

CHAPTER 82

(SB 130)

AN ACT relating to securities and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔ Section 1. KRS 292.310 is amended to read as follows:

When used in this chapter, unless the context otherwise requires:

- (1) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities~~[-, except as otherwise provided in this chapter.~~
 - (a) ~~"Agent" does not include an individual who represents:~~
 1. ~~An issuer in:~~
 - a. ~~Effecting a transaction in a security exempted by subsection (1), (2), (3), (10), or (11) of KRS 292.400, or subsection (5), (9), or (12) thereof if no commission or other remuneration is received for the sale of such securities or effecting a transaction in a security exempted by KRS 292.400(15) even if commission or other remuneration is received for the sale of such security provided that the individual offers or sells no other security except securities exempted by KRS 292.400(15);~~
 - b. ~~Effecting transactions exempted by KRS 292.410 unless otherwise required;~~
 - c. ~~Effecting transactions in a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Act of 1933 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in Kentucky;~~
 - d. ~~Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or~~
 - e. ~~Effecting other transactions if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the amount of purchases or sales of the issuer's own securities effected for the issuer; or~~
 2. ~~A broker dealer in effecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.~~
 - (b) ~~A partner, officer, or director of a broker dealer or issuer, or a person occupying a similar status or performing similar functions is an "agent" only if he otherwise comes within the definition in this subsection];~~
 - (2) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include *an*~~[-~~
 - (a) ~~An} agent, issuer, bank, savings institution, or trust company;~~
 - ~~[(b) A person that effects transactions in this state exclusively in securities exempted by KRS 292.400(15); or~~
 - (c) ~~A person who has no place of business in this state:~~
 1. ~~If he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or~~
 2. ~~If during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in this paragraph;]~~
 - (3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;

- (4) "Executive director" means the executive director of the Office of Financial Institutions or any individual employee of the Office of Financial Institutions expressly designated by *statute or* order of the executive director to act in the executive director's place;
- (5) "Covered ~~adviser~~~~advisor~~" means any person who is registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3;
- (6) "Covered security" means any security that is *or upon completion of a transaction will be* a covered security under Section 18(b) of the Securities Act of 1933, *15 U.S.C. sec. 77r(b)*, or rules or regulations promulgated thereunder;
- (7) "Office" means the Office of Financial Institutions of the Commonwealth of Kentucky;
- (8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;
- (9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;
- (10) *"Insolvent" means either a person's liabilities exceed the person's assets, or the person cannot meet obligations as they mature;*
- (11) "Investment adviser" means any person who, for compensation, *directly or indirectly*, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:
- (a) A bank, savings institution, or trust company;
 - (b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
 - (c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
 - (d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
 - (e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);
 - (f) ~~A person who has no place of business in this state if:~~
 1. ~~His only clients in this state are other investment advisers, covered advisers, broker dealers, banks, savings institutions, trust companies, insurance companies, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or~~
 2. ~~During any period of twelve (12) consecutive months he does not have more than five (5) clients other than those specified in subparagraph 1;~~
 - ~~(g)~~ An investment adviser representative or a person excluded from the definition of investment adviser representative;
 - ~~(g)~~~~(h)~~ A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment ~~Advisers~~~~Advisors~~ Act of 1940, *15 U.S.C. sec. 80b-2(a)(11)*;
 - ~~(h)~~~~(i)~~ A covered adviser; or
 - ~~(i)~~~~(j)~~ Such other persons not within the intent of this subsection as the executive director may by rule or order designate;
- (12)~~(11)~~ "Investment adviser representative" means *an individual employed by or associated with an investment adviser or covered adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendations or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:*

- (a) *Performs only clerical or ministerial acts;*
- (b) *Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;*
- (c) *Is employed by or associated with a covered adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3a, and is either:*
 - 1. *An "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3a; or*
 - 2. *Not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-2(a)(25); or*
- (d) *Is excluded by the executive director pursuant to order or regulation;*~~;~~

~~(a) With respect to any investment adviser registered or required to be registered under this chapter, any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:~~

- ~~1. Makes any recommendations or otherwise renders advice regarding securities;~~
- ~~2. Manages accounts or portfolios of clients;~~
- ~~3. Determines which recommendation or advice regarding securities should be given;~~
- ~~4. Solicits, offers, or negotiates for the sale of or sells investment advisory services; or~~
- ~~5. Supervises employees who perform any of the functions described in this paragraph; and~~

~~(b) With respect to any covered adviser, any person defined as an investment adviser representative who has a place of business located in Kentucky, as those terms are defined in Rule 203A-3 promulgated in accordance with the Investment Advisers Act of 1940.]~~

~~(13){(12)}~~ "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, ~~{(or persons performing similar functions,)}~~ or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right, ~~{(whether whole or fractional,)}~~ who creates fractional interests therein for the purpose of distribution;

~~(14){(13)}~~ "Nonissuer" means not directly or indirectly for the benefit of the issuer;

~~(15){(14)}~~ "Person" means an individual, a limited liability company, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

~~(16){(15)}~~ "Rule" or "regulation" means either or both administrative rules or administrative regulations promulgated by any governmental or other regulatory or self-regulatory entity, as the context requires;

~~(17){(16)}~~ "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;

- (18)~~(17)~~ "Securities Act of 1933," *15 U.S.C. secs. 77a et seq.*, "Securities Exchange Act of 1934," *15 U.S.C. secs. 78a et seq.*, "Public Utility Holding Company Act of 1935," *15 U.S.C. secs. 79 et seq.*, and "Investment Company Act of 1940," *15 U.S.C. secs. 80a-1 et seq.* mean the federal statutes of those names as amended before or after January 1, 1961;
- (19)~~(18)~~ "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;
- (20) **"Sign" means with present intent to authenticate or adopt a record to:**
- (a) *Execute or adopt a tangible symbol; or*
 - (b) *Attach or logically associate with the record an electronic symbol, sound, or process;*
- (21)~~(19)~~ "State" means any state, *commonwealth*, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;
- (22)~~(20)~~ "Life settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Life settlement investment" does not include:
- (a) Any transaction between an owner and a life settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720;
 - (b) Any transfer of ownership or beneficial interest in a life insurance policy from a life settlement provider to another life settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720 or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;
 - (c) The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
 - (d) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with Subtitle 15 of KRS Chapter 304; and
- (23)~~(21)~~ Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.
- ➔Section 2. KRS 292.330 IS REPEALED AND REENACTED TO READ AS FOLLOWS:
- (1) *It is unlawful for any person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration under subsection (2) of this section.*
 - (2) *The following persons are exempt from the registration requirement of subsection (1) of this section:*
 - (a) *A broker-dealer that affects transactions in this state exclusively in securities exempted by KRS 292.400(15);*
 - (b) *A broker-dealer that has no place of business in this state and that affects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, or investment companies as defined in the Investment Company Act of 1940, 15 U.S.C. secs. 80a-1 et seq., pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;*
 - (c) *A broker-dealer with no place of business in this state that during any period of twelve (12) consecutive months does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in paragraph (b) of this subsection; and*

