

CHAPTER 145

(SB 298)

AN ACT relating to persons regulated under the Securities Act of Kentucky.

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

➔Section 1. KRS 292.336 is amended to read as follows:

- (1) (a) Every registered broker-dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the commissioner by rule or order prescribes.
 - (b) All records required shall be:
 1. Preserved for three (3) years unless the commissioner, by administrative regulation or order, prescribes otherwise for particular types of records; ~~and~~ ~~[- All required records shall be -]~~
 2. Kept within this state or shall, at the request of the commissioner, be made available at any time for examination by him or her either in the principal office of the registrant or by production of exact copies thereof in this state.
 - (c) If a broker-dealer is registered with the United States Securities and Exchange Commission, then the books and records required by this section are limited to those that the Securities Exchange Act of 1934, 15 U.S.C. secs. 78a et seq., requires the broker-dealer to maintain.
 - (d) If an investment adviser has his or her principal place of business in another state, then the requirements of this ~~subsection~~ ~~[section]~~ shall be limited to the books and records requirements of that state, if the adviser is registered in that state and ~~is~~ in compliance with its recordkeeping requirements.
- (2) (a) **Subject to paragraphs (b) and (c) of this subsection**, every registered broker-dealer, investment adviser, and firm employing issuer agents shall file ~~any~~ ~~[such]~~ reports ~~[- as]~~ required by **the commissioner through** administrative regulation or order **promulgated** under this chapter.
 - (b) If a broker-dealer is registered with the United States Securities and Exchange Commission, then the reports required by this ~~subsection~~ ~~shall be~~ ~~[section are]~~ limited to those required under the Securities Exchange Act of 1934, 15 U.S.C. secs. 78a et seq.
 - (c) If an investment adviser has his or her principal place of business in another state, then the requirements of this ~~subsection~~ ~~[section]~~ shall be limited to the reporting requirements of that state, if the adviser is registered in that state and in compliance with its reporting requirements.
- (3) (a) **Subject to paragraph (b) of this subsection**, if the information contained in any document filed is or becomes inaccurate or incomplete in any material respect, then the broker-dealer, investment adviser, or firm employing issuer agents, as applicable, shall promptly file a correcting amendment.
 - (b) In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the **United States** Securities and Exchange Commission.
- (4) (a) The commissioner may conduct examinations, within or outside this state, of each broker-dealer, issuer agent, or investment adviser at such times and in such scope as he or she determines.
 - (b) 1. Examinations of each broker-dealer, issuer agent, or investment adviser ~~[-]~~ may be made without prior notice to the broker-dealer, issuer agent, or investment adviser.
 2. The expense reasonably attributable to any ~~such~~ examination shall be paid by the broker-dealer, issuer agent, or investment adviser whose business is examined, but the expense so payable shall not exceed an amount which the commissioner by administrative regulation prescribes.
 - (c) For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he or she deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the **United States** Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, 15 U.S.C. secs. 78a et seq.

- (5) (a) *Every investment adviser that is registered or required to be registered shall establish written procedures relating to a business continuity and succession plan.*
- (b) *The plan shall:*
1. *Be based upon the facts and circumstances of the investment adviser's business model, including the size of the firm, types of services provided, and number of locations;*
 2. *At a minimum, provide for:*
 - a. *The protection, backup, and recovery of books and records;*
 - b. *Alternate means of communication with customers, key personnel, employees, vendors, service providers, including third-party custodians, and regulators, including but not limited to providing notice of:*
 - i. *A significant business interruption;*
 - ii. *The death or unavailability of key personnel; and*
 - iii. *Other disruptions or cessations of business activities;*
 - c. *Office relocation in the event of temporary or permanent loss of a principal place of business; and*
 - d. *Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and*
 3. *Otherwise minimize service disruptions and client harm that could result from a sudden significant business interruption.*
- (c) *The investment adviser shall, at least annually, review the plan, and the review shall be documented and maintained for three (3) years.*
- (6) (a) *Every investment adviser that is registered or required to be registered shall establish and implement written physical security and cybersecurity policies and procedures designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information.*
- (b) *The policies and procedures shall:*
1. *Be tailored to the investment adviser's business model, taking into account the size of the firm, types of services provided, and the number of locations;*
 2. *At a minimum:*
 - a. *Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;*
 - b. *Ensure that the investment adviser safeguards confidential client records and information; and*
 - c. *Protect any records and information for which the release could result in harm or inconvenience to any client; and*
 3. *Cover at least the following five (5) functions:*
 - a. *Identification - development of organizational understanding to manage information security risk to systems, assets, data, and capabilities;*
 - b. *Protection - development and implementation of appropriate safeguards to ensure delivery of critical infrastructure services;*
 - c. *Detection - development and implementation of appropriate activities to identify the occurrence of an information security event;*
 - d. *Response - development and implementation of appropriate activities to take action regarding a detected information security event; and*
 - e. *Recovery - development and implementation of appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.*

- (c) 1. *The investment adviser shall, at least annually, review the policies and procedures to ensure the adequacy of the security measures and effectiveness of their implementation.*
- 2. *The review shall be documented and previous versions of the policies and procedures shall be maintained for three (3) years from the date of development.*
- (7) The commissioner may by administrative regulation prohibit unreasonable charges, profits, commissions, or other compensation of broker-dealers and investment advisers.
- ~~(8)(6)~~ The commissioner may promulgate administrative regulations to prescribe rules for the conduct of business by broker-dealers and investment advisers which he or she finds appropriate in the public interest and for the protection of investors.
- ~~(9)(7)~~ The commissioner may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in a central depository system with the Financial Industry Regulatory Authority (FINRA) or other agencies or authorities.

