

### **292.350 Registration by notification.**

- (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under KRS 292.360:
  - (a) Any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:
    1. There has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and
    2. The issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which equal at least five percent (5%) of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within thirty (30) days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety (90) days of the date of filing the registration statement), or if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three (3) full fiscal years, equal at least five percent (5%) of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;
  - (b) Any security registered for nonissuer distribution if any security of the same class has ever been registered under this chapter or a predecessor law, or the security being registered was originally issued pursuant to an exemption under this chapter or a predecessor law or, if previously publicly offered and sold, was not offered and sold within this state.
- (2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:
  - (a) A statement demonstrating eligibility for registration by notification;
  - (b) With respect to the issuer: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;
  - (c) With respect to any person on whose behalf any part of the offering is to be made, if such person is an officer, director, partner, or any person occupying a

similar status or performing similar functions, or any person directly or indirectly controlling the issuer, his name and address; the amount of securities held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

- (d) A description of the securities being registered;
  - (e) Total amount of securities to be offered and amount of securities to be offered in this state;
  - (f) The price at which the securities are to be offered for sale to the public, if other than at the market price thereof; any known variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value, if any);
  - (g) Names and addresses of the managing underwriters, if any, and a description of the plan of distribution, if any, of any securities which are to be offered otherwise than through an underwriter;
  - (h) Description of any security options outstanding or to be created in connection with the offering;
  - (i) Any adverse order, judgment, or decree previously entered in connection with the securities being registered by any court or securities and exchange commission;
  - (j) A copy of any offering circular or prospectus, if any, intended, or ordered by the commissioner, to be used in connection with the offering;
  - (k) In the case of any registration under paragraph (b) of subsection (1) which does not also satisfy the conditions of paragraph (a) of subsection (1), a certified balance sheet of the issuer as of its last fiscal year ended and a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement and a statement of income for each of the two (2) fiscal years preceding the date of the certified balance sheet, the last of which is to be certified, and for any period between the close of the last fiscal year and the date of the last balance sheet or for the period of the issuer's and any predecessor's existence if less than two (2) years; and
  - (l) Such additional information as the commissioner may by rule or order require.
- (3) If no stop order is in effect and no proceeding is pending under KRS 292.390, a registration statement under this section automatically becomes effective at three o'clock eastern standard time in the afternoon (3:00 p.m.) of the fifth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 863, effective July 15, 2010. -- Amended 1994 Ky. Acts ch. 165, sec. 6, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 346, sec. 4, effective July 15, 1982. -- Amended 1972 Ky. Acts ch. 265, sec. 5. -- Amended 1968 Ky. Acts ch. 56, sec. 2. -- Created 1960 Ky. Acts ch. 110, sec. 4, effective January 1, 1961.