- (d) Any other person exempted from registration by administrative regulation or order under this chapter.*
- (3) It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration under subsection (4) of this section.*
- (4) The following agents are exempt from the registration requirement of subsection (3) of this section:*
 - (a) An agent who represents a broker-dealer that is exempt from registration under this chapter;*
 - (b) An agent who represents a broker-dealer in affecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934, 15 U.S.C. sec. 78o(h)(2);*
 - (c) An agent who represents an issuer in:*
 - 1. Affecting a transaction in a security that is exempted by subsection (1), (2), (3), (10), or (11) of KRS 292.400;*
 - 2. Affecting a transaction in a security that is exempted by subsection (5), (9), or (12) of KRS 292.400 if the agent does not receive a commission or other remuneration based, directly or indirectly, on the transaction;*
 - 3. Affecting a transaction in a security that is exempted by KRS 292.400(15) provided that the agent offers or sells no other securities exempted by KRS 292.400(15);*
 - 4. Affecting a transaction in a security that is exempted by Section 11 of this Act unless registration as an agent is required elsewhere in this chapter or by administrative regulation or order under this chapter;*
 - 5. Affecting a transaction in a security that is a covered security, except that an agent who represents an issuer in affecting a transaction in a security that is a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Exchange Act of 1933, 15 U.S.C. sec. 77r(b)(3) or 77r(b)(f)(D), is not exempt if the agent receives a commission or other remuneration based, directly or indirectly, on the transaction;*
 - 6. Affecting a transaction with existing employees, partners, or directors of the issuer if the agent does not receive a commission or other remuneration based, directly or indirectly, on the transaction;*
 - 7. Affecting other transactions if the agent primarily performs, or is intended to primarily perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the agent's compensation is not based, directly or indirectly, on the transactions; and*
 - 8. Any other person exempted from registration by administrative regulation or order under this chapter.*
- (5) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer offering, selling, or purchasing its securities in this state.*
- (6) An individual may not act as an agent for more than one (1) broker-dealer or one (1) issuer at a time unless authorized by rule or order under this chapter.*
- (7) It is unlawful for a broker-dealer or an issuer to employ or associate with an agent unless the agent is registered under this chapter or exempt from registration.*
- (8) It is unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration under subsection (9) of this section.*
- (9) The following investment advisers are exempt from the registration requirement of subsection (8) of this section:*
 - (a) An investment adviser who has no place of business in this state if his only clients in this state are other investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust*

companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

- (b) An investment adviser who has no place of business in this state if, during any period of twelve (12) consecutive months, he or she does not have more than five (5) clients other than those specified in paragraph (a) of this subsection;*
 - (c) An investment adviser who is approved, and remains approved, by the Kentucky Economic Development Finance Authority as an investment fund manager pursuant to KRS 154.20-256; and*
 - (d) Any other investment adviser exempted from registration by administrative regulation or order under this chapter.*
- (10) It is unlawful for an investment adviser to employ or associate with an investment adviser representative unless the representative is registered under this chapter or exempt from registration.*
- (11) It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration under subsection (12) of this section.*
- (12) The following investment adviser representatives are exempt from the registration requirement of subsection (11) of this section:*
- (a) An investment adviser representative who is employed by or associated with an investment adviser that is exempt from registration under this chapter or a federal covered adviser that is excluded from the notice filing requirements under this chapter; and*
 - (b) Any other investment adviser representative exempted from registration by rule or order under this chapter.*
- (13) The registration of an investment adviser representative is effective only while the investment adviser representative is employed by or associated with an investment adviser registered under this chapter or with a covered adviser that has made a notice filing under this chapter.*
- (14) An individual may not act as an investment adviser representative for more than one (1) investment adviser or covered adviser at a time unless authorized by administrative regulation or order under this chapter*~~or agent, unless the person is registered under this chapter. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. It is unlawful for any investment adviser that is required to be registered under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:~~
- ~~(a) The person is so registered under this chapter;~~
 - ~~(b) The person is registered as a broker-dealer under this chapter; or~~
 - ~~(c) The person is approved, and remains approved, by the Kentucky Economic Development Finance Authority as an investment fund manager pursuant to KRS 154.20-256.~~
- ~~(2) It is unlawful for any covered adviser to transact business in this state unless:~~
- ~~(a) The person has made a notice filing with the executive director consisting of a copy of those documents that have been filed by the covered adviser with the United States Securities and Exchange Commission and that the executive director by rule or order requires to be filed together with consent to service of process and the fee prescribed in subsection (11)(b) of this section;~~
 - ~~(b) The person is registered as a broker-dealer under this chapter;~~
 - ~~(c) The person's only clients are investment companies as defined in the Investment Company Act of 1940, or insurance companies; or~~
 - ~~(d) The person is excluded from the definition of investment adviser under KRS 292.310(10)(a) to (h) and (j);~~
- ~~It is unlawful for an investment adviser representative to be employed by a covered adviser who is required to make a notice filing with the executive director unless the investment adviser representative is registered under this chapter.~~

- ~~(3) A broker dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the executive director or the executive director's designee an application together with a consent to service of process pursuant to KRS 292.430 and payment of the fee prescribed in subsection (11).~~
- ~~(a) Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions (except any partner, officer, or director or other such person whose registration as an agent is denied, suspended, or revoked under subsection (13)) without the filing of applications for registration as agents or the payment of fees for registration as agents.~~
- ~~(b) Except for any partner, officer, director, or other person whose registration as an investment adviser representative is denied, suspended, or revoked under subsection (13) of this section, registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer, director, or a person occupying a similar status or performing similar functions, without the filing of applications for registration as investment adviser representatives or the payment of fees for registration, as investment adviser representatives.~~
- ~~(c) The registration application shall contain whatever information the executive director requires concerning such matters as:~~
- ~~1. The applicant's form and place of organization;~~
 - ~~2. The applicant's proposed method of doing business;~~
 - ~~3. The qualifications and business history of the applicant and in the case of a broker dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker dealer or investment adviser; and in the case of an investment adviser, the qualifications and business history of an employee;~~
 - ~~4. Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and~~
 - ~~5. The applicant's financial condition and history.~~
- ~~(4) If no denial order is in effect and no proceeding is pending under subsection (13), registration becomes effective at noon of the thirtieth day after an application is filed, except as otherwise noted in this subsection:~~
- ~~(a) The executive director may specify an earlier effective date and may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.~~
- ~~(b) The executive director may by rule establish a procedure for transfer of an agent or an investment adviser representative whereby registration may become effective prior to the filing of an application; but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.~~
- ~~(c) The thirtieth day effective day is tolled if, before 5 p.m. EST of the thirtieth day, the executive director notifies the applicant that the application is incomplete or that he intends to deny the application, pending the completion of the application or a hearing and final order on the intent to deny the application or the waiver of a hearing through the failure to request a hearing with fifteen (15) days of receiving notice of the intent to deny the application, as applicable.~~
- ~~(5) The executive director may require as a condition of registration that the applicant (and, in the case of a corporation or partnership, the officers, directors, or partners) pass a written examination as evidence of knowledge of the securities business.~~
- ~~(6) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the executive director may by rule require the existence and maintenance of a minimum liquid net capital for registered broker-dealers and investment advisers and a minimum ratio between net capital and aggregate indebtedness, or both.~~
- ~~(7) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the executive director may by rule require registered broker-dealers, agents, and investment advisers to post surety bonds in an amount up to \$25,000, and may determine their conditions,~~

