

808 KAR 10:480. Books and records of firms employing issuer agents.

RELATES TO: KRS 292.336(1)(a), (b)

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. This administrative regulation establishes the books and records a firm employing issuer agents must maintain.

Section 1. Every firm employing issuer agents, who are either registered or required to be registered under the provisions of KRS Chapter 292, to effect transactions in its securities shall make and keep accurate, complete, and current the following books and records relating to these securities transactions:

(1) Records that track all receipts of funds from purchasers of the securities and all disbursements of those funds. The disbursement records shall provide sufficient detail to prepare an actual "Use of Proceeds" tabular display for comparison with the proposed "Use of Proceeds" tabular display required by the Offering Document Guidelines adopted by the department in April 2009. Records shall include bank statements which keep cash receipts and disbursements related to the securities offering separate from other receipts and disbursements of the issuer;

(2) Current financial statements, prepared according to generally accepted accounting principles, for the issuer for the most recent three (3) years (or the life of the issuer if less than three (3) years). These statements shall not be required to be audited, but shall be verified as true and accurate within the actual knowledge of the issuer's chief financial officer (or chief executive officer if the issuer has no specified financial officer);

(3) Employment contracts with agents, if any;

(4)(a) For any unregistered employees of the firm who contact investors or potential investors, documentation of the manner in which the employee is compensated.

(b) If the employee is compensated by salary and bonus, documentation of the factors used in determining the amount of the bonus;

(5)(a) Copies of any scripts or other materials used to train agents in the selling of the securities.

(b) Copies of any materials used to train unregistered employees who contact investors or potential investors;

(6)(a) Copies of any scripts or other materials prepared for use by agents in discussing the securities with potential purchasers.

(b) Copies of materials prepared for use by unregistered employees who contact investors or potential investors;

(7) Copies of any general advertising or promotional material utilized by the issuer during the period of the offering whether or not related directly to the securities offering;

(8) Copies of any prospectus or similar offering document used in the offer or sale of the issuer's securities and, if any document was revised during the offering period, copies of all versions of the document with notation of the dates during which each document was utilized;

(9) All material contracts related to the offering (such as leases, employment contracts, supplier or vendor contracts, turnkey contracts, etc.);

(10) Any professional opinion letters related to the offering (such as those from attorneys, accountants, experts, etc.);

(11) All subscription (or other requests to purchase) materials completed by offerees;

(12) All correspondence to or from potential investors;

(13) Customer files that document contact information for all purchasers of the issuer's securities.

ties and containing copies of all correspondence either received from or sent to these purchasers. These files shall also contain any other information necessary to determine that the sales complied with all requirements of any exemptions from registration of the securities claimed by the issuer and with any other applicable administrative regulations, including that the investment is suitable for the purchaser;

(14) A file documenting compliance with the securities laws of all relevant jurisdictions (including the Securities and Exchange Commission if the offering is across state lines) both in the offering and selling of the securities, and in the payment of compensation to the agents; and

(15) A complaint file for the offering which shall contain:

(a) Copies of any written (including electronic transmissions) complaints related to the offering of securities;

(b) A written summary of any oral complaint related to the offering with contact information for the complainant;

(c) Copies of any written responses to complaints; and

(d) A written summary of the disposition of each complaint.

Section 2. All books and records required under Section 1 of this administrative regulation shall be readily available for inspection by representatives of the department upon request without notice.

Section 3. The books and records required under Section 1 of this administrative regulation shall be maintained in a readily accessible format for a period of at least three (3) years after the conclusion of the securities offering.

Section 4. Incorporation by Reference. (1) "Offering Document Guidelines", revised April 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (37 Ky.R. 2509; 2850; eff. 7-1-2011; Crt eff. 2-27-2020.)