

CHAPTER 42

(SB 139)

AN ACT relating to investment advisers.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under Section (3)(c)(1) of the Investment Company Act of 1940, 15 U.S.C. sec. 80a-3(c)(1), as amended;*
- (b) *"Private fund adviser" means an investment adviser who provides advice solely to one (1) or more qualifying private funds;*
- (c) *"Qualifying private fund" means a private fund that meets the definition of a qualifying private fund under 17 C.F.R. sec. 275.203(m)-1, as amended; and*
- (d) *"Venture capital fund" means a private fund that meets the definition of a venture capital fund under 17 C.F.R. sec. 275.203(l)-1, as amended.*

(2) *Except as otherwise provided in this section, a private fund adviser shall be exempt from the registration requirement of subsection (8) of Section 2 of this Act if:*

- (a) *Neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d) of the Securities and Exchange Commission's Regulation D, 17 C.F.R. sec. 230.506(d), as amended;*
- (b) *The private fund adviser:*
 - 1. *Files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission under Rule 204-4, 17 C.F.R. sec. 275.204-4, as amended; and*
 - 2. *Pays the fees established by the commissioner; and*
- (c) *For a private fund adviser that advises one (1) or more 3(c)(1) funds that are not venture capital funds:*
 - 1. *The private fund adviser advises only those 3(c)(1) funds, other than venture capital funds, that satisfy at least one (1) of the following requirements:*
 - a. *The fund's outstanding securities, other than short-term paper, are beneficially owned entirely by persons who are accredited investors, as defined in Rule 501 of the Securities and Exchange Commission's Regulation D, 17 C.F.R. sec. 230.501, as amended, at the time the securities are purchased from the issuer; or*
 - b. *If the fund has one (1) or more beneficial owners who do not meet the requirements of subdivision a. of this subparagraph:*
 - i. *The fund existed prior to the effective date of this Act; and*
 - ii. *As of the effective date of this Act, the fund ceases to accept beneficial owners who do not meet the requirements of subdivision a. of this subparagraph;*
 - 2. *At the time of purchase, the private fund adviser discloses the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:*
 - a. *All services, if any, to be provided to individual beneficial owners;*
 - b. *All duties, if any, the private fund adviser owes to beneficial owners; and*
 - c. *Any other material information affecting the rights or responsibilities of the beneficial owners; and*

3. *As of the effective date of this Act, the private fund adviser:*
 - a. *Obtains on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund; and*
 - b. *Delivers a copy of the statements obtained under subdivision a. of this subparagraph to each beneficial owner of each 3(c)(1) fund that is not a venture capital fund.*
- (3) *A filing required under subsection (2)(b) of this section shall be:*
 - (a) *Made electronically through the Investment Adviser Registration Depository; and*
 - (b) *Deemed filed when the filing and fee required under subsection (2)(b) of this section is accepted by the Investment Adviser Registration Depository on the state's behalf.*
- (4) *An investment adviser who becomes ineligible for an exemption provided under this section shall comply with all applicable laws, administrative regulations, and orders requiring registration or notice filing within ninety (90) days from the date the adviser's eligibility ceases.*
- (5) (a) *The commissioner may waive compliance with subsection (2)(a) of this section if:*
 1. *The private fund adviser makes a showing of good cause; and*
 2. *The commissioner determines that it is not necessary under the circumstances to deny an exemption under this section to the private fund adviser.*
- (b) *A waiver under this subsection shall be without prejudice to any other action of the commissioner.*

➔Section 2. KRS 292.330 is amended 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 effects 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 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, 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 effecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934, 15 U.S.C. sec. 78o(h)(2); and
 - (c) An agent who represents an issuer in:
 1. Effecting a transaction in a security that is exempted by KRS 292.400(1), (2), (3), (10), or (11);
 2. Effecting a transaction in a security that is exempted by KRS 292.400(5), (9), or (12) if the agent does not receive a commission or other remuneration based, directly or indirectly, on the transaction;
 3. Effecting 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. Effecting a transaction in a security that is exempted by KRS 292.410 unless registration as an agent is required elsewhere in this chapter or by administrative regulation or order under this chapter;
 5. Effecting a transaction in a security that is a covered security, except that an agent who represents an issuer in effecting 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. Effecting 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. Effecting 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 *administrative regulation*~~[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 ~~that~~~~who~~ has no place of business in this state if *the investment adviser's*~~[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 ~~that~~~~who~~ has no place of business in this state if, during any period of twelve (12) consecutive months, *the investment adviser*~~[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 ~~that~~~~who~~ is approved, and remains approved, by the Kentucky Economic Development Finance Authority as an investment fund manager pursuant to KRS 154.20-256;
 - (d) *A private fund adviser in accordance with Section 1 of this Act;* and
 - ~~(e)~~~~(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 *administrative regulation*~~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.

Signed by Governor April 4, 2024.