~~except under this subsection that no such bond may be required of any registrant whose net capital exceeds \$100,000. An appropriate deposit of cash or securities shall be accepted in lieu of any required surety bond. Every surety bond shall provide for suit thereon by any person who has a cause of action under KRS 292.480, and every such bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three (3) years after the later of the sale or other act upon which it is based or the discovery of the sale or act.~~

- ~~(8) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, the executive director may by rule require registered broker-dealers to carry fidelity bonds, covering its agents, general partners, and officers, in such form, covering such risks, and in such amounts (not exceeding \$250,000) as he deems necessary for the protection of the public; and he may by rule require registered broker-dealers to furnish satisfactory evidence that they have such bonds.~~
- ~~(9) Every registration of a broker-dealer, agent, investment adviser, and investment adviser representative and every notice filing shall be effective until December 31 of the year of registration or notice unless the executive director by rule extends or lessens the registration or notice period may be renewed as hereinafter provided. The executive director may by rule increase or reduce the registration fee or notice filing fee set forth in subsection (11) of this section should the registration period or notice period be extended or lessened.~~
- ~~(a) The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the executive director or the executive director's designee. When an agent begins or terminates a connection with an issuer or registered broker-dealer, the agent and the issuer or broker-dealer shall promptly notify the executive director or the executive director's designee.~~
- ~~(b) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser specified in his application or with a covered adviser specified in a notice filed with the executive director or the executive director's designee. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser representative and the investment adviser shall promptly notify the executive director or the executive director's designee. When an investment adviser representative begins or terminates a connection with a covered adviser, the investment adviser representative shall notify the executive director or the executive director's designee.~~
- ~~(10) Registration of a broker-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the executive director or the executive director's designee prior to the expiration thereof an application containing the information the executive director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative filed with the executive director or the executive director's designee by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A notice filing by a covered adviser may be renewed by filing with the executive director or the executive director's designee a notice filing consisting of any documents filed with the United States Securities and Exchange Commission as the executive director may require by rule or order. A registered broker-dealer or investment adviser may file an application for registration of a successor and a covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.~~
- ~~(11) (a) The fee for initial or renewal registration shall be one hundred twenty dollars (\$120) for a broker-dealer, one hundred dollars (\$100) for an investment adviser, fifty dollars (\$50) for an agent, fifty dollars (\$50) for an investment adviser representative, and fifty dollars (\$50) for transfer of an agent or investment adviser representative, none of which fees shall be refundable.~~
- ~~(b) The fee for notice filings shall be one hundred dollars (\$100) for a covered adviser.~~
- ~~(12) (a) Every registered broker-dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the executive director by rule prescribes. All records required shall be preserved for three (3) years unless the executive director by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the executive director, be made available at any time for examination by him either in the principal office of the registrant or by production of exact copies thereof in this state. If a broker-dealer is registered with the United States Securities and Exchange~~

Commission, the books and records required by this section are limited to those that the Securities Act of 1934 requires the broker dealer to maintain. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to those books and records requirements of that state, provided the adviser is registered in that state and in compliance with its recordkeeping requirements.

- (b) ~~Every registered broker dealer and investment adviser shall file such reports as the executive director by rule prescribes. If a broker dealer is registered with the United States Securities and Exchange Commission, the reports required by this section are limited to those required under the Securities Act of 1934. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to the reporting requirements of that state, provided the adviser is registered in that state and in compliance with its reporting requirements.~~
- (c) ~~If the information contained in any document filed with the executive director or the executive director's designee is or becomes inaccurate or incomplete in any material respect, the broker dealer or investment adviser, as applicable, shall promptly file a correcting amendment. In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the Securities and Exchange Commission.~~
- (d) ~~The executive director may make periodic examinations, within or without this state, of each broker-dealer, firm employing issuer agents, and investment adviser at such times and in such scope as he determines. These examinations may be made without prior notice to the broker dealer, firm employing issuer agents, or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker dealer, firm employing issuer agents, or investment adviser whose business is examined but the expense so payable shall not exceed an amount which the executive director by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the executive director, insofar as he deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.~~
- (e) ~~The executive director may by rule prohibit unreasonable charges, profits, commissions, or other compensation of broker dealers and investment advisers.~~
- (f) ~~The executive director may prescribe rules for the conduct of business by broker dealers and investment advisers which he finds appropriate in the public interest and for the protection of investors.~~
- (g) ~~The executive director may enter into an arrangement, agreement, or other working relationship with federal, other state, and self regulatory authorities whereby documents may be filed and maintained in a central depository system with the National Association of Securities Dealers or other agencies or authorities. It is the intent of this paragraph that the executive director be provided power to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with the states and federal authorities. The executive director may permit initial and renewal registration filings required under this chapter to be filed with the Securities and Exchange Commission, the National Association of Securities Dealers, or other similar authorities. The executive director may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.~~
- (13) (a) ~~The executive director may by order deny, suspend, or revoke registration of any broker dealer, agent, investment adviser, or investment adviser representative, or bar or censure any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a registered broker dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in the Commonwealth of Kentucky, if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker dealer or investment adviser:~~
 1. ~~Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material~~

respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

2. ~~Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;~~
3. ~~Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;~~
4. ~~Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;~~
5. ~~Is the subject of an order of the executive director denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;~~
6. ~~Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:~~
 - a. ~~An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, limiting or revoking the person's license as a broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;~~
 - b. ~~An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;~~
 - c. ~~A United States Postal Service fraud order;~~
 - d. ~~A cease and desist or other administrative order entered after notice and opportunity for hearing by the executive director, the securities agency or administrator of another state, or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or~~
 - e. ~~An order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act;~~
7. ~~Has engaged in dishonest or unethical practices in the securities business;~~
8. ~~Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the executive director may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;~~
9. ~~Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as provided in paragraph (b) below; or the executive director may by order, deny, suspend, or revoke any registration if he finds that the order is in the public interest and that the applicant or registrant:~~
 - a. ~~Has failed reasonably to supervise his agents if he is a broker-dealer or his employees or investment adviser representatives if he is an investment adviser; or~~
 - b. ~~Has failed to pay the proper filing fee; but the executive director may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected; or~~
10. ~~Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking; or within the past five (5) years, has been the subject of an action of a securities regulator or a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a state, federal, or foreign jurisdiction suspending or expelling the person from membership in the exchange or self-regulatory organization.~~

