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VIA E-MAIL (roger.patrick@com.ohio.gov; CSIPublicComments@governor.ohio.gov)

Roger L. Patrick
Division Counsel
Division of Securities
Department of Commerce
77 S High Street, 22nd Floor
Columbus, Ohio 43215

Re: Proposed Revisions to Rule 1301:6-3-09 Registration by Qualification

Dear Mr. Patrick:

On behalf of the Alternative & Direct Investment Securities Association (“ADISA”)¹, we are submitting this comment letter regarding the Division of Securities’ (the “Division”) proposed revisions to Rule 1301:6-3-09 Registration by Qualification (the “Proposal”). ADISA appreciates the opportunity to provide comments on behalf of its members.

ADISA believes that the recent changes to the Proposal contained in Draft #8 (December 6, 2024) to remove the qualifying language used in the accredited investor exemption and remove the waiver form initially proposed and Draft #9 (March 13, 2025) to remove the affiliate restriction from the concentration limit policy (so that the 10% limitation applies to each of non-traded real estate investment trusts (“NTRs”) and non-traded business development companies (“NT BDCs”) rather than collectively), will be beneficial to investors looking to invest in these types of products and a positive step for issuers looking to raise capital and a welcome change for ADISA’s members.

¹ ADISA (Alternative & Direct Investment Securities Association), is the nation’s largest trade association for the non-traded alternative investment space (i.e., retail vs. institutional). Through its 5,000 financial industry members (over 1,000 firms), ADISA reaches over 220,000 finance professionals, with sponsor members raising in excess of \$200 billion annually, serving more than 1 million investors. ADISA is a non-profit organization (501c6), registered to lobby, and also has a related 501c3 charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

The Division has proposed to change its existing registration policies and template suitability standard as follows (as found in the Business Impact Analysis dated March 13, 2025 (the “**BIA**”)):

“... the addition of the accredited investor exemption that Ohio purchasers may use to exceed the 10% limit and removal of the affiliate restriction. An issuer can demonstrate compliance by striking the text “, our affiliates,” that previously appeared after the word “us” below and by adding the bolded text to its existing prospectus disclosure:

*Purchasers residing in Ohio may not invest more than 10% of their liquid net worth in us and other non-traded real estate investment programs.¹⁸ For purposes of Ohio’s suitability standard, “liquid net worth” is defined as that portion of net worth (total assets exclusive of home, home furnishings, and automobiles minus total liabilities) that is comprised of cash, cash equivalents, and readily marketable securities. The condition does not apply, directly or indirectly, to federally covered securities. **The condition also does not apply to purchasers who meet the definition of an 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.**”*

We note that footnote 18 states: *“For non-traded BDCs, the Division would state “non-traded business development companies” in the place of “non-traded real estate investment programs.”*

ADISA also believes that the ability of an issuer to immediately make such changes to its prospectus while the Division works to have these changes formally codified, if approved by CSI and JCARR, will be helpful for ADISA members.

While the updated suitability standard available to be utilized by issuers immediately (set forth above and contained in the BIA) makes a distinction between NTRs and NT BDCs, allowing for an investor to invest up to 10% of an investor’s liquid net worth in NTRs and 10% in NT BDCs, we note that the proposed amendment to O.A.C. 1301:6-3-09 (the “**Proposed Amendment**”) does not make a distinction between these two product types. Instead, section (A)(5)(a)(i) of the Proposed Amendment aggregates all such securities together under the 10% limitation, stating:

- (i) *“the 10% limitation applies in the aggregate at the time of sale to all holdings of the purchaser in the issuer and **other issuers of the same security type to the extent the securities held are subject to registration in accordance with sections 1707.09 and 1707.091 of the Revised Code** and likewise restrict an Ohio purchaser’s returns or ability to exit in whole or part for an indefinite or significant period of time;” [emphasis added]*

ADISA urges the Division to clarify within section (A)(5)(a)(i) of the Proposed Amendment that the 10% limitation applies to each product type, thus clarifying that NTRs and NT BDCs are not considered the same “security type.” ADISA believes this clarification is necessary since the term “security type” typically distinguishes between common stock, preferred stock, warrants, options, etc. and each of the NTRs and NT BDCs are typically offering common

stock, which would be considered the same “security type.” This clarification could be simply effectuated by replacing “security type” with “product type” in the Proposed Amendment.

ADISA appreciates the opportunity to provide input. We would be happy to discuss our positions further and to continue to assist the Division in creating appropriate protections for investors.

Sincerely,

A handwritten signature in cursive script that reads "John H. Grady".

John H. Grady
President

Drafting Committee:

Catherine Bowman
Deborah S. Froling