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Department of Financial Institutions

Kentucky Department of Financial Institutions

Division of Securities

Educational Webinar

Investment Adviser Law Changes



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- **Introduction**
- **Business Continuity Planning**
- **Cybersecurity**
- **Investment Adviser Continuing Education**
- **Frequently Asked Questions**



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Marni Gibson- Acting Deputy Commissioner

Lindsey Stout- Compliance Branch Manager

Anthony Murphy- Registration Branch Manager

Chad Harlan- Enforcement Branch Manager



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Senate Bill 298

- **Passed during 2022 legislative session**
- **Implemented new requirements for investment advisers and investment adviser representatives**
- **Effective Date- January 1, 2023**



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Business Continuity and Succession Planning



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KRS 292.336 (5)(a)

**Requires written procedures
relating to a Business
Continuity & Succession
Plan**



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KRS 292.336 (5)(b)

The plan shall:

(1) Be based upon the facts & circumstances of the adviser's business model, including the size of the firm, types of services provided, and number of locations

- Who is responsible for oversight and implementation of the plan?
- Assess ways your business and services may be disrupted? (i.e., natural disasters, cyberattacks, death/disability of key personnel)
- How could business disruptions impact firm operations?
 - Any potential harm to clients
 - Operations of other office locations
 - Access to third-party vendors & service providers

KRS 292.336 (5)(b)

(2) At a minimum provide for:

a) The protection, backup, and recovery of books and records

- How and where is firm data backed up?
 - Off-site location - contact information

b) Alternate means of communications with clients, personnel, employees, vendors, service providers, including custodians & regulators, including providing notice of:

- A significant business interruption;**
- The death or unavailability of key personnel; and**
- Other disruptions or cessations of business activities.**

- Firm response plan for total loss vs. temporary loss?
- What controls are in place for accessing data or back-up data without key personnel?
- How and by whom can back-up data be accessed?

KRS 292.336 (5)(b)

c) Office relocation in the event of temporary or permanent loss of a principal place of business; and

- Other locations from which the firm can continue to conduct business?

d) Assignment of duties to *qualified responsible persons* in the event of the death or unavailability of key personnel; and

- To continue firm operations, *qualified responsible persons* need to be a registered investment advisor representative--name and contact information.
- If firm operations cease, *qualified responsible persons* must know how to promptly access the plan and the relevant parties who need to be contacted.
 - How will the plan be accessible to these parties, including any revisions to the plan?

KRS 292.336 (5)(b)

(3) Otherwise minimize service disruptions and client harm that could result from a sudden significant business interruption.

- Assess the firm's operational and financial risks.
- Provide relevant contact information for critical business constituents:
 - Identify key personnel and qualified responsible persons;
 - Custodians;
 - Third-party vendors and service providers (i.e., third-party managers, CPA/auditor, legal counsel, compliance consultants, I.T. service providers.)
 - Banks
 - Regulatory Authority



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KRS 292.336 (5)(c)

At least annually, review the plan, and the review shall be documented and maintained for three (3) years.

- Who will be responsible for annual plan review?
- How will the review be documented?
- Where and how will the annual reviews be maintained?
- How will qualified responsible persons access the current plan in the event of a significant business disruption?



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Business Continuity and Succession Planning Resources

- **FINRA-** <https://www.finra.org/rules-guidance/notices/22-23>
- **FINRA/SEC/CFTC-** <https://www.sec.gov/about/offices/ocie/jointobservations-bcps08072013.pdf>



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Cybersecurity



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KRS 292.336 (6)(a)

Requires written *physical security* and *cybersecurity* policies and procedures designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information.



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KRS 292.336 (6)(b)

The policies & procedures shall:

(1) Be tailored to the adviser's business model, taking into account the size of the firm, types of services provided, and the number of locations;

- Who is responsible for the oversight, implementation, and ongoing monitoring of the policies and procedures?
- How will the firm ensure all employees protect firm data at each office location?
- How will a breach of security or cyberattack impact firm operations?



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KRS 292.336 (6)(b)

(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 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

KRS 292.336 (6)(b)

The policies & procedures shall:

(3) Cover at least the following (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.