- ~~— The executive director may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days.~~
- (b) ~~The following provisions govern the application of subparagraph 9. of paragraph (a) of this subsection:~~
- ~~1. — The executive director may not enter an order against a broker dealer on the basis of the lack of qualification of any person other than the broker dealer himself if he is an individual or an agent of the broker dealer;~~
 - ~~2. — The executive director may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;~~
 - ~~3. — The executive director may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;~~
 - ~~4. — The executive director shall consider that an agent who will work under the supervision of a registered broker dealer need not have the same qualifications as a broker dealer;~~
 - ~~5. — The executive director shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker dealer or agent. When he finds that an applicant for initial or renewal registration as a broker dealer is not qualified as an investment adviser or an investment adviser representative, he may by order condition the applicant's registration as a broker dealer upon his not transacting business in this state as an investment adviser or an investment adviser representative;~~
 - ~~6. — The executive director may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as investment adviser representatives and persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.~~
- (c) ~~The executive director may by order summarily postpone an application for registration or suspend a registration pending final determination of any proceeding under this section. A summary suspension of an existing registration shall only be made based upon a finding by the executive director that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public. KRS 13B.125 shall apply to the entry of a summary suspension of a registration. An appeal of a summary suspension shall address only the necessity of a summary action and shall not constitute an appeal of the merits of the underlying violation of the law. Upon the entry of the order, the executive director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the executive director, the order will remain in effect until it is modified or vacated by the executive director. If a hearing is requested or ordered, the executive director, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.~~
- (d) ~~If the executive director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, the executive director may by order cancel the registration or application.~~
- (e) ~~Withdrawal from registration as a broker dealer, agent, investment adviser, or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the executive director may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the executive director by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the executive director may nevertheless institute a revocation or~~

~~suspension proceeding under subparagraph 2. of paragraph (a) of this subsection within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective. A notice filing may be withdrawn or terminated by providing notice of the withdrawal or termination, as the case may be, to the executive director; the withdrawal or termination is effective upon receipt by the executive director of the notice.~~

~~(f) No order may be entered under any part of this section except the first sentence of paragraph (c) of this subsection without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or representative), opportunity for hearing, and written findings of fact and conclusions of law.~~

~~(14) Notwithstanding subsection (1) of this section, any broker-dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the executive director expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration under this section. The executive director may require that persons exempted from registration under this provision file such forms and information for notice purposes and be bound by one (1) or several provisions of this section as the executive director deems necessary and appropriate in the public interest or for the protection of investors and the executive director may impose filing fees in connection therewith, provided however, that the amount of the fee shall not exceed the fee which would be due in the event the exempt person were required to obtain registration].~~

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *A person shall apply for registration as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application containing the information required in a form designated by administrative regulation or order under this chapter, by filing a consent to service of process pursuant to KRS 292.430, by filing any other information requested by the executive director necessary to complete the application, and by paying the fee prescribed by this chapter.*
- (2) *If no denial order is in effect and no administrative proceeding is pending under this chapter, then registration becomes effective at 12 noon of the thirtieth day after a completed application is filed unless the executive director specifies by order an earlier or later effective date. A registration shall be effective until December 31 of the year of registration, except that a registration as an agent of an issuer shall be effective for the shorter of the term of the offering or a period of twelve (12) months.*
- (3) *An administrative regulation or order under this chapter may require as a condition of registration that the applicant and, in the case of a corporation or other legal entity, the officers or directors or persons occupying similar status or performing similar functions, pass a written examination as evidence of knowledge of the securities business.*
- (4) *Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, 15 U.S.C. sec. 78o, and Section 222 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-18a, an administrative regulation or order under this chapter may establish minimum financial requirements for broker-dealers and investment advisers registered or required to be registered under this chapter.*
- (5) *Registration of a broker-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing an application containing any information required by administrative regulation or order under this chapter and paying the fee prescribed in this chapter and, in the case of a broker-dealer or investment adviser, filing any financial statement required by administrative regulation or order under this chapter.*
- (6) *An administrative regulation or order under this chapter may impose other conditions on registration or waive, in whole or part, specific requirements in connection with registration if appropriate in the public interest and consistent with the protection of investors.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *It is unlawful for a covered adviser to transact business in this state as a covered adviser unless the covered adviser has made a notice filing under subsection (2) of this section or is exempt from the requirement to make a notice filing under subsection (3) of this section.*
- (2) *A person transacting business as a covered adviser in this state, who is not exempt under subsection (3) of this section, shall make a notice filing consisting of a copy of those documents filed by the covered adviser with the United States Securities and Exchange Commission and pay the fee prescribed by this chapter. A*

notice filing under this chapter is effective until 12 midnight of December 31 of the year for which the notice is filed.

- (3) *The following covered advisers are not required to comply with subsection (2) of this section:*
- (a) *A covered adviser who has no place of business in this state if his or her only clients in this state are investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;*
 - (b) *A covered adviser who has no place of business in this state if during any period of twelve (12) consecutive months he or she does not have more than five (5) clients other than those specified in paragraph (a) of this subsection; and*
 - (c) *Any other covered adviser exempted from making a notice filing by administrative regulation or order under this chapter.*
- (4) *A notice filing by a covered adviser may be renewed by filing a notice consisting of any documents filed with the United States Securities and Exchange Commission and paying the fee prescribed in this chapter.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *Pursuant to subsection (2) or (3) of this section, a broker-dealer or investment adviser may succeed to the unexpired portion of the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser by filing a new application for registration or notice filing or amending the registration or notice filing of its predecessor. The successor shall indicate on its application or amendment that it is filing as a successor.*
- (2) *A successor broker-dealer or investment adviser shall file a new application for registration if the succession is a result of a material change in the financial condition, management, or ownership of the predecessor. The predecessor shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after the successor files its application for registration.*
- (3) *A successor broker-dealer or investment adviser may file an amendment to the registration of its predecessor if the succession is a result of a change in the form of organization or the state of incorporation or organization of the predecessor that does not involve a material change in the financial condition, management, or ownership of the predecessor. The amendment becomes effective when filed or on a date designated by the successor in its filing.*
- (4) *A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *If an agent registered under this section terminates employment by or association with a broker-dealer or issuer, then the broker-dealer or issuer shall promptly file a notice of termination. The agent may file the notice of termination if the issuer or broker dealer has not done so within thirty (30) days of the effective date of termination.*
- (2) *If an investment adviser representative registered under this section terminates employment by or association with an investment adviser or covered adviser, then the investment adviser or covered adviser shall promptly file a notice of termination. The investment adviser representative may file the notice of termination if the investment adviser or covered adviser has not done so within thirty (30) days of the effective date of termination.*
- (3) *If the executive director determines that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, then the executive director may by order terminate the registration or application.*

