

FIRST REGULAR SESSION

SENATE BILL NO. 427

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS BARTLE, YECKEL, GIBBONS, SHIELDS, COLEMAN, SCOTT, STOLL, DOLAN, GRIESHEIMER, LOUDON AND CHAMPION.

Read 1st time February 5, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1518L.01I

AN ACT

To repeal sections 409.101, 409.102, 409.107, 409.201, 409.202, 409.203, 409.204, 409.301, 409.302, 409.303, 409.304, 409.305, 409.306, 409.307, 409.401, 409.402, 409.403, 409.404, 409.405, 409.406, 409.407, 409.408, 409.409, 409.410, 409.411, 409.412, 409.413, 409.414, 409.415, 409.416, 409.418, 409.420, 409.421, 409.500, 409.506, 409.511, 409.516, 409.521, 409.526, 409.531, 409.536, 409.541, 409.546, 409.551, 409.556, 409.561, and 409.566, RSMo, and to enact in lieu thereof sixty-eight new sections relating to securities regulation, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 409.101, 409.102, 409.107, 409.201, 409.202, 409.203, 409.204, 409.301, 409.302, 409.303, 409.304, 409.305, 409.306, 409.307, 409.401, 409.402, 409.403, 409.404, 409.405, 409.406, 409.407, 409.408, 409.409, 409.410, 409.411, 409.412, 409.413, 409.414, 409.415, 409.416, 409.418, 409.420, 409.421, 409.500, 409.506, 409.511, 409.516, 409.521, 409.526, 409.531, 409.536, 409.541, 409.546, 409.551, 409.556, 409.561, and 409.566, RSMo, are repealed and sixty-eight new sections enacted in lieu thereof, to be known as sections 409.1-101, 409.1-102, 409.1-103, 409.1-104, 409.1-105, 409.2-201, 409.2-202, 409.2-203, 409.2-204, 409.3-301, 409.3-302, 409.3-303, 409.3-304, 409.3-305, 409.3-306, 409.3-307, 409.4-401, 409.4-402, 409.4-403, 409.4-404, 409.4-405, 409.4-406, 409.4-407, 409.4-408, 409.4-409, 409.4-410, 409.4-411, 409.4-412, 409.4-413, 409.5-501, 409.5-502, 409.5-503, 409.5-504, 409.5-505, 409.5-506, 409.5-507, 409.5-508, 409.5-509, 409.5-510, 409.6-601, 409.6-602, 409.6-603, 409.6-604, 409.6-605, 409.6-606, 409.6-607, 409.6-608, 409.6-609, 409.6-610, 409.6-611, 409.6-612,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

409.7-701, 409.7-702, 409.7-703, 409.9-900, 409.9-901, 409.9-902, 409.9-903, 409.9-910, 409.9-911, 409.9-912, 409.9-913, 409.9-914, 409.9-920, 409.9-921, 409.9-927, 409.9-928, and 409.9-929 to read as follows:

409.1-101. Sections 409.101 through 409.7-799 may be cited as the Uniform Securities Act (2002) and in this chapter as this Act.

409.1-102. In this Act, unless the context otherwise requires:

(1) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this Act.

(2) "Commissioner" means the commissioner of securities appointed by the secretary of state.

(3) "Bank" means:

- (A) a banking institution organized under the laws of the United States;
- (B) a member bank of the Federal Reserve System;

(C) any other banking institution, whether incorporated or not, doing business under the laws of a State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this Act; and

(D) a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C).

(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

- (A) an agent;
- (B) an issuer;
- (C) a bank, a trust company organized or chartered under the laws of this state, or a savings institution, if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the conditions

described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4));

- (D) an international banking institution; or
- (E) a person excluded by rule adopted or order issued under this Act.

(5) "Depository institution" means:

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a State or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a State or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

(iii) an industrial loan company.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) "Filing" means the receipt under this Act of a record by the commissioner or a designee of the commissioner.

(9) "Fraud", "deceit", and "defraud" are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

- (A) a depository institution, a trust company organized or chartered under the laws of this state, or an international banking institution;
- (B) an insurance company;
- (C) a separate account of an insurance company;
- (D) an investment company as defined in the Investment Company Act of 1940;
- (E) a broker-dealer registered under the Securities Exchange Act of 1934;
- (F) an employee pension, profit-sharing, or benefit plan if the plan has total

assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this Act, a depository institution, or an insurance company;

(G) a plan established and maintained by a State, a political subdivision of a State, or an agency or instrumentality of a State or a political subdivision of a State for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this Act, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;

(J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of \$10,000,000;

(K) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of \$10,000,000;

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

(N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

(O) any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading

this Act; or

(P) any other person specified by rule adopted or order issued under this Act.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a State.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) an investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) a federal covered investment adviser;

(F) a bank, a trust company organized or chartered under the laws of this state, or a savings institution;

(G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

(H) any other person excluded by rule adopted or order issued under this Act.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which

recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

- (A) performs only clerical or ministerial acts;
- (B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;
- (C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this State as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is
 - (i) an "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or
 - (ii) not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or
- (D) is excluded by rule adopted or order issued under this Act.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means sections 409.101 to 409.566, as repealed by this act.

