



**OHIO SENATE BILL 199 - INTERESTED PARTY TESTIMONY
OHIO SECURITIES COMMISSIONER ANDREA SEIDT
OHIO DEPARTMENT OF COMMERCE, DIVISION OF SECURITIES**

Chairman Wilson, Vice Chair Hackett, Ranking Member Smith, and Members of the Senate Financial Institutions & Technology Committee, thank you for the opportunity to provide written testimony. I am offering this written testimony on behalf of the Ohio Department of Commerce, Ohio Division of Securities, a party interested in Ohio Senate Bill 199. SB 199 seeks to reform the Ohio Securities Act by curbing Division review of offerings registered by coordination. The Division's review is designed to weed out fraud that harms Ohio investors and Ohio financial markets. State review is beneficial because the United States Securities and Exchange Commission ("SEC"), the federal regulator, only performs a limited review and relies on the states like Ohio to supplement its review and fill in the gaps.ⁱ Division review has saved Ohio investors from hardships and losses suffered in deals cleared without adequate safeguards in other states.ⁱⁱ Victims in those cases were typically older and retired investors, an investor protection priority for the Division.

The Division understands that the bill sponsor and proponents have concerns regarding a specific Ohio registration condition, which limits how much investor money can be tied up in certain products that are registered by coordination in Ohio. Although the limit has proven valuable as it has saved Ohioans from the hardships and losses noted above, the Division is open to revising the condition to afford product sponsors and Ohio investors greater flexibility with these products. To that end, the Division has been working on a rulemaking solution that would allow a waiver of this limit for (1) any Ohio investor who acknowledges risk and (2) all Ohio accredited investors who have a significant tolerance for risk of loss and illiquidity. The latter waiver option was proposed last week based on a carve-out that proponents requested during the public comment process. Should the rulemaking solution resolve the bill sponsor's and proponents' concerns, the Committee may conclude that the reforms proposed in SB 199 are no longer necessary.

Lastly, the Division would like to thank the bill's sponsor for tendering the April 5, 2024 amendment in relation to R.C. 1707.23. Although an initial read indicates more drafting is needed to fully preserve state anti-fraud enforcement authority, the amendment is a strong first step in that direction. The Division stands ready to work with the bill's sponsor to review and comment on language that achieves our common goal of ensuring Ohioans have a safe and robust investment experience.

Please do not hesitate to contact me or Department of Commerce counsel Peter Thomas if you have any questions regarding this testimony.

i SEC Filing Review Process, <https://www.sec.gov/divisions/corpfin/cffilingreview>.

ii Notable examples of failed or fraudulent REIT offerings that the Division screened out include: United Development Funding REIT, Apple REIT (not affiliated with big tech company Apple), Wells Timber REIT, and Hartman REIT. In each case, federal regulators missed red flags and cleared the offerings, only to take enforcement action later after issuers defrauded or harmed thousands of investors in other states. The United Development Funding REIT case was a billion-dollar Ponzi scheme with 30,000 victims in other states; 4 executives were later convicted and sentenced to 20 years in federal prison. See, e.g., Bill Hethcock, *Government: 30,000 investors, banks nationwide bamboozled by United Development Funding in Ponzi-like scheme*, Dallas Business Journal (Feb. 10, 2022), <https://www.bizjournals.com/dallas/news/2022/02/10/victims-united-development-funding.html>. The Apple REIT case was an elder fraud case where the REIT and an affiliated BDC's captive broker-dealer was ordered to pay \$14 million in restitution to affected customers. See, e.g., FINRA News Release, *FINRA Sanctions David Lerner Associates \$14 million for Unfair Practices in Sale of Apple REIT Ten and for Charging Excessive Markups on Municipal Bonds and CMOs* (Oct. 22, 2012), <http://www.finra.org/home/Newsroom/NewsReleases/2012/P191729>. The company was fined for 116 pieces of advertising containing misleading, unwarranted or exaggerated statements. See, e.g., Diana Britton, *Non-Traded REITs Raising Red Flags in the Industry*, Wealth Management Magazine (Nov. 22, 2011), <https://www.wealthmanagement.com/investment/non-traded-reits-raising-red-flags-industry>; FINRA News Release, *FINRA Fines Wells Investment Securities \$300,000 for Use of Misleading Marketing Materials for REIT Offering* (Nov. 22, 2011); <https://www.finra.org/media-center/news-releases/2011/finra-fines-wells-investment-securities-300000-use-misleading-marketing>. Allen Wells, the REIT CEO, had a history of securities laws violations. Dean Starkman, *NASD Suspends Wells President from Broker-Dealer Arm for Year*, Wall Street Journal (Oct. 13, 2003), <https://www.wsj.com/articles/SB106607847441279500>. The founder of the Hartman REIT was subsequently removed and sued by the company for misappropriation and mismanagement. The company is now under investigation by the SEC. *Silver Star chairman accuses former CEO Allen Hartman of mismanagement, unauthorized borrowing*, Real Deal (Nov. 28, 2023), <https://therealdeal.com/texas/2023/11/28/silver-star-accuses-former-ceo-allen-hartman-of-misdeeds/>; Silver Star Properties REIT 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Feb. 2, 2024), <https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/1446687/000144668724000052/fil-20240202.htm>.