- (4) *An administrative regulation or order under this chapter may establish a procedure for temporary registration when an agent or an investment adviser representative registered under this chapter transfers employment or association to another broker-dealer or investment adviser, but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.*
- (5) *A broker-dealer, agent, investment adviser, or investment adviser representative may withdraw a registration by filing an application to withdraw. The withdrawal becomes effective thirty (30) days after receipt of the application by the executive director or within such shorter period of time as the executive director may determine, unless a revocation or suspension proceeding is pending.*
- (a) *If a proceeding is pending to revoke or suspend the registration, then the withdrawal becomes effective at such time and upon such conditions as the executive director by order determines; or*
- (b) *If a proceeding is not pending, then the executive director may institute a revocation or suspension proceeding under this chapter within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.*
- (6) *A covered adviser may withdraw a notice filing by filing a notice of withdrawal. The withdrawal is effective upon receipt by the executive director.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *The fee for initial or renewal registration shall be, for:*
- (a) *A broker-dealer, one hundred twenty dollars (\$120);*
- (b) *An investment adviser, one hundred dollars (\$100);*
- (c) *An agent, fifty dollars (\$50);*
- (d) *An investment adviser representative, fifty dollars (\$50); and*
- (e) *The transfer of an agent or investment adviser representative, fifty dollars (\$50).*
- (2) *The fee for initial or renewal notice filings shall be one hundred dollars (\$100) for a covered adviser.*
- (3) *The fees required by subsections (1) and (2) of this section shall not be refundable.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Every registered broker-dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the executive director by rule or order prescribes.*
- (b) *All records required shall be preserved for three (3) years unless the executive director by administrative regulation or order prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the executive director, be made available at any time for examination by him or her either in the principal office of the registrant or by production of exact copies thereof in this state.*
- (c) *If a broker-dealer is registered with the United States Securities and Exchange Commission, then the books and records required by this section are limited to those that the Securities Exchange Act of 1934, 15 U.S.C. secs. 78a et seq., requires the broker-dealer to maintain.*
- (d) *If an investment adviser has his or her principal place of business in another state, then the requirements of this section shall be limited to the books and records requirements of that state, if the adviser is registered in that state and is in compliance with its recordkeeping requirements.*
- (2) (a) *Every registered broker-dealer, investment adviser, and firm employing issuer agents shall file such reports as required by administrative regulation or order under this chapter.*
- (b) *If a broker-dealer is registered with the United States Securities and Exchange Commission, then the reports required by this section are limited to those required under the Securities Exchange Act of 1934, 15 U.S.C. secs. 78a et seq.*
- (c) *If an investment adviser has his or her principal place of business in another state, then the requirements of this section shall be limited to the reporting requirements of that state, if the adviser is registered in that state and in compliance with its reporting requirements.*

- (3) *If the information contained in any document filed is or becomes inaccurate or incomplete in any material respect, then the broker-dealer, investment adviser, or firm employing issuer agents, as applicable, shall promptly file a correcting amendment. In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the Securities and Exchange Commission.*
- (4) (a) *The executive director may conduct examinations, within or outside this state, of each broker-dealer, issuer agent, or investment adviser at such times and in such scope as he or she determines.*
- (b) *Examinations of each broker-dealer, issuer agent, or investment adviser, may be made without prior notice to the broker-dealer, issuer agent, or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer, issuer agent, or investment adviser whose business is examined, but the expense so payable shall not exceed an amount which the executive director by administrative regulation prescribes.*
- (c) *For the purpose of avoiding unnecessary duplication of examinations, the executive director, insofar as he or she deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, 15 U.S.C. secs.78a et seq.*
- (5) *The executive director may by administrative regulation prohibit unreasonable charges, profits, commissions, or other compensation of broker-dealers and investment advisers.*
- (6) *The executive director may promulgate administrative regulations to prescribe rules for the conduct of business by broker-dealers and investment advisers which he or she finds appropriate in the public interest and for the protection of investors.*
- (7) *The executive director may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in a central depository system with the Financial Industry Regulatory Authority (FINRA) or other agencies or authorities.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director may deny, refuse to renew, suspend, or revoke the registration of any broker-dealer, agent, investment adviser, or investment adviser representative. The executive director may bar, censure, or place on probation any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, or restrict, condition, or limit a registrant as to any function or activity of the business for which registration is required in this state. The executive director may take any of the foregoing actions for any reason set forth in subsection (2) of this section.*
- (2) *For actions taken in subsection (1) of this section, the executive director shall find that it is in the public interest and further find that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:*
- (a) *Has filed an application for registration under this chapter which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;*
- (b) *Has violated or failed to comply with this chapter or any administrative regulation promulgated or order issued under this chapter or a predecessor law;*
- (c) *Has been convicted of, or has pending against him or her, a felony;*
- (d) *Has been convicted within the past ten (10) years of, or has pending against him or her, any misdemeanor involving a security or any aspect of the securities business;*
- (e) *Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;*
- (f) *Is the subject of an order of the executive director denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;*

- (g) *Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:*
1. *An order by any securities administrator, entered after notice and opportunity for hearing, denying, suspending, limiting, or revoking the person's license as a broker-dealer, agent, investment adviser, or investment adviser representative or the substantial equivalent of those terms;*
 2. *An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;*
 3. *A United States Postal Service fraud order;*
 4. *A cease and desist or other administrative order entered after notice and opportunity for hearing by the executive director, or any other securities administrator or the United States Commodity Futures Trading Commission; or*
 5. *An order by the United States Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act, 7 U.S.C. secs. 1 et seq.;*
- (h) *Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years;*
- (i) *Is insolvent;*
- (j) *Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business. However, an order against an individual shall not be based on this paragraph if the individual has passed all examinations required as a condition of registration;*
- (k) *Has reasonably failed to supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and, within the previous ten (10) years, committed a violation of this chapter or administrative regulation promulgated or order issued under this chapter;*
- (l) *Has failed to pay a fee required under this chapter within thirty (30) days after having received written notice from the executive director of the failure to pay the required fee. The executive director shall vacate an order issued under this subsection if the fee is paid within thirty (30) days of the date of the order;*
- (m) *Has violated the law of any jurisdiction governing or regulating any aspect of the business of securities or banking, or, within the past five (5) years, has been the subject of an action of any securities regulator denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of a securities regulator suspending or expelling the person from membership in the exchange or self-regulatory organization; or*
- (n) *Refuses to allow or otherwise impedes an examination under this chapter or refuses access to a registrant's office to conduct an examination.*
- (3) *The executive director may not institute a proceeding under this section based solely on a fact or transaction known to him or her when a registration became effective, unless the proceeding is instituted within sixty (60) days after the effective date of the registration.*
- (4) *The executive director may by order summarily restrict, condition, limit, or suspend a registration, or censure or bar a registrant before final determination of an administrative proceeding under this section. A summary order issued under this subsection shall only be based upon a finding by the executive director that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public health, safety, or welfare. One (1) or more of the grounds listed in subsection (2) of this section shall be considered for a summary order. Any person aggrieved by an order of the executive director under this section may file with the office an application for an emergency hearing pursuant to KRS 13B.125 within thirty (30) days of the date of the order. The executive director shall comply with KRS 13B.125 when entering a summary order. The executive director may modify, stay, extend, or vacate the summary order issued under this subsection.*

- (5) *The executive director shall not issue an order under this section, except under subsection (4) of this section, without appropriate notice to the applicant or registrant, opportunity for a hearing, and written findings of fact and conclusions of law in accordance with KRS Chapter 13B.*

➔ Section 10. KRS 292.380 is amended to read as follows:

- (1) Except as otherwise expressly provided in this chapter, a registration statement under this chapter becomes effective when the executive director so orders. The executive director may require as a condition of registration under this chapter that a prospectus containing any designated part of the appropriate information specified in this chapter be sent or given to each person to whom an offer is made before or concurrently with:
- (a) The first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;
 - (b) The confirmation of any sale made by or for the account of any such person;
 - (c) Payment pursuant to any such sale; or
 - (d) Delivery of the security pursuant to any such sale, whichever first occurs; but the executive director shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933, *15 U.S.C. secs. 77a et seq.*, or regulations thereunder.
- (2) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this chapter or a predecessor law within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The executive director may by rule or otherwise permit the omission of any item of information or document from any registration statement.
- (3) The executive director may require as a condition of registration by qualification or coordination that (a) the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount or (b) any security issued within the past three (3) years, or to be issued, to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be delivered in escrow. The executive director may by rule or order determine the conditions of any escrow or impounding required hereunder. The executive director shall not reject a depository solely because of location in another state. All securities delivered in escrow to the executive director or some other depository satisfactory to him ~~[prior to January 1, 1968, which have not previously been released shall be released from escrow and all securities delivered in escrow to the executive director or some other depository satisfactory to him subsequent to January 1, 1968]~~ which have not previously been released shall be released from escrow no later than ten (10) years after the date of delivery into escrow.
- (4) The executive director may also require as a condition of registration by qualification that the issuer undertake to keep the securities registered under this chapter for a period of up to five (5) years or until the securities become exempt securities under KRS 292.400 or become covered securities, and that the issuer forward to its security holders audited annual financial statements during the period for which the shares are registered. The executive director may by rule or order impose other undertakings.
- (5) For the registration of securities by notification, coordination, or qualification, there shall be paid to the executive director an examination fee of one hundred twenty-five dollars (\$125) and a registration fee of three-fiftieths of one percent (0.06%) of the aggregate offering price of the securities which are to be offered in this state, but the registration fee shall in no case be less than sixty dollars (\$60) nor more than one thousand two hundred dollars (\$1,200). The examination fee and the registration fee shall be payable in separate checks. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under KRS 292.390, the executive director shall retain the examination fee. For a registration by notification for market-making purposes only the examination fee need be paid.
- (6) When securities are registered by notification or by coordination or by qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration statement is effective for one (1) year from its effective date ~~[, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the~~

~~issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution,]~~ except during the time a stop order is in effect under KRS 292.390. ***A registration statement shall require annual renewal, with payment of the same fees prescribed by subsection (5) of this section, for any year or partial year exceeding the original one (1) year period of effectiveness.*** All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction~~[-~~

~~(a)] so long as the registration statement is effective[-; and~~

~~(b) Between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under KRS 292.390 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one (1) year from its effective date if any securities of the same class are outstanding].~~

~~[— A registration statement may be withdrawn otherwise only in the discretion of the director.]~~

➔Section 11. KRS 292.410 is amended to read as follows:

- (1) Except as expressly provided, KRS 292.330 to 292.390 ***and Sections 3, 4, 5, 6, 7, 8, and 9 of this Act*** shall not apply to any of the following transactions:
 - (a) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;
 - (b) Any nonissuer distribution of an outstanding security by a registered broker-dealer, if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security;
 - (c) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the executive director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;
 - (d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
 - (e) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel first mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
 - (f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
 - (g) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
 - (h) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, ***15 U.S.C. secs. 80a-1 et seq.***, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
 - (i) The offer or sale of a security by the issuer of the security if all of the following conditions are met:
 1. The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation. The following shall not constitute general solicitation within the meaning of this section:
 - a. Solicitation of indications of interest in accordance with the terms and conditions as the executive director may adopt by rule; or
 - b. Offers to sell securities and the dissemination of written offering materials in accordance with the terms of this section at least thirty (30) days after the withdrawal of an application by the issuer to register the same class of securities;

2. The issuer reasonably believes that each purchaser of the securities is acquiring the securities for investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:
 - a. Obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and
 - b. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities; and
 3. The transaction satisfies one (1) of the following conditions:
 - a. Each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;
 - b. There are not more than fifteen (15) purchasers in Kentucky described in subdivision a. of this subparagraph, plus an unlimited number of purchasers who are "accredited investors" as defined by Rule 501 of the Securities Act of 1933, *17 C.F.R. sec. 230.501*; or
 - c. The aggregate offering price of the securities, including securities sold outside of Kentucky, does not exceed one million dollars (\$1,000,000), the total number of purchasers who are not accredited investors, including purchasers outside of Kentucky, does not exceed thirty-five (35), and each purchaser either receives all of the material facts with respect to the decision to invest in the security ~~or is an accredited investor or a purchaser described in subdivision a. of this subparagraph~~;
 4. Persons receiving commissions, *finders'* ~~finders~~ fees, or other remuneration in connection with sales of securities in reliance on this subsection ***shall be registered as a broker-dealer or agent under this chapter unless exempt from registration*** ~~are not relieved of compliance with KRS 292.330~~;
 5. The executive director may by rule deny the exemption provided in this subsection to a particular class of issuers or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter;
 6. The executive director may, by order, increase the maximum number of purchasers or the maximum offering amount provided in paragraph 3.c. of this subsection upon request if the executive director determines that any such increase is necessary or appropriate in the public interest or for the protection of investors. Any request to increase either or both of the conditions shall be made in writing to the executive director before any sale in reliance on the requested increase and shall be accompanied by the following:
 - a. A statement of the amount of the increase in the maximum offering amount or in the number of purchasers being requested, and the issuer's reasons for requesting the increase;
 - b. A copy of any offering circular or other written materials being distributed to prospective purchasers;
 - c. A copy of the written representation and legend serving as the issuer's basis for reasonable belief of a purchaser's investment intent and awareness of restrictions on the transferability and resale of the security being acquired; and
 - d. A filing fee of two hundred fifty dollars (\$250);
- (j) Any offer or sale of a preorganization certificate or subscription, if:
1. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
 2. The number of subscribers does not exceed twenty-five (25); and

