

Testimony of Thomas M. Selman
Institute for Portfolio Alternatives
HB 33
May 9, 2023

Chairman Rulli, Vice Chairman Schuring, Ranging Member DeMora and members of the Senate General Government Committee, thank you for the opportunity to provide proponent testimony on House Bill 33.

My name is Tom Selman. I am founder of Scopus Financial Group, offering regulatory and compliance support to the financial services industry. I am here on behalf of the Institute for Portfolio Alternatives, which represents the sponsors and distributors of alternative products, including non-listed real estate investment trusts (“REITs,”) and business development companies (“BDCs”).

Prior to founding Scopus, I was the Executive Vice President for Regulatory Policy and Legal Compliance Officer for the Financial Industry Regulatory Authority, or “FINRA.” FINRA is the federal regulator of the broker-dealer industry. FINRA itself is regulated by the United States Securities and Exchange Commission.

For much of my career I wrote and interpreted FINRA rules, so I have extensive experience with securities regulation through the SEC and state securities offices.

I am here to urge your support for language that is in HB 33, specifically Section 1707.01.33 that addresses several security issues affecting our industry.

Non-listed REITs and BDCs are used by investors to diversify their portfolios and provide needed capital to growing businesses. These REITs and BDCs are sponsored by some of the largest asset management companies in the world. They are regulated by the United States Securities and Exchange Commission and by the Ohio Department of Commerce Division of Securities. These REITs and BDCs are distributed through the largest securities firms that under federal law must act in their clients’ best interests.

Under Ohio Revised Code Section 1707.091, non-listed REITS are “registered by coordination” which means that the securities offerings in Ohio are supposed to be registered and thus available to Ohio investors “at the moment” that the SEC registration is effective.¹

Unfortunately, Ohio has earned a reputation as the one of the most difficult states in America to do business for this industry. Ambiguity in the statute enables the Division to apply a different section of Ohio, ORC Section 1707.09, to these offerings. This provision allows the Division to

¹ RC 1707.091(C). *See also* Commentary to the Uniform Securities Act (1956), Section 303(c), upon which registration by coordination in Ohio is largely based, says that “[registration by coordination] is designed to achieve simultaneous effectiveness at the federal and state levels without impinging upon the Administrator's duty to test the registration statement under the substantive standards imposed by § 306.”

withhold registration until an issuer meets any condition it seeks to impose – even though the SEC has declared the registration effective. This leads to an unwelcome business environment, increased issuance costs, and fewer investment opportunities for Ohioans. I have attached to my written testimony a memorandum from local counsel that supports our position.

This language included in HB 33 would make two technical improvements:

1. Reinforce application of Section 1707.091 – and the nonapplication of Section 1707.09 – to non-listed REIT registrations. The bill clarifies that the Division may not delay a registration by coordination, nor require that a non-listed REIT waive registration by coordination to meet a condition imposed by the Division.
2. Make non-listed BDCs eligible for a third type of registration procedures, “notice” filings, which are available under Section 1707.92 for investment companies. BDCs are investment companies that comply with many provisions of the federal Investment Company Act of 1940. Notice filing is appropriate for non-listed BDCs.

These technical improvements would bring clarity of regulation to a growing area of investment. No investor protections would be weakened by the bill, nor does the bill restrict the Division of Securities’ enforcement authority to protect investors and go after bad actors. The technical changes would simply ensure that Ohio has an efficient regulatory approach that is based on a common sense reading of the language of the statute and ensures appropriate options for Ohio investors. Thank you, Chairman Rulli, Vice Chairman Schuring, Ranging Member DeMora and members of the Senate General Government Committee for the opportunity to provide testimony on House Bill 33.

I will be happy to answer any questions you have.

Attachment

###