

154.20-277 Annual audit of investment funds by certified public accountant -- Examination of investment funds by authority and Department of Revenue -- Other audits -- Department's powers of enforcement -- Notice of noncompliance -- Examination, investigative, and enforcement powers of securities regulatory organizations.

- (1) Each investment fund manager shall cause the books and records of the investment fund to be audited on an annual basis by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied. The audit shall address the financial condition of the investment fund and compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284. Each year the audit report shall be completed and certified by the independent certified public accountant and delivered to the authority within ninety (90) days after the end of the investment fund's fiscal year.
- (2) The authority and the Department of Revenue, individually or collectively, may examine, under oath, any of the officers, trustees, partners, members, managers, directors, agents, employees, or investors of an investment fund regarding the affairs and business of the investment fund. The authority and the Department of Revenue, individually or collectively, may issue subpoenas and subpoena duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may be reported to the Franklin Circuit Court, which shall enforce the subpoena or subpoena duces tecum according to the rules of civil or criminal procedure, as applicable.
- (3) In addition to the audits required by this section, the authority or the Department of Revenue may audit one (1) or more investment funds or investment fund managers in any year on a random basis or for cause. The authority or the Department of Revenue may also audit, for cause, any small business in which an investment fund has made a qualified investment. Nothing in this section shall be construed to prohibit the Department of Revenue from conducting any audit relating to the administration or enforcement of the tax laws of the Commonwealth which the Department of Revenue determines to be appropriate.
- (4) If any audit conducted pursuant to this section discloses that an investment fund or investment fund manager is not in compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284, the authority and the Department of Revenue may consult with one another with respect to this noncompliance and the Department of Revenue may exercise any of its powers to protect the Commonwealth's interest and to enforce the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284.
- (5) The authority may give an investment fund manager written notice of any noncompliance with the provisions of KRS 154.20-250 to 154.20-284 and specify a period of time the investment fund manager shall have to cure any noncompliance. Failure to cure any such noncompliance within the period of time specified by the authority may result in further action by the authority pursuant to this section.
- (6) Nothing in this section shall be construed to prohibit the Department of Financial Institutions, Division of Securities, or any other securities regulatory organization or body with jurisdiction over the activity of an investment fund or the investment fund manager from conducting any examination or investigation relating to the securities activities of the investment fund or investment fund manager. If any examination or investigation

conducted pursuant to any securities laws or regulations discloses that an investment fund or investment fund manager is not in compliance with any provision of any applicable securities laws or regulations, the appropriate securities regulator may take whatever action it deems appropriate in accordance with such securities laws and regulations to respond to the noncompliance, notwithstanding any action the authority or the Department of Revenue may or may not take with respect to the noncompliance.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 197, effective July 15, 2010. -- Amended 2005 Ky. Acts ch. 85, sec. 575, effective June 20, 2005. -- Amended 2002 Ky. Acts ch. 230, sec. 25, effective July 15, 2002. -- Created 1998 Ky. Acts ch. 414, sec. 11, effective July 15, 1998.