

### **292.320 Fraudulent and other prohibited practices.**

- (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
  - (a) To employ any device, scheme, or artifice to defraud;
  - (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
  - (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
- (2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
  - (a) To employ any device, scheme, or artifice to defraud the other person; or
  - (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
- (3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:
  - (a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client unless the client is an "accredited investor," as defined by Rule 501 of the Securities Act of 1933;
  - (b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
  - (c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.
- (4) Paragraph (a) of subsection (3) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in paragraph (b) of subsection (3) of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one (1) or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.
- (5) Subsection (3)(a) of this section shall also not apply to a contract with any person or class of persons that the commissioner by rule or regulation or by order upon application determines does not need the protections of subsection (3)(a) of this

section. The commissioner may grant a conditional or unconditional exemption based on factors which include the person's or persons' financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, or other factors as the commissioner determines are consistent with this section.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 859, effective July 15, 2010. -- Amended 2002 Ky. Acts ch. 230, sec. 36, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 157, sec. 13, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 20, sec. 3, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 165, sec. 3, effective July 15, 1994. -- Amended 1972 Ky. Acts ch. 265, sec. 2. -- Created 1960 Ky. Acts ch. 110, sec. 1, effective January 1, 1961.