(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record", except in the phrases "of record", "official record", and "public record", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and

having been offered and sold for value;

(B) a gift of assessable stock involving an offer and sale; and

(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or other specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E) includes as an "investment contract", among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement.

(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing

agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

409.1-103. "Securities Act of 1933" (15 U.S.C. Section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. Section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. Section 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. Section 1001 et seq.), "National Housing Act" (12 U.S.C. Section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. Section 1 et seq.), "Internal Revenue Code" (26 U.S.C. Section 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. Section 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. Section 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this Act.

409.1-104. A reference in this Act to an agency or department of the United States is also a reference to a successor agency or department.

409.1-105. This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This Act authorizes the filing of records and signatures, when specified by provisions of this Act or by a rule adopted or order issued under this Act, in a manner consistent with Section 104(a) of that act (15 U.S.C. Section 7004(a)).

409.2-201. The following securities are exempt from the requirements of Sections 409.3-301 through 409.3-306 and 409.5-504:

(1) a security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a State; by a political subdivision of a State; by a public authority, agency, or instrumentality of one or more States; by a political

subdivision of one or more States; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing;

(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a); or

(C) any other depository institution, or any trust company organized or chartered under the laws of this state, unless by rule or order the commissioner proceeds under Section 409.2-204;

(4) a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this State;

(5) a security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) regulated in respect to its rates and charges by the United States or a State;

(B) regulated in respect to the issuance or guarantee of the security by the United States, a State, Canada, or a Canadian province or territory; or

(C) a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

(6) a federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this Act; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency

registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. Section 80b-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this Act limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to paragraph (B) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

(A) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the commissioner does not disallow the exemption within the period established by the rule;

(B) to file a request for exemption authorization for which a rule under this Act may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 409.6-611, and grounds for denial or suspension of the exemption; or

(C) to register under Section 409.3-304;

(8) a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a State, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and

(9) an equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt

under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).

409.2-202. The following transactions are exempt from the requirements of Sections 409.3-301 through 409.3-306 and 409.5-504:

(1) an isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this Act, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) the security is sold at a price reasonably related to its current market price;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution; and

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this Act or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; or

(E) the issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated

Quotation System, unless the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940; or the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization;

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this Act in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this Act in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this Act in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) a default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this Act effecting an unsolicited order or offer to purchase;

(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this Act;

(8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of

discretionary authority in a signed record for the account of others;

(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the commissioner after a hearing;

(10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) a transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this Act as a broker-dealer or as an agent;

(12) a transaction by an executor, commissioner of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(13) a sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by rule adopted or order issued under this Act;

(14) a sale or an offer to sell securities by an issuer, if the transaction is part of a single issue in which:

(A) not more than 25 purchasers are present in this State during any 12 consecutive months, other than those designated in paragraph (13);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this Act or an agent registered under this Act for soliciting a prospective purchaser in this State; and

(D) the issuer reasonably believes that all the purchasers in this State, other than those designated in paragraph (13), are purchasing for investment;

(15) a transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible

securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;

(16) an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

(17) an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this Act, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this Act; and

(C) a stop order of which the offeror is aware has not been issued by the commissioner under this Act and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(19) a rescission offer, sale, or purchase under Section 409.5-510;

(20) an offer or sale of a security to a person not a resident of this State and not present in this State if the offer or sale does not constitute a violation of the laws of the State or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this Act;

(21) employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) directors; general partners; trustees, if the issuer is a business trust;

officers; consultants; and advisors;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations;

(22) a transaction involving:

(A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162); or

(23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this Act, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this Act; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this Act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with chapter 536, RSMo, the commissioner, by rule adopted or order issued under this Act, may revoke the designation of a securities exchange under this

paragraph, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

409.2-203. A rule adopted or order issued under this Act may exempt a security, transaction, or offer; a rule under this Act may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 409.3-301 through 409.3-306 and 409.5-504; and an order under this Act may waive, in whole or in part, any or all of the conditions for an exemption or offer under Sections 409.2-201 and 409.2-202.

409.2-204. (a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this Act may deny, suspend application of, condition, limit, or revoke an exemption created under Section 409.2-201(3)(C), (7) or (8) or 409.2-202 or an exemption or waiver created under Section 409.2-203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in Section 409.3-306(d) or 409.6-604 and only prospectively.

(b) A person does not violate Section 409.3-301, 409.3-303 through 409.3-306, 409.5-504, or 409.5-510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

409.3-301. It is unlawful for a person to offer or sell a security in this State unless:

- (1) the security is a federal covered security;
- (2) the security, transaction, or offer is exempted from registration under Sections 409.2-201 through 409.2-203; or
- (3) the security is registered under this Act.

409.3-302. (a) With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under Sections 409.2-201 through 409.2-203, a rule adopted or order issued under this Act may require the filing of any or all of the following records:

(1) before the initial offer of a federal covered security in this State, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with Section 409.6-611 signed by the issuer and the payment of a fee of one hundred dollars;

(2) after the initial offer of the federal covered security in this State, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this State, if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee of one-twentieth of one percent of the amount of securities sold in this state during that previous fiscal year. In no case shall this fee exceed three thousand dollars.