Cyber Controls

Limiting threats:

- **Employee controls-** safeguarding data & devices, utilizing encryption, and requiring strong passwords (13 or more characters);
- **Limiting access** as necessary to confidential, personally identifiable data;
- **Training employees and new hires** on threats;
- **Network security-** firewalls, data protection, and reliable backup;
- **Platform security-** patch all systems, updated anti-virus software, two-factor authentication;
- **Third-party vendor access-** security measures, risks, require breach notification;
- **Perform risk assessments** to identify vulnerabilities;
- **Create an Incident Response Team** to review risk assessments, keep the firm aware of new risks as they arise, and discuss what the firm is doing to stay on top of risks;
- **Have a strong Incident Response Plan** in place to address how the firm will respond to and recover from any security breach:
 - Notifying appropriate authorities as well as clients.
 - Cyber insurance coverage

KRS 292.336 (6)(c)

(1) The adviser shall, at least annually, review the policies and procedures to ensure the adequacy of the security measures and effectiveness of their implementation.

- Who will be responsible for annual review of policies & procedures?
- How will the reviews be documented?

(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.

- Where and how will the annual reviews be maintained?



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Cybersecurity Resources

- **NASAA-** <https://www.nasaa.org/industry-resources/investment-advisers/resources/>
 - Provides access to a cybersecurity checklist & guidance for advisers specifically that includes 89 assessment areas.
- **SEC-** <https://www.sec.gov/spotlight/cybersecurity>
 - Cybersecurity risk alerts, news, information & various resources
- **FINRA-** <https://www.finra.org/rules-guidance/key-topics/cybersecurity>
 - Provides a small firm cybersecurity checklist, guidance, news releases, and regulatory notices related to common cybersecurity threats

Cybersecurity & Infrastructure Security Agency (CISA)

www.cisa.gov

- Report cyber issues & ransomware attacks
- Subscribe to Alerts
- Review Cyber Essentials, Resource Hub, Tips and FAQs
- Incident Response Teams available to support firms impacted by intrusions
- Ransomware Readiness Self-Assessment
- FREE services for all organizations including vulnerability scanning, web application testing, phishing tests, penetration testing. Also have a Cyber Security Evaluation Tool (See the Services catalog)



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Investment Adviser Representative Continuing Education



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KRS 292.338 (2)

Except as otherwise provided in this section, every registered investment adviser representative shall complete the following continuing education reporting requirements each reporting period:



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KRS 292.338 (2)

- (a) Six (6) credits of ethics and professional responsibility content offered by an authorized provider, with at least three (3) hours covering ethics; and**
- (b) Six (6) credits of products and practice content offered by an authorized provider.**



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- **North American Securities Administrators Association Model Rule**
- **To date, 10 states have passed or adopted continuing education requirements**
- **Uniformity**



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KRS 292.338 (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 if certain parameters are met.



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KRS 292.338 (8)

- An investment adviser representative who fails to comply with this section by the end of a reporting period shall be subject to renewal as “CE Inactive”
- The IAR shall remain CE inactive until he/she completes and reports all required CE credits
- An IAR who is CE inactive at the close of the next calendar year shall not be eligible for registration or renewal

Frequently Asked Questions



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- ❖ **My firm is notice filed in Kentucky. Do all our IARs need to complete CE?**
- ❖ **Are IARs required to take specific courses?**
- ❖ **Who reports course completion?**
- ❖ **If an IAR earns more than 12 CE credits in a year, can he or she carry over those hours to the next year?**



- ❖ **Does an IAR need to make up missed CE credits?**
- ❖ **I am registered as a broker-dealer agent with a FINRA member firm. Does my agent CE count towards IAR CE?**
- ❖ **Who will provide CE that meets the requirements?**
- ❖ **Can IARs be exempt on the basis of experience or professional designations?**



IAR CE Resources

- **NASAA- <https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education/>**
 - **FAQ Section**
 - **Two webinars**
 - **Participating jurisdictions**



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Questions?

- **Contact Lindsey Stout (lindsey.stout@ky.gov) with questions related to business continuity or cybersecurity.**
- **Contact Marni Gibson (marni.gibson@ky.gov) with questions related to investment adviser representative continuing education requirements.**

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