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

(1) *As used in this section:*

- (a) *"Approved IAR continuing education content" means the materials, written, oral, or otherwise:*
 - 1. *That have been approved by NASAA or its designee; and*
 - 2. *Which make up the educational program provided to an investment adviser representative under this section;*
 - (b) *"Authorized provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this section;*
 - (c) *"Credit" means a unit that has been designated by NASAA or its designee as at least fifty (50) minutes of educational instruction;*
 - (d) *"Ethics and professional responsibility content" means approved IAR continuing education content that addresses an investment adviser representative's ethical and regulatory obligations;*
 - (e) *"FINRA" means the Financial Industry Regulatory Authority;*
 - (f) *"Home state" means a state, other than Kentucky, in which the investment adviser representative has his or her principal office and place of business;*
 - (g) *"NASAA" means the North American Securities Administrators Association or a committee designated by its board of directors;*
 - (h) *"Products and practice content" means approved IAR continuing education content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry; and*
 - (i) 1. *"Reporting period" means one (1) twelve (12) month period as determined by NASAA.*
 - 2. *An investment adviser representative's initial reporting period commences the first day of the first full reporting period after the individual is registered, or required to be registered, under this chapter.*
- (2) *Except as otherwise provided in this section, every registered investment adviser representative shall complete the following continuing education requirements each reporting period:*
- (a) *Six (6) credits of ethics and professional responsibility content offered by an authorized provider, with at least three (3) hours covering the topic of ethics; and*
 - (b) *Six (6) credits of products and practice content offered by an authorized provider.*
- (3) *An investment adviser representative shall be considered in compliance with subsection (2)(b) of this section for each applicable reporting period if:*
- (a) *The investment adviser representative:*
 - 1. *Is also registered as an agent of a FINRA-member broker-dealer; and*

- 2 *Complies with FINRA's continuing education requirements; and*
- (b) *FINRA's continuing education content meets all of the following baseline criteria, as determined by NASAA:*
1. *The content focuses on compliance, regulatory, ethical, and sales practices standards;*
 2. *The content is derived from:*
 - a. *State and federal investment advisory statutes, rules, and regulations;*
 - b. *Securities industry rules and regulations; or*
 - c. *Accepted standards and practices in the financial services industry; and*
 3. *The content requires that its participants demonstrate proficiency in the subject matter of the educational materials.*
- (4) *Continuing education credits completed by an investment adviser representative shall be considered to comply with subsection (2) of this section for each applicable reporting period if:*
- (a) *The investment adviser representative:*
 1. *Is not required to pass a written examination by administrative regulation or order promulgated pursuant to KRS 292.331(3);*
 2. *Completes continuing education credits necessary for maintaining, and remaining in good standing to hold, a professional designation identified by the commissioner by administrative regulation or order; and*
 3. *Is required to complete continuing education credits to maintain, and remain in good standing to hold, the professional designation identified by the commissioner by administrative regulation or order; and*
 - (b) *The continuing education content provided by the credentialing organization for the professional designation identified by the commissioner by administrative regulation or order is approved IAR continuing education content.*
- (5) *An investment adviser representative registered or required to be registered in Kentucky who is registered as an investment adviser representative in the individual's home state shall be considered in compliance with this section if:*
- (a) *The investment adviser representative's home state has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Continuing Education; and*
 - (b) *The investment adviser representative is in compliance with the home state's investment adviser representative continuing education requirements.*
- (6) *Every investment adviser representative shall be responsible for ensuring that the authorized provider reports the investment adviser representative's completion of the approved IAR continuing education content.*
- (7) *An investment adviser representative who completes continuing education credits in excess of the amount required for the reporting period may not carry forward excess credits to a subsequent reporting period.*
- (8) (a) *An investment adviser representative who fails to comply with this section by the end of a reporting period shall:*
1. *Be subject to registration renewal as "CE inactive" at the close of the calendar year in Kentucky; and*
 2. *Remain "CE inactive" until the investment adviser representative completes and reports all required continuing education credits for all reporting periods as required by this section.*
- (b) *An investment adviser representative who is "CE inactive" at the close of the next calendar year shall not be eligible for:*
1. *Investment adviser representative registration; or*
 2. *Renewal of investment adviser representative registration.*

- (9) *A person who was previously registered under this chapter as an investment adviser representative and became unregistered shall complete approved IAR continuing education content for all reporting periods that occurred between the time that the investment adviser representative became unregistered and the time the person became registered again under this chapter unless the investment adviser representative makes a subsequent application for registration and complies with any examination requirement under KRS 292.331(3).*
- (10) *The commissioner may, in his or her discretion, waive any requirements of this section.*

➔Section 3. This Act takes effect on January 1, 2023.

Signed by Governor April 8, 2022.