(b) A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this Act to be filed and by paying a renewal fee of one hundred dollars. A previously filed consent to service of process complying with Section 409.6-611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) Notice filings for federal covered securities under Section 18(b)(4)(D). With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), a rule under this Act may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with Section 409.6-611 signed by the issuer not later than 15 days after the first sale of the federal covered security in this State and the payment of a fee of one hundred dollars; and the payment of a fee of fifty dollars for any late filing.

(d) Stop orders. Except with respect to a federal security under Section 181(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the commissioner finds that there is a failure to comply with a notice or fee requirement of this section, the commissioner may issue a stop order suspending the offer and sale of a federal covered security in this State. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the commissioner.

409.3-303. (a) A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in Section 409.3-305 and a consent to service of process complying with Section 409.6-611:

(1) a copy of the latest form of prospectus filed under the Securities Act of 1933;
(2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this Act;

(3) copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the commissioner; and

(4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) a stop order under subsection (d) or Section 409.3-306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under Section 409.4-412; and

(2) the registration statement has been on file for at least 20 days or a shorter period provided by rule adopted or order issued under this Act.

(d) The registrant shall promptly notify the commissioner in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the commissioner may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The commissioner shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) Effectiveness of registration statement. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the commissioner, the registration statement is automatically effective under this Act when all the conditions are satisfied or waived. If the registrant notifies the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the

commissioner intends the institution of a proceeding under Section 409.3-306. The notice by the commissioner does not preclude the institution of such a proceeding.

409.3-304. (a) A security may be registered by qualification under this section.

(b) A registration statement under this section must contain the information or records specified in Section 409.3-305, a consent to service of process complying with Section 409.6-611, and, if required by rule adopted under this Act, the following information or records:

(1) with respect to the issuer and any significant subsidiary, its name, address, and form of organization; the State or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the

previous three years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held

or to be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold 10 percent or more in the aggregate of those options;

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with Section 409.2-202(17)(B);

(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and changes in financial position for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by rule adopted or order issued under this Act.

(c) A registration statement under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this Act, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending under Section 409.3-306;

(2) the commissioner has not issued an order under Section 409.3-306 delaying effectiveness; and

(3) the applicant or registrant has not requested that effectiveness be delayed.

(d) The commissioner may delay effectiveness once for not more than 90 days if the commissioner determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The commissioner may also delay effectiveness for a further period of not more than 30 days if the commissioner determines that the delay is necessary or appropriate.

(e) A rule adopted or order issued under this Act may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

409.3-305. (a) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this Act.

(b) A person filing a registration statement shall pay a filing fee of one hundred dollars. Each person shall pay a registration fee equal to one-twentieth of one percent of the amount by which the maximum aggregate offering price at which the registered securities are to be offered in this state exceeds one hundred thousand dollars. In no case shall the registration fee be more than nine hundred dollars. If a registration statement is withdrawn before the effective date or a preeffective stop

order is issued under Section 409.3-306, the commissioner shall retain a filing fee of one hundred dollars. A person filing a renewal of a registration statement shall pay a filing fee of one hundred dollars.

(c) A registration statement filed under Section 409.3-303 or 409.3-304 must specify:

(1) the amount of securities to be offered in this State;
(2) the States in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) any adverse order, judgment, or decree issued in connection with the offering by a State securities regulator, the Securities and Exchange Commission, or a court.

(d) A record filed under this Act or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or Section 409.3-304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) A rule adopted or order issued under this Act may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this Act, but the commissioner may not reject a depository institution solely because of its location in another State.

(g) A rule adopted or order issued under this Act may require as a condition of registration that a security registered under this Act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this Act or preserved for a period specified by the rule or order, which may not be longer than five years.

(h) Except while a stop order is in effect under Section 409.3-306, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this Act during which the security is being offered or

distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. A registration statement remains effective for each additional year by filing a renewal as described by rule adopted or order issued under this Act. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this Act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the commissioner.

(i) While a registration statement is effective, a rule adopted or order issued under this Act may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) A registration statement may be amended after its effective date. The post-effective amendment becomes effective when the commissioner so orders. If a post-effective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee as described in subsection (b). A post-effective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

409.3-306. (a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the commissioner finds that the order is in the public interest and that:

(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under Section 409.3-305(j) as of its effective date, or a report under Section 409.3-305(i), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this Act or a rule adopted or order issued under this Act or a condition imposed under this Act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this Act applicable to the offering, but the commissioner may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the commissioner may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another State unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered under Section 409.3-303, there has been a failure to comply with the undertaking required by Section 409.3-303(b)(4);

(6) the applicant or registrant has not paid the filing fee, but the commissioner shall void the order if the deficiency is corrected; or

(7) the offering:

(A) will work or tend to work a fraud upon purchasers or would so operate;

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) is being made on terms that are unfair, unjust, or inequitable.

(b) To the extent practicable, the commissioner by rule adopted or order issued under this Act shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the commissioner when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) The commissioner may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the commissioner shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the

commissioner, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) A stop order may not be issued under this section without:

- (1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
- (2) an opportunity for hearing before the commissioner; and
- (3) findings of fact and conclusions of law in a record in accordance with the provisions of chapter 536, RSMo and procedural rules promulgated by the commissioner.

