

PUBLIC PROTECTION CABINET
Department of Financial Institutions
(Amended at ARRS Committee)

808 KAR 10:501. Required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption; and notice filing requirements for federal crowdfunding offerings.

RELATES TO: KRS 292.327, 292.330-292.390, 292.411, 292.412, 15 U.S.C. 77d, 15 U.S.C. 77r, 17 C.F.R. Part 227

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.411(1)(f) and (s) require the commissioner to prescribe the notice filing form to be used, the filing fee to be paid, and the records to be kept by an issuer. KRS 292.412(2) requires the commissioner to prescribe the filing procedure and form to be used by registered broker-dealers operating an Internet Web site pursuant KRS 292.411(1)(r). KRS 292.412(3), (5), (6), (7), and (8) require the commissioner to prescribe filing procedures and forms for applications and renewal applications, the filing fees to be paid, the records to be kept, and the examination fees for Internet Web site operators. This administrative regulation establishes the required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption, and notice filing requirements for federal crowdfunding offerings.

Section 1. Definitions.

- (1) "Commissioner" is defined by KRS 292.310(4).
- (2) "Completion of an offering" means the occurrence of one (1) of the following:
 - (a) The date upon which the offering deadline expires;
 - (b) The date upon which the transaction becomes void pursuant to KRS 292.411(1)(i);or
 - (c) If the offering is closed prior to the offering deadline pursuant to KRS 292.411(k), the date of early closing.
- (3) "Internet Web site operator" means a person registered as an Internet Web site operator pursuant to KRS 292.412.

Section 2. Issuer Notice Filings. An issuer making a submission pursuant to KRS 292.411(1)(f) shall complete and submit the following:

- (1) Form CF 1, Kentucky Intrastate Crowdfunding Exemption Issuer Notice Filing Form with all required attachments;
- (2) Form CF 2, Final Report of Sales Form no later than thirty (30) days after the completion of an offering conducted pursuant to KRS 292.411; and
- (3) A filing fee of \$500.

Section 3. Registration of Internet Web Site Operators.

- (1) A person applying for registration as an Internet Web site operator shall complete and submit the following:
 - (a) Form CF 3, Internet Web Site Operator Registration Form with all required attachments;
 - (b) Form CF 4, Internet Web Site Operator Surety Bond Form; and
 - (c) A filing fee of \$250.

(2) An Internet Web site operator applying to renew its registration for the following calendar year pursuant to KRS 292.412(6) shall complete and submit the following between December 1 and December 15 of the preceding calendar year:

(a) Form CF 3, Internet Web Site Operator Registration Form with all required attachments; and

(b) A renewal fee of \$250.

(3) Except as provided in subsection (4) of this section, an initial registration shall be effective until December 31 of the year in which the initial registration is approved by the commissioner.

(4) An initial registration approved after November 30 shall be effective until December 31 of the following calendar year.

Section 4. Broker-dealer Notice Filings.

(1) Form CF 5, Broker-Dealer Internet Web Site Operator Notice Filing Form shall be completed by a broker-dealer making a notice filing pursuant to KRS 292.412(2).

(2) The notice filing shall be filed before the broker-dealer operates an Internet Web site pursuant to KRS 292.411(1)(r).

(3) Except as provided in subsection (4) of this section, a notice filing made pursuant to this section shall be effective until December 31 of the year in which the filing is made.

(4) A notice filing made between December 1 and December 31 of the year in which a previous notice filing expires shall be effective for the subsequent calendar year.

Section 5. Recordkeeping Requirements.

(1) An issuer shall accurately make and keep the following books and records relating to any offer or sale made pursuant to KRS 292.411:

(a) All forms and documents that are required by KRS 292.411 or this administrative regulation to be filed with the commissioner;

(b) Evidence of residency from each purchaser in any offering made by the issuer as required by KRS 292.411(1)(o);

(c) Evidence of accredited investor status for each purchaser making an investment exceeding \$10,000 as required by KRS 292.411(1)(e) and (o);

(d) Evidence reflecting all offers made by the issuer;

(e) Evidence reflecting all sales made by the issuer;

(f) Manually or electronically signed copies of all purchaser certifications as required by KRS 292.411(1)(n);

(g) All limited notices distributed in accordance with KRS 292.411(1)(r)7.;

(h) All notices of cancellation of commitment to invest pursuant to KRS 292.411(1)(j);

(i) All notices of closing of an offering prior to the offering deadline delivered pursuant to KRS 292.411(1)(k);

(j) Quarterly reports made pursuant to KRS 292.411(1)(t); and

(k) All other communications with purchasers in the offering.

