

292.3301 Definitions -- Private fund adviser registration exemptions -- Filings.

- (1) As used in this section:
 - (a) "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under Section (3)(c)(1) of the Investment Company Act of 1940, 15 U.S.C. sec. 80a-3(c)(1), as amended;
 - (b) "Private fund adviser" means an investment adviser who provides advice solely to one (1) or more qualifying private funds;
 - (c) "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund under 17 C.F.R. sec. 275.203(m)-1, as amended; and
 - (d) "Venture capital fund" means a private fund that meets the definition of a venture capital fund under 17 C.F.R. sec. 275.203(l)-1, as amended.
- (2) Except as otherwise provided in this section, a private fund adviser shall be exempt from the registration requirement of KRS 292.330(8) if:
 - (a) Neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d) of the Securities and Exchange Commission's Regulation D, 17 C.F.R. sec. 230.506(d), as amended;
 - (b) The private fund adviser:
 1. Files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission under Rule 204-4, 17 C.F.R. sec. 275.204-4, as amended; 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 July 15, 2024; and
 - ii. As of July 15, 2024, 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 responsibilities of the beneficial owners; and
 3. As of July 15, 2024, the private fund adviser:
 - a. Obtains on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund; and
 - b. Delivers a copy of the statements obtained under subdivision a. of this subparagraph to each beneficial owner of each 3(c)(1) fund that is not a venture capital fund.
- (3) A filing required under subsection (2)(b) of this section shall be:
 - (a) Made electronically through the Investment Adviser Registration Depository; and
 - (b) Deemed filed when the filing and fee required under subsection (2)(b) of this section is accepted by the Investment Adviser Registration Depository on the state's behalf.
- (4) An investment adviser who becomes ineligible for an exemption provided under this section shall comply with all applicable laws, administrative regulations, and orders requiring registration or notice filing within ninety (90) days from the date the adviser's eligibility ceases.
- (5) (a) The commissioner may waive compliance with subsection (2)(a) of this section if:
 1. The private fund adviser makes a showing of good cause; and
 2. The commissioner determines that it is not necessary under the circumstances to deny an exemption under this section to the private fund adviser.
- (b) A waiver under this subsection shall be without prejudice to any other action of the commissioner.

Effective: July 15, 2024

History: Created 2024 Ky. Acts ch. 42, sec. 1, effective July 15, 2024.