(f) The commissioner may modify or vacate a stop order issued under this section if the commissioner finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

409.3-307. The commissioner may waive or modify, in whole or in part, any or all of the requirements of Sections 409.3-302, 409.3-303, and 409.3-304(b) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to Section 409.3-305(i).

409.4-401. (a) It is unlawful for a person to transact business in this State as a broker-dealer unless the person is registered under this Act as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) a broker-dealer without a place of business in this State if its only transactions effected in this State are with:

(A) the issuer of the securities involved in the transactions;

(B) a broker-dealer registered under this Act or not required to be registered as a broker-dealer under this Act;

(C) an institutional investor;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this State and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the

customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this State but was not present in this State when the customer relationship was established, if:

(i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the State in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) within 45 days after the customer's first transaction in this State, the person files an application for registration as a broker-dealer in this State and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the commissioner notifies the person that the commissioner has denied the application for registration or has stayed the pendency of the application for good cause;

(G) not more than three customers in this State during the previous 12 months, in addition to those customers specified in subparagraphs (A) through (F) and under subparagraph (H), if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the broker-dealer has its principal place of business; and

(H) any other person exempted by rule adopted or order issued under this Act; and

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.

(c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this State, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the commissioner under this Act, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon

request from a broker-dealer or issuer and for good cause, an order under this Act may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) A rule adopted or order issued under this Act may permit:

(1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this State to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or other foreign jurisdiction who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) an individual from Canada or other foreign jurisdiction who is present in this State and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is present in this State, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this State as permitted for a broker-dealer described in paragraph (1).

409.4-402. (a) It is unlawful for an individual to transact business in this State as an agent unless the individual is registered under this Act as an agent or is exempt from registration as an agent under subsection (b).

(b) Exemptions from registration. The following individuals are exempt from the registration requirement of subsection (a):

(1) an individual who represents a broker-dealer in effecting transactions in this State limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78(o)(2));

(2) an individual who represents a broker-dealer that is exempt under Section 409.4-401(b) or (d);

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section 409.2-202, other than Section 409.2-202(11) and

(14);

(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) an individual who represents a broker-dealer registered in this State under Section 409.4-401(a) or exempt from registration under Section 409.4-401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) any other individual exempted by rule adopted or order issued under this Act.

(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this Act or an issuer that is offering, selling, or purchasing its securities in this State.

(d) It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this Act.

409.4-403. (a) It is unlawful for a person to transact business in this State as an investment adviser unless the person is registered under this Act as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) a person without a place of business in this State that is registered under the securities act of the State in which the person has its principal place of business

if its only clients in this State are:

(A) federal covered investment advisers, investment advisers registered under this Act, or broker-dealers registered under this Act;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this State if the investment adviser is registered under the securities act of the State in which the clients maintain principal places of residence; or

(D) any other client exempted by rule adopted or order issued under this Act;

(2) a person without a place of business in this State if the person has had, during the preceding 12 months, not more than five clients that are resident in this State in addition to those specified under paragraph (1); or

(3) any other person exempted by rule adopted or order issued under this Act.

(c) It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this Act, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the commissioner, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this Act as an investment adviser representative who transacts business in this State on behalf of the investment adviser unless the individual is registered under Section 409.4-404(a) or is exempt from registration under Section 409.4-404(b).

409.4-404. (a) It is unlawful for an individual to transact business in this State as an investment adviser representative unless the individual is registered under this Act as an investment adviser representative or is exempt from registration as an investment adviser under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

(1) an individual who is exclusively employed by or associated with an investment adviser that is exempt from registration under Section 409.4-403(b) or a federal covered investment adviser that is excluded from the notice filing requirements of Section 409.4-405; and

(2) any other individual exempted by rule adopted or order issued under this Act.

(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this Act or a federal covered investment adviser that has made or is required to make a notice filing under Section 409.4-405.

(d) An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this Act prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

(e) It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this State on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this Act, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the commissioner, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) An investment adviser registered under this Act, a federal covered investment adviser that has filed a notice under Section 409.4-405, or a broker-dealer registered under this Act is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this Act, a federal covered investment adviser who has filed a notice under Section 409.4-405, or a broker-dealer registered under this Act with which the individual is employed or associated as an investment adviser representative.

409.4-405. (a) Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this State as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) The following federal covered investment advisers are not required to comply with subsection (c):

(1) a federal covered investment adviser without a place of business in this State if its only clients in this State are:

(A) federal covered investment advisers, investment advisers registered under this Act, and broker-dealers registered under this Act;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this State; or

(D) other clients specified by rule adopted or order issued under this Act;

(2) a federal covered investment adviser without a place of business in this State if the person has had, during the preceding 12 months, not more than five clients that are resident in this State in addition to those specified under paragraph (1); and

(3) any other person excluded by rule adopted or order issued under this Act.

(c) A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with Section 409.6-611, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this Act and pay the fees specified in Section 409.4-410(e).

(d) The notice under subsection (c) becomes effective upon its filing.