(2) An Internet Web site operator shall accurately make and keep the following books and records:

(a) Records of fees received pursuant to KRS 292.412(4)(a);

(b) All agreements with issuers offering securities through the Internet Web site operator's Web site;

(c) All information provided to the Internet Web site operator by an issuer to establish that the issuer is organized under the laws of Kentucky and authorized to do business in Kentucky as required by KRS 292.411(1)(r)1.;

(d) Evidence reflecting the limitation of Web site access as required by KRS 292.411(1)(r)3.;

(e) All correspondence or other communications with issuers, prospective purchasers, or purchasers;

- (f) All information made available through the Internet Web site relating to an offering; and
- (g) Any other information provided by or through the Internet Web site operator to issuers, prospective purchasers, or purchasers.

Section 6. Kentucky Intrastate Crowdfunding Examination Fees. The fee for a routine examination of an Internet Web site operator shall be fifty (50) dollars per working hour. A fee shall not be charged for examination work by an examiner-trainee.

Section 7. Federal Crowdfunding Notice Filing Provisions.

(1) The following provisions apply to offerings made under the federal Regulation Crowdfunding (17 C.F.R Part 227) and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933 (15 U.S.C.77d(a)(6) and 15 U.S.C.77r(b)(4)(C)):

(a) For an issuer that either (1) has its principal place of business in this state or (2) sells fifty (50) percent or greater of the aggregate amount of the offering to residents of this state, the issuer shall file the following with the commissioner:

1. A completed Form U-CF, Uniform Notice of Federal Crowdfunding Offering form, or copies of all documents filed with the Securities and Exchange Commission;
2. A consent to service of process on Form U-2 if not filing on Form U-CF; and
3. A filing fee of \$250;

(b) For an issuer that has its principal place of business in this state, the filings required under paragraph (a) of this subsection shall be filed with the commissioner when the issuer makes its initial Form C filing concerning the offering with the Securities and Exchange Commission; and

(c) For an issuer that does not have its principal place of business in this state, but where residents of this state have purchased fifty (50) percent or greater of the aggregate amount of the offering, the filing required under paragraph (a) of this subsection shall be filed when the issuer becomes aware that such purchases have met this threshold, and in no event later than thirty (30) days from the date of completion of the offering.

(2) The initial notice filing required under subsection (1) of this section is effective for twelve months from the date of the filing with the commissioner.

(3) For each additional twelve-month period in which the same offering is continued, an issuer conducting an offering under 17 C.F.R Part 227 and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933 (15 U.S.C.77d(a)(6) and 15 U.S.C.77r(b)(4)(C)) shall renew the initial notice filing required under subsection (1) of this section by filing the following on or before the expiration of the initial notice filing:

- (a) A completed Form U-CF marked "renewal" ora cover letter requesting renewal; and
- (b) A renewal fee of \$250.

Section 8. Incorporation by reference.

(1) The following material is incorporated by reference:

- (a) "Form CF 1, Kentucky Intrastate Crowdfunding Exemption Issuer Notice Filing Form", September 2023;
- (b) "Form CF 2, Final Report of Sales Form", September, 2023;
- (c) "Form CF 3, Internet Web Site Operator Registration Form", September 2023;
- (d) "Form CF 4, Internet Web Site Operator Surety Bond Form", September 2023; and
- (e) "Form CF 5, Broker-Dealer Internet Web Site Operator Notice Filing Form", September 2023.
- (f) "Form U-2, Uniform Consent to Service of Process, September 2023
- (g) "Form U-CF, Uniform Notice of Federal Crowdfunding Offering", September 2023

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 500 Mero St 2SW19, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at kfi.ky.gov.

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CONTACT PERSON: Gary Stephens, Asst. General Counsel, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, phone 502-782-9046, fax 502-573-8787, email Gary.Stephens@ky.gov.