

**COMMONWEALTH OF KENTUCKY
DEPARTMENT OF FINANCIAL INSTITUTIONS
ORDER OF THE COMMISSIONER**

WHEREAS, The Commissioner of the Department of Financial Institutions is charged with the administration of Chapter 292 (hereinafter, "Securities Act") of the Kentucky Revised Statutes; and

WHEREAS, KRS 292.330(8) states that "It is unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration under subsection (9) of this section"; and

WHEREAS, KRS 292.330(9) states that "The following investment advisers are exempt from the registration requirement of subsection (8) of this section:

- (a) An investment adviser who has no place of business in this state if his only clients in this state are other investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;
- (b) An investment adviser who has no place of business in this state if, during any period of twelve (12) consecutive months, he or she does not have more than five (5) clients other than those specified in paragraph (a) of this subsection;
- (c) An investment adviser who is approved, and remains approved, by the Kentucky Economic Development Finance Authority as an investment fund manager pursuant to KRS 154.20-256; and
- (d) Any other investment adviser exempted from registration by administrative regulation or order under this chapter."; and

WHEREAS, KRS 292.530 states that the purpose of this chapter is "...Protect investors by preventing investment fraud and related illegal conduct or, if this fraud or illegal conduct has already occurred, remedying, where possible, the harm done to investors through active implementation and application of this chapter's enforcement powers..."; and

WHEREAS, Section 3(c)(7) of the Investment Company Act (hereinafter, the "ICA") excepts from the definition of investment company, "Any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities."

WHEREAS, Section 2(a)(51) of the ICA defines a qualified purchaser as:

- (i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 3(c)(7) with that person's qualified purchaser spouse) who owns not less than \$5,000,000 in investments, as defined by the Commission;
- (ii) any company that owns not less than \$5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or

spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments.

WHEREAS, the Securities Act and applicable rules and the ICA and applicable rules recognize that qualified purchasers are presumed to be sophisticated investors requiring minimal investor protections compared to other investors; and

WHEREAS, the Commissioner finds that it is necessary and appropriate in the public interest and consistent with the purposes of KRS 292 to allow investment advisers to funds that are excepted from the definition of investment company under section 3(c)(7) of the ICA to also be exempt from registration under 292.330(9).

NOW, THEREFORE, the Commissioner hereby **ORDERS**:

1. Investment advisers to funds excepted from the definition of investment company under Section 3(c)(7) of the ICA are also exempt from registration under 292.330(9) as long as the outstanding securities of the fund are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and the fund is not making and does not at that time propose to make a public offering of such securities.

It is so ORDERED as of the 12th day of August, 2020.

Charles A. Vice
Commissioner