409.4-406. (a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with Section 409.6-611, and paying the fee specified in Section 409.4-410 and any reasonable fees charged by the designee of the commissioner for processing the filing. The application must contain:

(1) the information or record required for the filing of a uniform application; and

(2) upon request by the commissioner, any other financial or other information or record that the commissioner determines is appropriate.

(b) If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) If an order is not in effect and a proceeding is not pending under Section 409.4-412, registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this Act may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under

Section 409.4-412, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this Act, by paying the fee specified in Section 409.4-410, and by paying costs charged by the designee of the commissioner for processing the filings.

(e) A rule adopted or order issued under this Act may impose such other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this Act may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

409.4-407. (a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to Section 409.4-401 or 409.4-403 or a notice pursuant to Section 409.4-405 for the unexpired portion of the current registration or notice filing.

(b) A broker-dealer or investment adviser that changes its form of organization or State of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this Act. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this Act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this Act.

409.4-408. (a) If an agent registered under this Act terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this Act terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser

representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) If an agent registered under this Act terminates employment by or association with a broker-dealer registered under this Act and begins employment by or association with another broker-dealer registered under this Act; or if an investment adviser representative registered under this Act terminates employment by or association with an investment adviser registered under this Act; or, if a federal covered investment adviser, who has filed a notice under Section 409.4-405 and begins employment by or association with another investment adviser registered under this Act; or if a federal covered investment adviser, who has filed a notice under Section 409.4-405, upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of Section 409.4-406(a) and payment of the filing fee required under Section 409.4-410, the registration of the agent or investment adviser representative, is:

(1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or

(2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding 12 months.

(c) The commissioner may by order withdraw a temporary registration if there are or were grounds for discipline as specified in Section 409.4-412 and the commissioner does so within 30 days after the filing of the application. If the commissioner does not withdraw the temporary registration within the 30 day period, registration becomes automatically effective on the 31st day after filing.

(d) The commissioner may by order prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) If the commissioner determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an

adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this Act may require the registration be canceled or terminated or the application denied. The commissioner may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

409.4-409. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this Act unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this Act. The commissioner may institute a revocation or suspension proceeding under Section 409.4-412 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

409.4-410. (a) A person shall pay a fee of two hundred dollars when initially filing an application for registration as a broker-dealer and a fee of one hundred dollars when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the commissioner shall retain the entire fee.

(b) The fee for an individual is fifty dollars when filing an application for registration as an agent, a fee of fifty dollars when filing a renewal of registration as an agent, and a fee of fifty dollars when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the commissioner shall retain the entire fee.

(c) A person shall pay a fee of two hundred dollars when filing an application for registration as an investment adviser and a fee of one hundred dollars when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the commissioner shall retain the entire fee.

(d) The fee for an individual is fifty dollars when filing an application for registration as an investment adviser representative, a fee of fifty dollars when filing a renewal of registration as an investment adviser representative, and a fee of fifty dollars when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the commissioner shall retain the entire fee.

(e) A federal covered investment adviser required to file a notice under Section 409.4-405 shall pay an initial fee of two hundred dollars and an annual notice fee of one hundred dollars.

(f) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this Act.

(g) An investment adviser representative who is registered as an agent under Section 409.4-402 and who represents a person that is both registered as a broker-dealer under Section 409.4-401 and registered as an investment adviser under Section 409.4-403 or required as a federal covered investment adviser to make a notice filing under Section 409.4-405 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

409.4-411. (a) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this Act may establish minimum financial requirements for broker-dealers registered or required to be registered under this Act and investment advisers registered or required to be registered under this Act.

(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under this Act and an investment adviser registered or required to be registered under this Act shall file such financial reports as are required by a rule adopted or order issued under this Act. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22):

(1) a broker-dealer registered or required to be registered under this Act and an investment adviser registered or required to be registered under this Act shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this Act;

(2) broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the commissioner; and

(3) investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule adopted or order issued under this Act.

(d) The records of a broker-dealer registered or required to be registered under

this Act and of an investment adviser registered or required to be registered under this Act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the commissioner, within or without this State, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this Act may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed twenty-five thousand dollars. The commissioner may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this Act whose net capital exceeds, or of an investment adviser registered under this Act whose minimum financial requirements exceed, the amounts required by rule or order under this Act. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in Section 409.5-509(j)(2).

(f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this Act may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this Act, a rule adopted or order issued under this Act may require that information or other record be furnished or disseminated to clients or prospective clients in this State as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this Act may require an individual registered under Section 409.4-402 or 409.4-404 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this Act may require continuing education for an individual registered under Section 409.4-404.

409.4-412. (a) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this Act may deny an application, or may condition or limit registration: (1) of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and (2) if the applicant is a broker-dealer or investment adviser, of any partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser.

(b) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action an order issued under this Act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. However, the commissioner

(1) may not institute a revocation or suspension proceeding under this subsection based on an order issued by another State that is reported to the commissioner or designee later than one year after the date of the order on which it is based; and

(2) under subsection (d)(5)(A) and (B), may not issue an order on the basis of an order under the state securities act of another State unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this State.

(c) If the commissioner finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this Act may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of five thousand dollars for a single violation or fifty thousand dollars for several violations on a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having similar functions or any person directly or indirectly controlling the broker-dealer or investment adviser.

