

1 AN ACT relating to investment advisers.

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

3 ➔Section 1. KRS 292.330 is amended to read as follows:

- 4 (1) It is unlawful for any person to transact business in this state as a broker-dealer  
5 unless the person is registered under this chapter as a broker-dealer or is exempt  
6 from registration under subsection (2) of this section.
- 7 (2) The following persons are exempt from the registration requirement of subsection  
8 (1) of this section:
- 9 (a) A broker-dealer that effects transactions in this state exclusively in securities  
10 exempted by KRS 292.400(15);
- 11 (b) A broker-dealer that has no place of business in this state and that effects  
12 transactions in this state exclusively with or through the issuers of the  
13 securities involved in the transactions, other broker-dealers, or banks, savings  
14 institutions, trust companies, insurance companies, or investment companies  
15 as defined in the Investment Company Act of 1940, 15 U.S.C. secs. 80a-1 et  
16 seq., pension or profit-sharing trusts, or other financial institutions or  
17 institutional buyers, whether acting for themselves or as trustees;
- 18 (c) A broker-dealer with no place of business in this state that during any period  
19 of twelve (12) consecutive months does not direct more than fifteen (15)  
20 offers to sell or to buy into this state in any manner to persons other than those  
21 specified in paragraph (b) of this subsection; and
- 22 (d) Any other person exempted from registration by administrative regulation or  
23 order under this chapter.
- 24 (3) It is unlawful for an individual to transact business in this state as an agent unless  
25 the individual is registered under this chapter as an agent or is exempt from  
26 registration under subsection (4) of this section.
- 27 (4) The following agents are exempt from the registration requirement of subsection (3)

1 of this section:

2 (a) An agent who represents a broker-dealer that is exempt from registration  
3 under this chapter;

4 (b) An agent who represents a broker-dealer in effecting transactions described in  
5 Section 15(h)(2) of the Securities Exchange Act of 1934, 15 U.S.C. sec.  
6 78o(h)(2); and

7 (c) An agent who represents an issuer in:

- 8 1. Effecting a transaction in a security that is exempted by KRS  
9 292.400(1), (2), (3), (10), or (11);
- 10 2. Effecting a transaction in a security that is exempted by KRS  
11 292.400(5), (9), or (12) if the agent does not receive a commission or  
12 other remuneration based, directly or indirectly, on the transaction;
- 13 3. Effecting a transaction in a security that is exempted by KRS  
14 292.400(15), provided that the agent offers or sells no other securities  
15 exempted by KRS 292.400(15);
- 16 4. Effecting a transaction in a security that is exempted by KRS 292.410  
17 unless registration as an agent is required elsewhere in this chapter or by  
18 administrative regulation or order under this chapter;
- 19 5. Effecting a transaction in a security that is a covered security, except  
20 that an agent who represents an issuer in effecting a transaction in a  
21 security that is a covered security under Section 18(b)(3) or 18(b)(4)(d)  
22 of the Securities Exchange Act of 1933, 15 U.S.C. sec. 77r(b)(3) or  
23 77r(b)(f)(D), is not exempt if the agent receives a commission or other  
24 remuneration based, directly or indirectly, on the transaction;
- 25 6. Effecting a transaction with existing employees, partners, or directors of  
26 the issuer if the agent does not receive a commission or other  
27 remuneration based, directly or indirectly, on the transaction;

- 1           7.    Effecting other transactions if the agent primarily performs, or is  
2           intended to primarily perform upon completion of an offering of the  
3           issuer's own securities, substantial duties for or on behalf of the issuer  
4           otherwise than in connection with transactions in the issuer's own  
5           securities and the agent's compensation is not based, directly or  
6           indirectly, on the transactions; and
- 7           8.    Any other person exempted from registration by administrative  
8           regulation or order under this chapter.
- 9   (5)   The registration of an agent is effective only while the agent is employed by or  
10       associated with a broker-dealer registered under this chapter or an issuer offering,  
11       selling, or purchasing its securities in this state.
- 12   (6)   An individual may not act as an agent for more than one (1) broker-dealer or one  
13       (1) issuer at a time unless authorized by rule or order under this chapter.
- 14   (7)   It is unlawful for a broker-dealer or an issuer to employ or associate with an agent  
15       unless the agent is registered under this chapter or exempt from registration.
- 16   (8)   It is unlawful for any person to transact business in this state as an investment  
17       adviser unless the person is registered under this chapter as an investment adviser or  
18       is exempt from registration under subsection (9) of this section.
- 19   (9)   The following investment advisers are exempt from the registration requirement of  
20       subsection (8) of this section:
- 21       (a)   An investment adviser who has no place of business in this state if his ***or her***  
22           only clients in this state are other investment advisers, covered advisers,  
23           broker-dealers, banks, savings institutions, trust companies, insurance  
24           companies, pension or profit-sharing trusts, or other financial institutions or  
25           institutional buyers, whether acting for themselves or as trustees;
- 26       (b)   An investment adviser ~~*that:*~~~~*who*~~
- 27           **1.**   Has no place of business in this state if, during any period of twelve (12)

1 consecutive months, the investment adviser~~[he or she]~~ does not have  
 2 more than five (5) clients, other than those specified in paragraph (a) of  
 3 this subsection; or

4 2. During any period of twelve (12) consecutive months, does not have  
 5 more than five (5) clients, other than those specified in paragraph (a)  
 6 of this subsection, whose principal residence or principal place of  
 7 business is in this state;

8 (c) An investment adviser who is approved, and remains approved, by the  
 9 Kentucky Economic Development Finance Authority as an investment fund  
 10 manager pursuant to KRS 154.20-256;

11 (d) A private fund adviser in accordance with Section 2 of this Act; and

12 (e)~~[(d)]~~ Any other investment adviser exempted from registration by  
 13 administrative regulation or order under this chapter.

