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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Lang

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SUMMARY

- Specifies that the registration procedures, evaluation standards, and general oversight provisions for a registration by qualification or registration by description do not apply to a registration by coordination and makes all three registration types mutually exclusive.
- Limits the Division of Securities discretion to refuse or suspend security offerings under coordination.
- Prohibits the Division from exercising any enforcement power, or suspending, revoking, conditioning, or delaying any registration of securities, or entering any stop order, due to any noncompliance or partial compliance with any requirement, formal or informal, of the Division that is inconsistent with, or more stringent or burdensome than, federal law.
- Prohibits the Division from issuing a comment letter concerning a registration under coordination.
- Prohibits the Division from issuing any written guidance or interpretation, policy statement, advisory opinion, standard, or similar statement concerning registration by coordination, other than statements solely of an administration nature that have no general and uniform operation.
- Requires business development companies (BDCs) to file a notice with the Division of Securities before conducting business in Ohio, and permits a BDC, after filing the notice, to sell an indefinite amount of securities in Ohio.

DETAILED ANALYSIS

General background

The Ohio Securities Act regulates the sale of securities (e.g., stocks, bonds, options, promissory notes, and investment contracts) in Ohio. The Act delegates the administration of the law to the Division of Securities in the Department of Commerce.¹ If a device or transaction constitutes a security under the Act, it cannot be sold in Ohio without first registering it with the Division or properly exempting it from registration. Additionally, persons who carry out the sale of securities in Ohio must be licensed by the Division or properly exempted from licensure.

Existing law, unchanged by the bill, provides three ways to register securities with the Division, each of which requires a filing with the Division that includes fees, exhibits, and other specified documents:

- An issuer that is registering securities with the U.S. Securities and Exchange Commission (SEC) under the Securities Act of 1933 can file a **registration by coordination** with the Division.
- An issuer that is making an offering that involves a limited number of purchasers or limited selling efforts can file a **registration by description** with the Division.
- Issuers that are not eligible for registration by coordination or registration by description can pursue **registration by qualification** with the Division.

Oversight by the Division of registration by coordination

Under existing law, changed in part by the bill, the Division of Securities may subject securities registered by coordination to the same application rules and evaluation standards that apply to those registered by qualification. These registration by qualification rules and standards are more robust than the baseline requirements for registration by coordination, and allow the Division greater discretion to decline registration if, for example, the Division determines the proposed offering of securities is to be made on grossly unfair terms to the purchaser. The bill changes this, so that the registration by coordination is mutually exclusive from a registration by qualification, limiting the Division's review discretion. The bill specifies that all three registration types, coordination, description, and qualification, are mutually exclusive and requires all federally registered securities to be registered by coordination. Currently, a federally registered security may be registered in Ohio by either coordination or qualification.²

Under existing law, changed in part by the bill, the Division may suspend a security offering under any type of registration or a security subject to an exemption if it finds the

¹ R.C. Chapter 1707.

² R.C. 1707.01(Q), 1707.09(A)(1), 1707.091(A), and R.C. 1707.08, not in the bill; Ohio Administrative Code 1301:6-3-09.1(E), not in the bill.

proposed offer or disposition is on grossly unfair terms, or the plan of issuance and sale of securities would (or would tend to) defraud or deceive purchasers. The bill seems to exclude securities registered by coordination from this oversight.³

Timing of effectiveness

Under existing law, subject to full payment of a registration fee and certain other requirements, a registration statement under the coordination procedure is effective either at the moment the federal registration statement becomes effective or at the time the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the SEC. The bill retains the same application fee and other requirements, but also specifies that the effectiveness of the statement is not subject to delay or waiver of any condition by the Division of Securities or the issuer.⁴

The Division's enforcement power

Under existing law, the Division is given authority to investigate any alleged violations of the law when the Division believes it to be in the best interests of the public and necessary for the protection of investors. The bill prohibits the Division from exercising any enforcement power, or suspending, revoking, conditioning, or delaying any registration of securities, or entering any stop order respecting any registration of securities due to any noncompliance or partial compliance with any requirement, formal or informal rule, or principle of law or policy of the division that is inconsistent with, or more stringent or burdensome than, federal law and rule require. Further, the bill prohibits the Division from issuing a comment letter concerning a registration by coordination or issuing any written guidance or interpretation, policy statement, advisory opinion, standard, or similar statement concerning registration by coordination, other than statements solely of an administration nature that have no general and uniform operation.

The bill specifies that the purpose of the change is to eliminate and preclude excessive and duplicative rules and regulations that stand in the way of job creation.⁵

Notice filings

Under existing law, investment companies, as defined under the federal Investment Company Act of 1940, that are registered or have filed a registration statement with the SEC must also file a notice with the Division of Securities. The notice filing consists of a fee, based on

³ R.C. 1707.01(Q)(3) and 1707.13, explicitly applies to registration by description and registration by qualification, and also incorporates by reference registration by coordination. The bill's change to the definition of "registration by coordination" negates that reference. However, R.C. 1707.091(C)(1), unchanged by the bill, provides that a registration by coordination cannot be effective if a stop order under R.C. 1707.13 applies. See also, "[Merit Standards for Securities Offerings](#)," Ohio Department of Commerce, which can be found on the Department of Commerce, Division of Securities website: <https://com.ohio.gov/divisions-and-programs/securities>.

⁴ R.C. 1707.091(C).

⁵ R.C. 1707.03(A), 1707.09(G)(2)(b), 1707.091(E), (F), and (G), 1707.13(B), and 1707.23(B).

the aggregate price of securities to be sold in Ohio, and a copy of the investment company's federal registration statement or form U-1 (Uniform Application to Register Securities) or form NF (Uniform Investment Company Notice Filing) of the North American Securities Administrators Association.

The bill extends the notice filing requirement to business development companies (BDCs) that elect to be subject to federal SEC requirements. A BDC is a closed-end fund that invests in private companies and small public firms that have low trading volumes or are in financial distress. BDCs raise capital through public offerings, corporate bonds, and hybrid investment instruments. The bill authorizes a BDC to sell an indefinite amount of securities in Ohio after filing notice with the Division. Under continuing law, securities sold to a business development company are exempt from the general registration requirements.⁶

HISTORY

Action	Date
Introduced	12-05-23

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⁶ R.C. 1707.092(A) and (B), 1707.01(S)(11), and 1707.03(D), not in the bill; See also, "[Business Development Company \(BDC\): Definition and How to Invest](#)," James Chen, August 11, 2023, which is available by conducting a keyword "Business Development Company" search on Investopedia's website: [Investopedia.com](#).