(d) A person may be disciplined under subsections (a) through (c) if the person:

(1) has filed an application for registration in this State under this Act or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) willfully violated or willfully failed to comply with this Act or the predecessor act or a rule adopted or order issued under this Act or the predecessor act within the previous ten years;

(3) has been convicted of a felony or within the previous ten years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the commissioner under this Act or the predecessor act, a State, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing by:

(A) the securities, depository institution, insurance, or other financial services regulator of a State or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) the securities regulator of a State or by the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the Securities and Exchange Commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States Postal Service fraud order;

(E) the insurance regulator of a State denying, suspending, or revoking the registration of an insurance agent; or

(F) a depository institution regulator suspending or barring a person from the depository institution business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a State that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a State, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the commissioner may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the commissioner from conducting an audit or inspection under Section 409.4-411(d) or refuses access to a registrant's office to conduct an audit or inspection under Section 409.4-411(d);

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this Act or the predecessor act or a rule adopted or order issued under this Act or the predecessor act within the previous 10 years;

(10) has not paid the proper filing fee within 30 days after having been notified by the commissioner of a deficiency, but the commissioner shall vacate an order under this paragraph when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous 10 years:

(A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and

Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a State;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; or

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e). The commissioner may require an applicant for registration under Section 409.4-402 or 409.4-404 who has not been registered in a State within the two years preceding the filing of an application in this State to successfully complete an examination.

(e) A rule adopted or order issued under this Act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this Act may waive, in whole or in part, an examination as to an individual and a rule adopted under this Act may waive, in whole or in part, an examination as to a class of individuals if the commissioner determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) The commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the commissioner shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order issued may not be issued under this section, except under subsection (f), without:

- (1) appropriate notice to the applicant or registrant;
- (2) opportunity for hearing; and

(3) findings of fact and conclusions of law in a record.

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the commissioner under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) The commissioner may not institute a proceeding under subsection(a), (b), or (c) based solely on material facts actually known by the commissioner unless an investigation or the proceeding is instituted within one year after the commissioner actually acquires knowledge of the material facts.

(j) **Hearings, Findings of Fact and Conclusions of Law.**

(1) Any applicant denied an agent, broker-dealer, investment adviser or investment adviser representative registration by order of the commissioner pursuant to subsection (a) may file a petition with the administrative hearing commission alleging that the commissioner has denied the registration. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law. The commissioner shall have the burden of proving a ground for denial pursuant to this Act.

(2) If a proceeding is instituted to revoke or suspend a registration of any agent, broker-dealer, investment adviser, or investment adviser representative pursuant to subsection (b), the commissioner shall refer the matter to the administrative hearing commission. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The commissioner shall have the burden of proving a ground for suspension or revocation pursuant to this Act. The administrative hearing commission shall submit its findings of fact and conclusions of law to the commissioner for final disposition.

(3) Hearing procedures before the commissioner or the administrative hearing commission and judicial review of the decisions and orders of the commissioner and of the administrative hearing commission, and all other procedural matters pursuant to this Act shall be governed by the provisions of chapter 536, RSMo. Hearings before the administrative hearing commission shall also be governed by the provisions of chapter 621, RSMo.

409.4-413. It is unlawful for a broker-dealer, investment adviser, legal firm offering bond counsel services, or any persons having an interest in any such firms to be involved in any manner in the issuance of bonds authorized by an election, if the firm or such person makes any contribution of any kind whatsoever to any campaign in support of the bond election.

409.5-501. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) to employ a device, scheme, or artifice to defraud;

(2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or

(3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

409.5-502. (a) It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

(1) to employ a device, scheme, or artifice to defraud another person; or

(2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) A rule adopted under this Act may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(c) A rule adopted under this Act may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

409.5-503. (a) In a civil action or administrative proceeding under this Act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) In a criminal proceeding under this Act, a person claiming an exception or exclusion from definition has the burden of injecting the issue pursuant to section 556.051, RSMo, and a person claiming an exemption or qualification as a federal covered security has the burden of proving the claim as an affirmative defense pursuant to section 556.056, RSMo.

409.5-504. (a) Except as otherwise provided in subsection (b), a rule adopted or order issued under this Act may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective

investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this Act.

(b) This section does not apply to sales and advertising literature specified in subsection (a) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section 409.2-201, 409.2-202, or 409.2-203 except as required pursuant to Section 409.2-201(7).

409.5-505. It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this Act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

409.5-506. The filing of an application for registration, a registration statement, a notice filing under this Act, the registration of a person, the notice filing by a person, or the registration of a security under this Act does not constitute a finding by the commissioner that a record filed under this Act is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the commissioner has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

409.5-507. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the commissioner, or designee of the commissioner, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

409.5-508. (a) A person that willfully violates this Act, or a rule adopted or order issued under this Act, except Section 409.5-504 or the notice filing requirements of Section 409.3-302 or 409.4-405, or that willfully violates Section 409.5-505 knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than one million dollars or imprisoned not more than ten years, or both. An individual convicted of violating a rule or order under this Act may

be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(b) The attorney general or the proper prosecuting attorney with or without a reference from the commissioner, may institute criminal proceedings under this Act.

