion in real estate assets.

Real Estate Roundtable

The Real Estate Roundtable and its members lead an industry that generates more than 20% of America's gross national product, employs more than 9 million people, and produces nearly two-thirds of the taxes raised by local governments for essential public services. Our members are senior real estate industry executives from the U.S.'s leading income-producing real property owners, managers, and investors; the elected heads of America's leading real estate trade organizations; as well as the key executives of the major financial services companies involved in financing, securitizing, or investing in income-producing properties.

Securities Industry and Financial Markets Association (SIFMA)

SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

Small Business Investor Alliance

Established in 1958, SBIA has been promoting the growth and vitality of the private equity industry for more than 60 years. SBIA strives to create a positive climate for small business investors to do what they do best: grow the U.S. economy and create American jobs. Our members represent the lower middle market ecosystem, including fund managers, funds in formation, institutional investors, and select service providers. SBIA works tirelessly on behalf of our members to advocate for public policy that promotes domestic investment and the growth of small businesses that fuel the American economy.

EXHIBIT A

February 3, 2023

VIA ELECTRONIC SUBMISSION: Roger.Patrick@com.ohio.gov and csipubliccomments@governor.ohio.gov

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RE: Ohio Division of Securities Rule 1301:6-3-09 Registration by Qualification

Dear Sir or Madam,

The undersigned associations ("Associations") appreciate the opportunity to comment on the proposal of the Ohio Division of Securities Division (the "Division") to amend Rule 1301:6-3-09 (the "Proposal"). Our organizations represent a broad spectrum of businesses and investment professionals across the financial services sector.

We appreciate the Division's willingness to engage in administrative rulemaking, as requested by the Joint Committee on Agency Rule Review under R.C. 101.352. By submitting the Proposal through this process, the Division is ensuring that it hears from impacted constituents and market participants in Ohio such as our members.

The changes outlined in the Proposal are wide reaching and impactful on Ohio market participants. Many of the changes, however, represent a departure from the language of the principles of law and policy that have been previously enforced by the Division outside of the Ohio rulemaking process. We respectfully submit the following comments to the Proposal:

- The Division should extend the length of the comment period to provide a meaningful opportunity to comment.

- The Division should be required to submit an appropriate business impact analysis as required by the Ohio Common Sense Initiative ("CSI").

- The Division should first conduct a thorough business impact analysis of a concentration limit in Ohio and amend any proposed concentration limit to provide an accredited investor exemption.

1. The Division should Extend the Comment Period.

The laws and regulations promulgated and enforced by the Division are vitally important to the protection of Ohio investors and the facilitation of capital formation in Ohio. The Associations, however, are concerned that meaningful public input into the rulemaking process, a critical element to ensuring that the Division's rules are appropriately tailored and that the Division is meeting its statutory obligations, is at risk with a comment period of merely 14 calendar days. On February 1, 2023, multiple stakeholders requested an extension of at least an additional 14 days to respond; however, the Division did not respond to that request by the comment deadline. Sufficient time for meaningful public input into individual proposals, and equally the potential interconnectedness of these proposals, is important and could have a significant impact on investors, capital formation, economic growth and job creation.

It is also important to recognize that the Associations' members are regulated by other U.S. regulatory agencies and governmental bodies. The Associations' members must not only consider the Division's rulemaking, but also proposals from numerous other federal, state and international regulators. The Division's rule proposals affect many of the same market participants and the investing public in general. Several of the proposed changes could overlap and potentially impact each other. Market participants cannot, nor should the Division or CSI, consider the costs and benefits of each rule in isolation.

Exceptionally short comment periods such as this do not provide public commenters with the opportunity to fully consider a rule proposal and draft a focused and clear response to the Division. The exceedingly short comment period associated with a proposal that contains 20 NASAA Statements of Policy, 17 Merit Standards, and new rule language does not allow the public time to fully analyze, consider and comment on the Proposal, including the time that it takes to study and analyze the market and economic implications of the Proposal. By contrast, the SEC typically allows 60 to 90 days for public comment on its rule proposals. Given the importance of these issues to the citizens of Ohio and the magnitude of these changes, an extension of the comment period is necessary.

The Associations respectfully requests that the Division extend the review and comment period to give the public a reasonable opportunity to comment.