3. No payment is made by any subscriber;
- (k) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if no commission or other remuneration ~~[(other than a standby commission)]~~ is paid or given directly or indirectly, ***except to a broker-dealer registered under this chapter***, for soliciting any security holder in this state;
- (l) Any offer ~~[(but not a sale)]~~ of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, ***15 U.S.C. secs. 77a et seq.***, if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;
- (m) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;
- (n) Any transaction incident to a right of conversion or a statutory or judicially-approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;
- (o) Any transaction by a person who does not control, and is not controlled by or under common control with, the issuer if:
1. The transaction is at a price reasonably related to the current market price;
 2. The security is registered under Section 12 of the Securities Exchange Act of 1934, ***15 U.S.C. sec. 78l***, and the issuer files reports pursuant to Section 13 of that act, ***15 U.S.C. sec. 78m***; and
 3. Copies of such federal registration statements, reports, forms or exhibits as the executive director may by rule or order require are filed with the executive director;
- (p) Any transaction by a person who may control, or may be controlled by or under common control with, the issuer if:
1. The transaction is at a price reasonably related to the current market price;
 2. The security is registered under Section 12 of the Securities Exchange Act of 1934, ***15 U.S.C. sec. 78l***, and the issuer files reports pursuant to Section 13 of that act, ***15 U.S.C. sec. 78m***;
 3. Copies of such federal registration statements, forms, reports, or exhibits as the executive director may by rule or order require are filed with the executive director; and
 4. Such sales by any such person comply with such rules as the executive director may prescribe; or
- (q) Any transaction for which the executive director by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors.
- (2) The executive director may by order deny or revoke the exemption specified in KRS 292.400(6), (9), or (12) or in this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law ***in accordance with KRS Chapter 13B***.
- (3) ~~The [except that the]~~ executive director may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this ***section where the executive director determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of conduct constituting a violation of this chapter or administrative regulation promulgated, or order issued pursuant to this chapter, or that a person has materially aided, is materially aiding, or about to materially aid an act, practice, or course of conduct constituting a violation of this chapter, an administrative regulation promulgated pursuant to this chapter, or an order issued under this chapter. Any person aggrieved by an order of the executive director under this section may file an application for an emergency hearing pursuant to KRS 13B.125. The executive director shall comply with KRS 13B.125 when entering a summary order. The executive director may modify, stay, extend, or vacate any summary order issued under this section*** subsection. Upon entry of a summary order, the executive director shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is

~~ordered by the executive director, the order will remain in effect until it is modified or vacated by the executive director. If a hearing is requested or ordered, the executive director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order to extend it until final determination].~~

- (4) ~~An~~**[No]** order *issued* under this *section shall not*~~[subsection may]~~ operate retroactively. No person *shall*~~[may]~~ be considered to have violated this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order. In any proceeding under this chapter, the burden of proving an exemption from a definition is upon the person claiming it.

➔Section 12. KRS 292.480 is amended to read as follows:

- (1) Any person, who offers or sells a security in violation of this chapter or of any rules or orders promulgated hereunder or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, ~~[(the buyer not knowing of the untruth or omission)]~~ and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less:
- (a) The value of the security when the buyer is disposed of it; and
 - (b) Interest at the legal rate per annum from the date of disposition.
- (2) Any person who purchases a security in violation of this chapter or of any administrative regulations or orders promulgated under this chapter or who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in light of the circumstances under which they are made not misleading, the seller not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission is liable to the person selling the security to him, who may sue either at law or in equity for:
- (a) A return of the security, together with any income received by the purchaser on the security, costs, and reasonable attorney's fees, upon a tender of the full amount of the consideration received for the security; or
 - (b) If the purchaser no longer owns the security, the difference between the fair value of the security at the date of the transaction and the consideration received for the security, together with interest on the difference at the legal rate compounded annually from the date of the transaction, and costs and reasonable attorney's fees.
- (3) For purposes of paragraph (b) of subsection (2) of this section, when the purchaser no longer owns the security, if a seller seeking relief under paragraph (b) of subsection (2) of this section offers and presents admissible evidence of the highest intermediate value of the subject security as of some specific date occurring within a reasonable period of time after the date of the sale of the security but no later than the date an action under paragraph (b) of subsection (2) of this section is filed, or of the total consideration received by the purchaser in a subsequent sale of that security, it shall be presumed until rebutted by a preponderance of evidence to the contrary that the value or sale price, as applicable, is the fair value of the security at the date of the transaction as those terms are used in paragraph (b) of subsection (2) of this section to measure damages. For purposes of subsections (1) and (2) of this section and all other provisions of this chapter, statements and omissions may be either oral or written.
- (4) Every person who directly or indirectly controls a seller or purchaser liable under subsection (1) or (2) of this section, every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of a seller or purchaser who materially aids in the sale or purchase, and every broker-dealer or agent who materially aids in the sale or purchase is also liable jointly and severally with and to the same extent as the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of

the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

- (5) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three (3) years after the date the occurrence of the act, omission, or transaction constituting a violation of this chapter was discovered, or in the exercise of reasonable care should have been discovered. No person may sue under this section:
- (a) If the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at the legal rate from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty (30) days of its receipt;
 - (b) If the buyer received an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty (30) days of its receipt; or
 - (c) If paragraph (b) of subsection (2) of this section applies, and if the seller received a written offer before suit equal to the difference between the greater of the highest intermediate value of the security or the consideration received by the purchaser upon disposal of the security and the consideration received by the seller for the security, together with interest on the difference at the legal rate from the date of the transaction; or if paragraph (a) of subsection (2) of this section applies, and if the seller received a written offer to return the security together with any income received by the purchaser on the security; and in either case he failed to accept the offer within thirty (30) days of its receipt.
- (6) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.
- (7) ***A person who receives directly or indirectly any consideration for providing investment advice to another person and who employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs, and reasonable attorney's fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.***
- (8) The rights and remedies provided by this section are in addition to any other rights or remedies that may exist at law or in equity.

➔Section 13. KRS 292.500 is amended to read as follows:

- (1) The administration of the provisions of this chapter shall be under the Office of Financial Institutions.
- (2) It is unlawful for the executive director or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the executive director and which is not made public. Except as provided in subsection (19){(18)} of this section, no provision of this chapter authorizes the executive director or any of his officers or employees to disclose any confidential information except among themselves or when necessary or appropriate in an administrative hearing or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the executive director or any of his officers or employees.
- (3) The executive director may ~~from time to time~~ promulgate, amend, and repeal administrative regulations, forms, and orders as are necessary to carry out the provisions of this chapter, including administrative regulations and forms governing registration statements, applications, notice filings, and reports and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of administrative regulations and forms, the executive director may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