(c) This Act does not limit the power of this State to punish a person for conduct that constitutes a crime under other laws of this State.

409.5-509. (a) Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

(b) A person is liable to the purchaser if the person sells a security in violation of Section 409.3-301 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the rate of eight percent per year from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3).

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the rate of eight percent per year from the date of the purchase, costs, and reasonable attorneys' fees determined by the court.

(c) A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income

received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3).

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the rate of eight percent per year from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

(d) A person acting as a broker-dealer or agent that sells or buys a security in violation of Section 409.4-401(a), 409.4-402(a), or 409.5-506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (3), or, if a seller, for a remedy as specified in subsections (c)(1) through (3).

(e) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of Section 409.4-403(a), 409.4-404(a), or 409.5-506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the rate of eight percent per year from the date of payment, costs, and reasonable attorneys' fees determined by the court.

(f) A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

(1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the rate of eight percent per year from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(g) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

(1) a person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(h) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(i) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) A person may not obtain relief:

(1) under subsection (b) for violation of Section 409.3-301, or under subsection (d) or (e), unless the action is instituted within one year after the violation occurred; or

(2) under subsection (b), other than for violation of Section 409.3-301, or under subsection (c) or (f), unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

(k) A person that has made, or has engaged in the performance of, a contract in violation of this Act or a rule adopted or order issued under this Act, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this Act, may not base an

action on the contract.

(l) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this Act or a rule adopted or order issued under this Act is void.

(m) The rights and remedies provided by this Act are in addition to any other rights or remedies that may exist, but this Act does not create a cause of action not specified in this section or Section 409.4-411(e).

409.5-510. A purchaser, seller, or recipient of investment advice may not maintain an action under Section 409.5-509 if:

(1) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(A) an offer stating the respect in which liability under Section 409.5-509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this Act to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation of Section 409.5-509(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the rate of eight percent per year from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the rate of eight percent per year from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(C) if the basis for relief under this section may have been a violation of Section 409.5-509(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the rate of eight percent per year from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the rate of eight percent per year from the date of the sale;

(D) if the basis for relief under this section may have been a violation of

Section 409.5-509(d); and if the customer is a purchaser, an offer to pay as specified in subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C);

(E) if the basis for relief under this section may have been a violation of Section 409.5-509(e), an offer to reimburse in cash the consideration paid for the advice and interest at the rate of eight percent per year from the date of payment; or

(F) if the basis for relief under this section may have been a violation of Section 409.5-509(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the rate of eight percent per year from the date of the violation causing the loss;

(2) the offer under paragraph (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the commissioner, by order, specifies;

(3) the offeror has the present ability to pay the amount offered or to tender the security under paragraph (1);

(4) the offer under paragraph (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) in a record within the period specified under paragraph (2) is paid in accordance with the terms of the offer.

409.6-601. (a) This Act shall be administered by the commissioner of securities who shall be appointed by and act under the direction of the secretary of state, and shall receive compensation as provided by law.

(b) It is unlawful for the secretary of state, commissioner or an officer, employee, or designee of the commissioner to use for personal benefit or the benefit of others records or other information obtained by or filed with the commissioner that are not public under Section 409.6-607(b). This Act does not authorize the secretary of state, commissioner or an officer, employee, or designee of the commissioner to disclose the record or information, except in accordance with Section 409.6-602, 409.6-607(c), or 409.6-608.

(c) This Act does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) The commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the

prevention and detection of securities fraud. In developing and implementing these initiatives, the commissioner may collaborate with public and nonprofit organizations with an interest in investor education. The commissioner may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the commissioner to require participation or monetary contributions of a registrant in an investor education program.

(e) The Investor Education and Protection Fund is created to provide funds for the purposes identified in subsection (d). Notwithstanding the provisions of Section 33.080 RSMo any funds remaining in the secretary of state's Investor Education and Protection Fund at the end of any biennium shall not be transferred to the general revenue fund.

409.6-602. (a) The commissioner may:

(1) conduct public or private investigations within or outside of this State which the commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this Act or a rule adopted or order issued under this Act, or to aid in the enforcement of this Act or in the adoption of rules and forms under this Act;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this Act or a rule adopted or order issued under this Act if the commissioner determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation under this Act, the commissioner or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the commissioner considers relevant or material to the investigation.

(c) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the commissioner under this Act, the commissioner may apply to the circuit court of any county of the state or the city of St. Louis, or a court of another State to enforce compliance. The court may:

- (1) hold the person in contempt;
 - (2) order the person to appear before the commissioner;
 - (3) order the person to testify about the matter under investigation or in question;
 - (4) order the production of records;
 - (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;
 - (6) impose a civil penalty of not less than ten thousand dollars and not greater than fifty thousand dollars for each violation; and
 - (7) grant any other necessary or appropriate relief.
- (d) This section does not preclude a person from applying to the circuit court of any county of the state or the city of St. Louis for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.
- (e) An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the commissioner under this Act or in an action or proceeding instituted by the commissioner under this Act on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the commissioner may apply to the circuit court of any county of the state or the city of St. Louis to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.
- (f) At the request of the securities regulator of another State or a foreign jurisdiction, the commissioner may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other State or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The commissioner may provide the assistance by using the authority to investigate and the powers conferred by this section as the commissioner determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this Act or other law of this State if occurring in this State. In deciding whether to provide the assistance, the commissioner may consider whether the requesting

regulator is permitted and has agreed to provide assistance reciprocally within its State or foreign jurisdiction to the commissioner on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this State; and the availability of resources and employees of the commissioner to carry out the request for assistance.

