

1 AN ACT relating to investment advisers.

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

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

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

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

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

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

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

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

20 *(a) Neither the private fund adviser nor any of its advisory affiliates are subject*  
21 *to an event that would disqualify an issuer under Rule 506(d) of the*  
22 *Securities and Exchange Commission's Regulation D, 17 C.F.R. sec.*  
23 *230.506(d), as amended;*

24 *(b) The private fund adviser:*

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

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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

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

26                    ➔Section 2. KRS 292.330 is amended to read as follows:

- 27                    (1) It is unlawful for any person to transact business in this state as a broker-dealer

1 unless the person is registered under this chapter as a broker-dealer or is exempt  
2 from registration under subsection (2) of this section.

3 (2) The following persons are exempt from the registration requirement of subsection  
4 (1) of this section:

5 (a) A broker-dealer that effects transactions in this state exclusively in securities  
6 exempted by KRS 292.400(15);

7 (b) A broker-dealer that has no place of business in this state and that effects  
8 transactions in this state exclusively with or through the issuers of the  
9 securities involved in the transactions, other broker-dealers, or banks, savings  
10 institutions, trust companies, insurance companies, or investment companies  
11 as defined in the Investment Company Act of 1940, 15 U.S.C. secs. 80a-1 et  
12 seq., pension or profit-sharing trusts, or other financial institutions or  
13 institutional buyers, whether acting for themselves or as trustees;

14 (c) A broker-dealer with no place of business in this state that during any period  
15 of twelve (12) consecutive months does not direct more than fifteen (15)  
16 offers to sell or to buy into this state in any manner to persons other than those  
17 specified in paragraph (b) of this subsection; and

18 (d) Any other person exempted from registration by administrative regulation or  
19 order under this chapter.

20 (3) It is unlawful for an individual to transact business in this state as an agent unless  
21 the individual is registered under this chapter as an agent or is exempt from  
22 registration under subsection (4) of this section.

23 (4) The following agents are exempt from the registration requirement of subsection (3)  
24 of this section:

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

27 (b) An agent who represents a broker-dealer in effecting transactions described in

1 Section 15(h)(2) of the Securities Exchange Act of 1934, 15 U.S.C. sec.  
2 78o(h)(2); and

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

- 4 1. Effecting a transaction in a security that is exempted by KRS  
5 292.400(1), (2), (3), (10), or (11);
- 6 2. Effecting a transaction in a security that is exempted by KRS  
7 292.400(5), (9), or (12) if the agent does not receive a commission or  
8 other remuneration based, directly or indirectly, on the transaction;
- 9 3. Effecting a transaction in a security that is exempted by KRS  
10 292.400(15), provided that the agent offers or sells no other securities  
11 exempted by KRS 292.400(15);
- 12 4. Effecting a transaction in a security that is exempted by KRS 292.410  
13 unless registration as an agent is required elsewhere in this chapter or by  
14 administrative regulation or order under this chapter;
- 15 5. Effecting a transaction in a security that is a covered security, except  
16 that an agent who represents an issuer in effecting a transaction in a  
17 security that is a covered security under Section 18(b)(3) or 18(b)(4)(d)  
18 of the Securities Exchange Act of 1933, 15 U.S.C. sec. 77r(b)(3) or  
19 77r(b)(f)(D), is not exempt if the agent receives a commission or other  
20 remuneration based, directly or indirectly, on the transaction;
- 21 6. Effecting a transaction with existing employees, partners, or directors of  
22 the issuer if the agent does not receive a commission or other  
23 remuneration based, directly or indirectly, on the transaction;
- 24 7. Effecting other transactions if the agent primarily performs, or is  
25 intended to primarily perform upon completion of an offering of the  
26 issuer's own securities, substantial duties for or on behalf of the issuer  
27 otherwise than in connection with transactions in the issuer's own

1 securities and the agent's compensation is not based, directly or  
2 indirectly, on the transactions; and

3 8. Any other person exempted from registration by administrative  
4 regulation or order under this chapter.

5 (5) The registration of an agent is effective only while the agent is employed by or  
6 associated with a broker-dealer registered under this chapter or an issuer offering,  
7 selling, or purchasing its securities in this state.

8 (6) An individual may not act as an agent for more than one (1) broker-dealer or one  
9 (1) issuer at a time unless authorized by administrative regulation~~[rule]~~ or order  
10 under this chapter.

11 (7) It is unlawful for a broker-dealer or an issuer to employ or associate with an agent  
12 unless the agent is registered under this chapter or exempt from registration.

13 (8) It is unlawful for any person to transact business in this state as an investment  
14 adviser unless the person is registered under this chapter as an investment adviser or  
15 is exempt from registration under subsection (9) of this section.

16 (9) The following investment advisers are exempt from the registration requirement of  
17 subsection (8) of this section:

18 (a) An investment adviser that~~[who]~~ has no place of business in this state if the  
19 investment adviser's~~[his]~~ only clients in this state are other investment  
20 advisers, covered advisers, broker-dealers, banks, savings institutions, trust  
21 companies, insurance companies, pension or profit-sharing trusts, or other  
22 financial institutions or institutional buyers, whether acting for themselves or  
23 as trustees;

24 (b) An investment adviser that~~[who]~~ has no place of business in this state if,  
25 during any period of twelve (12) consecutive months, the investment  
26 adviser~~[he or she]~~ does not have more than five (5) clients, other than those  
27 specified in paragraph (a) of this subsection;

- 1 (c) An investment adviser ~~that~~<sup>who</sup> is approved, and remains approved, by the  
2 Kentucky Economic Development Finance Authority as an investment fund  
3 manager pursuant to KRS 154.20-256;
- 4 **(d) A private fund adviser in accordance with Section 1 of this Act;** and  
5 ~~(e)~~<sup>(d)</sup> Any other investment adviser exempted from registration by  
6 administrative regulation or order under this chapter.
- 7 (10) It is unlawful for an investment adviser to employ or associate with an investment  
8 adviser representative unless the representative is registered under this chapter or  
9 exempt from registration.
- 10 (11) It is unlawful for an individual to transact business in this state as an investment  
11 adviser representative unless the individual is registered under this chapter as an  
12 investment adviser representative or is exempt from registration under subsection  
13 (12) of this section.
- 14 (12) The following investment adviser representatives are exempt from the registration  
15 requirement of subsection (11) of this section:
- 16 (a) An investment adviser representative who is employed by or associated with  
17 an investment adviser that is exempt from registration under this chapter or a  
18 federal covered adviser that is excluded from the notice filing requirements  
19 under this chapter; and
- 20 (b) Any other investment adviser representative exempted from registration by  
21 **administrative regulation**~~rule~~ or order under this chapter.
- 22 (13) The registration of an investment adviser representative is effective only while the  
23 investment adviser representative is employed by or associated with an investment  
24 adviser registered under this chapter or with a covered adviser that has made a  
25 notice filing under this chapter.
- 26 (14) An individual may not act as an investment adviser representative for more than  
27 one (1) investment adviser or covered adviser at a time unless authorized by

1 administrative regulation or order under this chapter.