- (4) No administrative regulation, form, or order may be promulgated, amended, or repealed unless the executive director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provision of this chapter. In promulgating administrative regulations and forms, the executive director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statement, applications, notice filings, and reports whenever practicable.
- (5) The executive director may by administrative regulation or order prescribe the form and content of financial statements required under this chapter and the circumstances under which consolidated financial statements shall be certified by certified public accountants. All financial statements shall be prepared in accordance with generally-accepted accounting standards.
- (6) All administrative regulations and forms of the executive director shall be published.
- (7) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any administrative regulation, form, or order of the executive director, notwithstanding that the administrative regulation, form, or order may later be amended or repealed or be determined by judicial or other authority to be invalid for any reason.
- (8) A document is filed when it is received by the executive director or when the executive director receives confirmation that a document has been filed ~~pursuant to KRS 292.327, 292.330, 292.360, and 292.370~~. ***The executive director may accept electronic filings of any documents required to be filed under this chapter, either in conjunction with paper filings or in place of paper filings in whole or in part.***
- (9) Every administrative hearing shall be conducted in accordance with KRS Chapter 13B and the provisions of this chapter, and shall be public unless the executive director in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.
- (10) The executive director shall keep a ***record*** ~~register~~ of all applications for registration and registration statements and notice filings which are or have ~~ever~~ been effective under this chapter and ***a record of*** all denial, suspension, or revocation final orders which have ~~ever~~ been entered under this chapter. ~~The register shall be open for public inspection.~~
- (11) The information contained in or filed with any registration statement, application, ***or notice filing is a public record subject to the provisions of the Kentucky Open Records Act*** ~~filings, or report may be made available to the public under administrative regulations as the executive director may promulgate~~.
- (12) Upon request and at reasonable charges as he prescribes, the executive director shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any administrative hearing or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.
- (13) The executive director in his discretion may honor requests from interested persons for interpretative opinions.
- (14) The executive director may ***impose*** ~~assess~~ civil fines against any person who violates any provision of this chapter or any rule or order ***or voluntary agreement entered into*** under this chapter. ***The fine shall not exceed twenty thousand dollars (\$20,000) per violation, except when the violation is directed at, or results in monetary damage to one (1) or more individuals who are sixty (60) years of age or older, the executive director may impose an additional fine not to exceed twenty thousand dollars (\$20,000) per violation. Each act or transaction which violates this chapter or administrative regulation, or orders or agreements entered into under this chapter, shall constitute a separate violation. Any employer or principal shall be jointly and severally liable for fines imposed in connection with the conduct of employees or agents.***
- (15) ***The executive director is authorized to designate that the fines imposed for violations of this chapter or administrative regulation, or any order or voluntary agreement entered into pursuant to this chapter, be deposited into the securities fraud prosecution and prevention fund established in Section 16 of this Act.***
- ~~(15)~~ (16) In addition to any fines ***imposed*** ~~levied~~ under subsection (14) of this section, the executive director may also assess the costs of any investigation, including attorney's fees incurred as a result of bringing enforcement actions under the provisions of this chapter and costs of holding any hearing as a result of an enforcement action. Costs and attorney's fees may only be ***imposed*** ~~assessed~~ if there has been a final determination that a violation has occurred, and in an amount reasonably related to the costs of investigation

and enforcement for those violations only. *Costs and attorney's fees may be included as part of an agreement in settlement of an enforcement action.*

- (17)~~(16)~~ If fines, *fees*, or costs *imposed*~~assessed~~ under this section are not paid, *then* the executive director may notify the *Revenue Cabinet which may*~~Attorney General who shall promptly~~ institute an action in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court, *or any other court of competent jurisdiction*, for the recovery of the fines, *fees*, or costs.
- (18)~~(17)~~ The remedies provided by this section are not exclusive and may be sought and employed in any combination to enforce the provisions of this chapter. The remedies set forth in this section shall not prohibit or restrict the executive director from participating in any way whatsoever with respect to any joint examination, investigation, enforcement action, settlement, or other legal or regulatory action with securities administrators of other jurisdictions, the Securities and Exchange Commission, any self-regulatory organization, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, *15 U.S.C. secs. 78a et seq.* Accordingly, the executive director may, at any time and in his sole discretion, share or cause to be shared by any employee of the office any information gained pursuant to an examination, investigation, filing, or from any other source, with other governmental agencies, jurisdictions, or governmental or self-regulating organizations or entities, to the extent the executive director, in his sole discretion, deems that the sharing of information is or will be reasonably necessary or useful to the office or other agency in carrying out its regulatory responsibilities.
- (19)~~(18)~~ The following materials, documentation, and other information are deemed to have been confidentially disclosed to the office and to be confidential information under the Kentucky Open Records Act and, specifically, the provisions of KRS 61.878(1)(b), to the extent described in this subsection and except as provided further in administrative regulation:
- (a) Any materials, documentation, or other information provided to or otherwise obtained by the office during the course of a routine compliance examination of any broker-dealer, agent, investment adviser, or investment adviser representative;~~and~~
 - (b) *Any materials, documentation or other information that is part of an ongoing investigation; and*
 - (c) Any materials, documentation, or other information provided to or otherwise obtained by the office from any other regulatory or governmental body, including but not limited to any other state securities regulator, the Securities and Exchange Commission, any self-regulatory organization, any state or federal criminal agency, and any criminal prosecutorial body, and which the other body expressly deems to be confidential.
- (20) (a) *The confidential information specified in subsection (19)(a) and (b) of this section may be released when required in a proper legal proceeding in which a subpoena and protective order ensuring confidentiality has been issued by the tribunal.*
- (b) *The confidential information specified in subsection (19)(c) of this section must be obtained from the entity which provided the information.*

➔Section 14. KRS 292.530 is amended to read as follows:

- (1) The purpose of this chapter is to:
- (a) Protect~~Kentucky~~ investors by preventing investment fraud and related illegal conduct or, if this fraud or illegal conduct has already occurred, remedying, where possible, the harm done to~~Kentucky~~ investors through active implementation and application of this chapter's enforcement powers;
 - (b) Educate the investing public as to the best methods for making informed investment choices; and
 - (c) Assist companies in their legitimate attempts to raise capital and transact in securities in Kentucky.
- (2) In addition, this chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation.

➔Section 15. KRS 292.313 is amended to read as follows:

- (1) KRS 292.320(1), 292.330~~(4)~~, 292.340, 292.450, and 292.480 apply to persons who sell or offer to sell when an offer to sell is made in this state, or an offer to buy is made and accepted in this state.

- (2) KRS 292.320(1), 292.330~~{(4)}~~, and 292.450 apply to persons who buy or offer to buy when an offer to buy is made in this state, or an offer to sell is made and accepted in this state.
- (3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).
- (4) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).
- (5) An offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months, or a radio or television program originating outside this state is received in this state.
- (6) Subsections (2), (3), and (4) of KRS 292.320, as well as KRS 292.330~~{(4)}~~ and 292.450 so far as investment advisers or investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created in the State Treasury a trust and revolving fund designated as the "securities fraud prosecution and prevention fund."*
- (2) *The executive director may designate that all or a portion of the civil fines imposed for violations of this chapter or administrative regulations, or orders issued pursuant to this chapter, be deposited into the fund established in subsection (1) of this section.*
- (3) *The fund established by subsection (1) of this section may also receive additional state appropriations, gifts, grants, and federal funds.*
- (4) *Expenditures from the fund established by subsection (1) of this section may be used to assist in criminal prosecution of fraudulent activities under this chapter, for training and equipment related to prevention, detection, and investigation of securities fraud, and for investor education.*
- (5) *The money deposited into the fund is hereby appropriated for the uses set forth in subsection (4) of this section. Notwithstanding KRS 45.229, any money remaining in the fund at the close of any calendar year shall not lapse but shall be carried forward to the next calendar year. All interest earned on money in the fund shall be credited to the fund.*
- (6) *The executive director is responsible for the distribution of moneys in the fund and shall, in consultation with the Attorney General and local prosecutors, develop and promulgate administrative regulations for the use of those moneys.*

➔Section 17. KRS 304.37-530 is amended to read as follows:

A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in *subsection (19) of Section 1 of this Act*~~{KRS 292.310(13)}~~.

Signed by Governor April 7, 2010.