14 (10) It is unlawful for an investment adviser to employ or associate with an investment  
 15 adviser representative unless the representative is registered under this chapter or  
 16 exempt from registration.

17 (11) It is unlawful for an individual to transact business in this state as an investment  
 18 adviser representative unless the individual is registered under this chapter as an  
 19 investment adviser representative or is exempt from registration under subsection  
 20 (12) of this section.

21 (12) The following investment adviser representatives are exempt from the registration  
 22 requirement of subsection (11) of this section:

23 (a) An investment adviser representative who is employed by or associated with  
 24 an investment adviser that is exempt from registration under this chapter or a  
 25 federal covered adviser that is excluded from the notice filing requirements  
 26 under this chapter; and

27 (b) Any other investment adviser representative exempted from registration by

1 rule or order under this chapter.

2 (13) The registration of an investment adviser representative is effective only while the  
3 investment adviser representative is employed by or associated with an investment  
4 adviser registered under this chapter or with a covered adviser that has made a  
5 notice filing under this chapter.

6 (14) An individual may not act as an investment adviser representative for more than  
7 one (1) investment adviser or covered adviser at a time unless authorized by  
8 administrative regulation or order under this chapter.

9 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO  
10 READ AS FOLLOWS:

11 **(1) As used in this section:**

12 **(a) "3(c)(1) fund" means a qualifying private fund that is eligible for the**  
13 **exclusion from the definition of an investment company under Section**  
14 **(3)(c)(1) of the Investment Company Act of 1940, 15 U.S.C. sec. 80a-3(c)(1),**  
15 **as amended;**

16 **(b) "Private fund adviser" means an investment adviser who provides advice**  
17 **solely to one (1) or more qualifying private funds;**

18 **(c) "Qualifying private fund" means a private fund that meets the definition of**  
19 **a qualifying private fund under 17 C.F.R. sec. 275.203(m)-1, as amended;**  
20 **and**

21 **(d) "Venture capital fund" means a private fund that meets the definition of a**  
22 **venture capital fund under 17 C.F.R. sec. 275.203(l)-1, as amended.**

23 **(2) Except as otherwise provided in this section, a private fund adviser shall be**  
24 **exempt from the registration requirement of subsection (8) of Section 1 of this**  
25 **Act if:**

26 **(a) Neither the private fund adviser nor any of its advisory affiliates are subject**  
27 **to an event that would disqualify an issuer under Rule 506(d) of the**

1           Securities and Exchange Commission's Regulation D, 17 C.F.R. sec.  
2           230.506(d), as amended;

3           (b) The private fund adviser:

4           1. Files with the state each report and amendment thereto that an exempt  
5           reporting adviser is required to file with the Securities and Exchange  
6           Commission under Rule 204-4, 17 C.F.R. sec. 275.204-4, as amended;  
7           and

8           2. Pays the fees established by the commissioner; and

9           (c) For a private fund adviser that advises one (1) or more 3(c)(1) funds that  
10           are not venture capital funds:

11           1. The private fund adviser advises only those 3(c)(1) funds, other than  
12           venture capital funds, that satisfy at least one (1) of the following  
13           requirements:

14           a. The fund's outstanding securities, other than short-term paper,  
15           are beneficially owned entirely by persons who are accredited  
16           investors, as defined in Rule 501 of the Securities and Exchange  
17           Commission's Regulation D, 17 C.F.R. sec. 230.501, as  
18           amended, at the time the securities are purchased from the  
19           issuer; or

20           b. If the fund has one (1) or more beneficial owners who do not  
21           meet the requirements of subdivision a. of this subparagraph:

22           i. The fund existed prior to the effective date of this Act; and

23           ii. As of the effective date of this Act, the fund ceases to accept  
24           beneficial owners who do not meet the requirements of  
25           subdivision a. of this subparagraph;

26           2. At the time of purchase, the private fund adviser discloses the  
27           following in writing to each beneficial owner of a 3(c)(1) fund that is

- 1                   not a venture capital fund:
- 2                   a. All services, if any, to be provided to individual beneficial
- 3                   owners;
- 4                   b. All duties, if any, the private fund adviser owes to beneficial
- 5                   owners; and
- 6                   c. Any other material information affecting the rights or
- 7                   responsibilities of the beneficial owners; and
- 8                   3. As of the effective date of this Act, the private fund adviser:
- 9                   a. Obtains on an annual basis audited financial statements of each
- 10                   3(c)(1) fund that is not a venture capital fund; and
- 11                   b. Delivers a copy of the statements obtained under subdivision a.
- 12                   of this subparagraph to each beneficial owner of each 3(c)(1)
- 13                   fund that is not a venture capital fund.
- 14                   (3) A filing required under subsection (2)(b) of this section shall be:
- 15                   (a) Made electronically through the Investment Adviser Registration
- 16                   Depository; and
- 17                   (b) Deemed filed when the filing and fee required under subsection (2)(b) of
- 18                   this section is accepted by the Investment Adviser Registration Depository
- 19                   on the state's behalf.
- 20                   (4) An investment adviser who becomes ineligible for an exemption provided under
- 21                   this section shall comply with all applicable laws, administrative regulations, and
- 22                   orders requiring registration or notice filing within ninety (90) days from the date
- 23                   the adviser's eligibility ceases.
- 24                   (5) (a) The commissioner may waive compliance with subsection (2)(a) of this
- 25                   section if:
- 26                   1. The private fund adviser makes a showing of good cause; and
- 27                   2. The commissioner determines that it is not necessary under the

1                   *circumstances to deny an exemption under this section to the private*  
2                   *fund adviser.*

3           *(b) A waiver under this subsection shall be without prejudice to any other*  
4           *action of the commissioner.*