

January 10, 2025

Via Email Only @ roger.patrick@com.ohio.gov.

Roger Lee Patrick, Jr.
Division Counsel
Ohio Department of Commerce
77 South High Street
22nd Floor
Columbus, Ohio 43215

**Re: Response to the Proposed Amendment to Ohio Division of Securities Rule
1301:6-3-09**

Dear Mr. Patrick:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in disputes with the securities industry. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the Financial Industry Regulatory Authority ("FINRA") relating to both investor protection and disclosure. As such, PIABA frequently comments upon proposed rule changes and retrospective rule reviews in order to protect the rights and fair treatment of the investing public.

Background

Ohio Division of Securities ("the Division") is seeking comment on one additional, proposed revision to rule 1301:6-3-09, Registration by Qualification, beyond the revisions initially advanced regarding the incorporation of specified NASAA statements of policy, the Division's Merit Standards for Securities Offerings, other longstanding guidance intended to assist registration compliance. Specifically, the additional revision would, if adopted, allow a self-executing waiver of the concentration limit for Ohio investors who have a significant tolerance for risk of loss and illiquidity and meet the definition of accredited investor as defined in rule 501(a) of Regulation D under the Securities Act of 1933, 15 U.S.C.A. 77a, as amended.

Discussion/Position

PIABA restates its earlier position as set forth in its prior comment letter to the Division¹ that the self-executing online waiver does not serve to protect Ohio investors and should be abandoned.

First, the self-executing waiver does not provide adequate controls for the unscrupulous salesperson who would use an investor's computer to log into the Division's web site and complete the form on behalf of their client. This is the precise type of conduct – forgery and falsification of digital signatures - of which FINRA has recently narrowed its focus in disciplined broker-dealers and their registered representatives. For instance, consider FINRA Regulatory Notice 22-08 describing the widespread signature issues involving a wide range of forms, including account opening documents and updates, account activity letters, discretionary trading authorizations, wire instructions and internal firm documents related to the review of customer transactions.²

Further, the concept that risk disclosures make the private placement sales appropriate fails on any one of a number of levels. Study after study continues to show that risk warnings in these contexts are not meaningful to an unwitting investor. There is also the problem that arises when the wrongful broker or investment adviser argues that the online-sign off is proof positive that the client accepted the risk and waived any obligation for the seller to abide by their duties imposed by Reg BI for brokers (or a standard fiduciary duty for brokers where there is a special relationship of trust and confidence) or the fiduciary duty applicable to all investment advisers. Further, PIABA does not have confidence in the selling firm's ability to communicate, train, and supervise their employees and agents on the waiver, especially since those actions and costs are discretionary and not required by regulation, as noted on Ohio's Business Impact Analysis. *See BIA at p. 57.*

Second, not only does PIABA not support the suggested waivers for any investors, but especially not for accredited investors. Accredited investors, who have accumulated some degree of meaningful wealth, tend to be better educated people who are more likely to acknowledge the limits of their knowledge base. They therefore rely on the advice of so-called experts, such as the selling agents of products like the BDCs and non-traded REITs at issue related to this rule. PIABA's members have represented countless wealthy investors who fell prey to wrongful sales

¹ On August 15, 2023, the Joint Committee on Agency Rule Review (“JCARR”) re-referred the Division's rule proposal to amend rule 1301:6-3-09 to the Common Sense Initiative Office (“CSI”). On August 22, 2023, the Division resubmitted the proposed rule to CSI (with a copy to stakeholders) along with an updated Business Impact Analysis (“BIA”) to allow additional public comment. Based on additional comments received, CSI recommended the Division collect additional data and place the rule proposal in TBR (to be refiled) status with JCARR.

² For a specific FINRA Letter of Acceptance, Waiver & Consent, see FINRA AWC No. 2022074093701 (LPL registered representative consenting to four-month suspension and \$5,000 fine for electronically signing the names of 30 customers on a total of 53 account documents, three of whose names were signed on three documents without the customers' permission. The account documents, which included new account applications, account transfer forms, money transfer forms, transfer on death forms, beneficiary updates, electronic prospectus delivery authorizations, concentrated securities acknowledgments, trusted person forms, and a journal form, were required books and records of the firm).

practices for the simple reason that they figured their trusted financial advisors would treat them as they treat their own clients. As those investors would never dream of lying to a client, it confounds them that their hired financial advisors would lie to them. Therefore, one could credibly argue that accredited investors are more likely to lose money in private placements, and PIABA believes this category of investors should likewise be afforded protections.

In sum, PIABA again refers the Division to its earlier positions set forth in its August 2023 letter and underscores that the current proposal would only weaken the strong investor protections within the corresponding Ohio rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Gana", with a long horizontal flourish extending to the right.

Adam Gana, President
Public Investors Advocate Bar Association