

154.20-256 Approval of investment funds and managers -- Application -- Documents -- Powers of authority -- Purpose of investment fund -- Criteria for approval -- Disclosure form -- Operation of multiple funds -- Loss of unused credits -- Confidentiality -- Standards.

- (1) The approval of investment funds and investment fund managers shall be made pursuant to an application to the authority submitted by a proposed fund manager on behalf of a proposed investment fund and shall include:
 - (a) The name, address, and Social Security number or employer identification number, as applicable, of the investment fund manager and the investment fund;
 - (b) The applicant's business plan, including the minimum and maximum amount of cash contributions to be solicited for the investment fund, and strategy for operation of the proposed investment fund;
 - (c) The amount of credits the investment fund seeks for making qualified investments;
 - (d) The applicant fund manager's relevant experience and demonstrated ability to manage the proposed investment fund;
 - (e) The location and account number of a bank account that has been established for use by the investment fund;
 - (f) The exemption or registration provision that is being relied upon or intended to be relied upon by both the investment fund and the investment fund manager to permit this offering of securities and the activity of the investment fund manager in relation to the offering, in compliance with applicable state and federal securities laws and regulations;
 - (g) A representation that the investment fund and the investment fund manager are and shall remain in compliance with applicable state and federal securities regulations; and
 - (h) Any additional information the authority deems necessary.
- (2) The applicant shall include copies of the following documents as attachments to the application:
 - (a) The disclosure documents used in connection with the offering and investment in the investment fund;
 - (b) The disclosure documents provided to each investor which state that:
 1. The investor has certain rights, responsibilities, and liabilities pursuant to KRS 154.20-250 to 154.20-284;
 2. The Commonwealth shall be immune from liability for any losses or damages investors, investment funds, or investment fund managers may incur pursuant to KRS 154.20-279;
 3. No tax credit shall be available under the provisions of KRS 154.20-250 to 154.20-284 until the investment fund and the investment fund manager have complied with applicable state and federal securities laws and regulations and have been approved by the authority, and an

agreement has been executed, and the terms of that agreement have been disclosed in writing to each investor; and

4. Investors shall lose all rights to any unused credits allocated to an investment fund that does not make a qualified investment within one (1) year of the date of the agreement with the authority or within any one (1) year period thereafter through the end of the term of the agreement.

An applicant soliciting cash contributions for the initial capitalization of an investment fund, or an investment fund manager soliciting additional cash contributions for an approved investment fund, shall disclose in advance and in writing to each potential investor those items described in this subsection in addition to any other items required by law or by agreement.

- (3) The authority shall have, in addition to its other powers provided in this chapter and as otherwise provided by law, all powers and authority, not explicitly prohibited by statute, that are necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of KRS 154.20-250 to 154.20-284, including but not limited to power to:
 - (a) Require consultation, advisory, and legal fees and other expenses the authority deems necessary or incident to the preparation, adoption, implementation, modification, or enforcement of the terms of any agreement or other document, or otherwise necessary or incident to any transaction;
 - (b) Require the investment fund manager to pay these fees and expenses directly to the person providing such consultation, advisory, legal, or other services on behalf of the authority; and
 - (c) Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.

Any payments made by an investment fund manager pursuant to this subsection may be passed on to the investment fund manager's investment fund.

- (4) An investment fund's stated purpose shall be primarily to encourage and assist in the creation, development, or expansion of small businesses located in Kentucky.
- (5) The criteria considered by the authority for the approval of investment fund managers and the maximum amount of credits allocated to the investors of an investment fund shall include but not be limited to:
 - (a) Compliance by those persons with applicable state and federal securities laws and regulations;
 - (b) A review of the application;
 - (c) The investment strategy for the investment fund;
 - (d) The relevant experience of the applicant fund manager or, if the applicant fund manager is an entity, the applicant's management;
 - (e) The applicant's demonstrated ability to manage the investment fund; and
 - (f) The amount of credits requested by the investment fund and the total amount of credits which may be granted to investors under KRS 154.20-258.
- (6) Following the making of a qualified investment, the investment fund manager shall

within sixty (60) days file a disclosure form with the authority detailing the following information:

- (a) The name and address of the small business in which the qualified investment was made;
 - (b) The amount of the qualified investment; and
 - (c) The name, address, and Social Security number or employer identification number, as may be applicable, of each investor and the amount of credit allocated to each investor by virtue of the investor's proportional ownership interest in the qualified investment.
- (7) An investment fund manager and its affiliates may operate no more than three (3) separate investment funds pursuant to separate applications submitted to and approved by the authority, provided the investment fund manager is in compliance with any applicable state and federal securities laws and regulations as evidenced by a written statement to the authority by an investment fund manager to that effect.
 - (8) An investment fund manager seeking to expand a previously approved investment fund shall submit to the authority an amended application in a form acceptable to the authority.
 - (9) An investment fund shall lose all unused credits that are available to its investors if the investment fund does not make a qualified investment within one (1) year of the date of the agreement or within any one (1) year period thereafter through the end of the term of the agreement.
 - (10) The contents of the information form required under subsections (1), (2), and (6) of this section shall be treated by the authority and by the Department of Revenue as confidential and shall not be considered public records under KRS 61.870 to 61.884.
 - (11) The authority, in consultation with the Department of Revenue, may establish additional procedures and standards, as it deems necessary for the approval of investment funds and investment fund managers, and for the allocation and granting of investment tax credits by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

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History: Amended 2005 Ky. Acts ch. 85, sec. 570, effective June 20, 2005. -- Created 2002 Ky. Acts ch. 230, sec. 19, effective July 15, 2002.