2. The Division Should Submit a Full Business Impact Analysis

A pivotal element of the rulemaking process is a thoughtful business impact analysis of a proposed rule. Section 107.53 of the Ohio Revised Code requires the Division to conduct a Business Impact Analysis of any new legislative rule, including this Proposal. When rules are not appropriately tailored to consider their business impact, regulatory obstacles may hamper business and potentially harm Ohio as an innovative and entrepreneurial state.

An appropriate business impact analysis that meets CSI's statutory and policy obligations necessarily requires meaningful input from the public, including subject-matter experts and investors. Without this public input, the Division runs the risk of drafting, implementing, and enforcing rules that may have a direct impact on Ohio's business growth, investment opportunities and job creation.

Failure to provide a meaningful economic impact of this Proposal may result in a direct, negative impact on the Division's obligations to protect investors and facilitate capital formation. Companies and investors deserve regulatory rulemaking that is appropriately tailored, well-crafted and fully thought-out.

The Division should be required to resubmit a Business Impact Analysis that takes this impact on businesses in Ohio into account and fully addresses the questions, as required by the Common Sense Initiative and the JCARR order.

The Associations respectfully request that the CSI require the Division to submit a detailed and thorough Business Impact Analysis.

3. The Associations Recommend that a Specific Business Impact Analysis be Performed on the Proposed Concentration Limit, and that any Emerging Concentration Limit Include an Accredited Investor Exemption.

Although the Associations need more time to review and comment on all aspects of the Proposal, we do have specific comments on the concentration limit. We hope that our comments will help the Division develop this part of the Proposal.

The federal government does not impose a concentration limit on investors and Ohio is in the minority of states that impose a concentration limit. As a preliminary matter, we believe it is critical that the Division conduct a specific business impact analysis on the benefit versus cost to Ohio of a concentration limit that restricts investment opportunities. Market volatility and economic factors are important considerations for investors seeking portfolio diversification. These factors, along with the impact on economic and business activity in Ohio, should be considered in the context of a limitation on investment.

If, after conducting a business impact analysis, the Division moves forward with adoption of a concentration limit, we recommend that the Division adopt an accredited investor exemption, as defined in Rule 501 of Regulation D under the Securities Act of 1933.[1] By doing so, the Proposal would ensure that wealthy and sophisticated investors maintain investment choice when they are advised by their federally regulated broker or investment adviser. These investors may need to follow portfolio diversification strategies like those employed by large institutions.

The Associations strongly recommend that the Division include an exemption from the concentration limit for accredited investors. The "accredited investor" definition in SEC Rule 501 is intended to encompass those individuals and entities "whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the Securities Act's registration process unnecessary."[2] By not including this exemption, the Proposal would preclude the recommendation of a licensed financial professional without regard to the financial sophistication of the investor. No one is in a better position to evaluate what is best for investors than investors themselves and their financial professionals.

The Associations recommend that the Division amend the concentration limit to read as follows:

> (5) Absent good cause shown, registration by qualification will be conditioned upon the restriction of sales to the purchaser in concentrations not to exceed 10% of a purchaser's liquid net worth. This standard shall not be applied to purchasers who qualify as an "accredited investor" as defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended.[3]

> **The Associations respectfully recommend that the Division conduct a detailed Business Impact Analysis of the concentration limit before any adoption and amend any concentration limit to include an exemption for an accredited investors.**

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The undersigned appreciate the opportunity to comment on the Proposal. We are ready and willing to work with the CSI and the Division on this important rulemaking.

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[1] in 2016, the North American Securities Administrators Association proposed to include in guidance a concentration limit with an accredited investor exemption. See https://www.nasaa.org/wp-content/uploads/2016/07/Notice-for-Public-Comment-REIT-Concentration-Limit-07272016.pdf.

[2] *See*, e.g., Rel. No. 33-6683 (Jan. 16, 1987) [52 FR 3015] (Regulation D Revisions; Exemption for Certain Employee Benefit Plans).

[3] 17 C.F.R. § 230.501(a)(1) to (8).

Sincerely,

American Investment Council
Coalition for Business Development
Defined Contribution Alternatives Association
Defined Contribution Real Estate Council
Financial Services Institute
Institute for Portfolio Alternatives
Insured Retirement Institute
National Association of Insurance and Financial Advisors
Nareit
Real Estate Roundtable
Small Business Investor Alliance
Securities Industry and Financial Markets Association (SIFMA)