409.6-603. (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this Act or a rule adopted or order issued under this Act or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this Act or a rule adopted or order issued under this Act, the commissioner may maintain an action in the circuit court of any county of the state or the city of St. Louis to enjoin the act, practice, or course of business and to enforce compliance with this Act or a rule adopted or order issued under this Act.

(b) In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the commissioner, for the defendant or the defendant's assets;

(B) ordering the commissioner to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) imposing a civil penalty up to ten thousand dollars for a single violation or up to one million dollars for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this Act or the predecessor act or a rule adopted or order issued under this Act or the predecessor act;

(D) ordering the payment of prejudgment and post-judgment interest; and

(E) ordering the payment to the Investor Education and Protection Fund of an amount equal to ten percent of the total rescission, restitution or disgorgement ordered, or such other amount as awarded by the court; or

(3) order such other relief as the court considers appropriate.

(c) The commissioner may not be required to post a bond in an action or proceeding under this Act.

(d) The commissioner is authorized to enter into a consent injunction and judgment in the settlement of any proceeding in the public interest under this Act.

(e) The commissioner may create an Investor Restitution Fund for the purpose of preserving and distributing to aggrieved investors, disgorgement or restitution funds obtained through enforcement actions prosecuted by the commissioner. In addition to the equitable powers of the court authorized above, the court may order that funds be paid into the Investor Restitution Fund for distribution to aggrieved investors. It shall be the duty of the commissioner to distribute such funds to those persons injured by the unlawful acts, practices or courses of business. Such funds may or may not be in interest-bearing accounts, but any interest, which accrues to any such account, shall be paid to the credit of the Investor Education and Protection Fund. Notwithstanding the provisions of Section 33.080 RSMo any funds remaining in the secretary of state's Investor Restitution Fund at the end of any biennium shall not be transferred to the general revenue fund, but if the commissioner is unable with reasonable efforts to ascertain the aggrieved investors, then the funds may be transferred to the Investor Education and Protection Fund.

409.6-604. (a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this Act or a rule adopted or order issued under this Act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this Act or a rule adopted or order issued under this Act, the commissioner may:

- (1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this Act;
- (2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section 409.4-401(b)(1)(D) or (F) or an investment adviser under Section 409.4-403(b)(1)(C); or
- (3) issue an order under Section 409.2-204.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within 30 days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing

to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing before the commissioner must be provided. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record in accordance with the provisions of Chapter 536, RSMo and procedural rules promulgated by the commissioner. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation.

(e) In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this Act or a rule adopted or order issued under this Act. These funds may be paid into the Investor Education and Protection Fund.

(f) If a petition for judicial review of a final order is not filed in accordance with Section 409.6-609, the commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) If a person does not comply with an order under this section, the commissioner may petition a court of competent jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than five thousand dollars but not greater than one hundred thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(h) The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this Act.

409.6-605. (a) The commissioner may:

(1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this Act and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by rule, define terms, whether or not used in this Act, but those definitions

may not be inconsistent with this Act; and

(3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Under this Act, a rule or form may not be adopted or amended, or an order issued or amended, unless the commissioner finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this Act. In adopting, amending, and repealing rules and forms, Section 409.6-608 applies in order to achieve uniformity among the States and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the commissioner may require that a financial statement filed under this Act be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this Act. A rule adopted or order issued under this Act may establish:

(1) subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this Act;

(2) whether unconsolidated financial statements must be filed; and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) The commissioner may provide interpretative opinions or issue determinations that the commissioner will not institute a proceeding or an action under this Act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this Act. A rule adopted or order issued under this Act may establish a reasonable charge for interpretative opinions or determinations that the commissioner will not institute an action or a proceeding under this Act.

(e) A penalty under this Act may not be imposed for, and liability does not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the commissioner under this Act.

(f) A hearing in an administrative proceeding under this Act must be conducted in public unless the commissioner for good cause consistent with this Act determines that the hearing will not be so conducted.

(g) Any rule or portion of a rule, as that term is defined in section 536.010,

RSMo, that is created under the authority delegated in this Act shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

409.6-606. (a) The commissioner shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this Act or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this Act or the predecessor act; and interpretative opinions or no action determinations issued under this Act.

(b) The commissioner shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) The commissioner shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this Act may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the commissioner of a record's nonexistence is *prima facie* evidence of a record or its nonexistence.

409.6-607. (a) Except as otherwise provided in subsection (b), records obtained by the commissioner or filed under this Act, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) The following records are not public records and are not available for public examination under subsection (a):

(1) a record obtained by the commissioner in connection with an audit or inspection under Section 409.4-411(d) or an investigation under Section 409.6-602;

(2) a part of a record filed in connection with a registration statement under Sections 409.3-301 and 409.3-303 through 409.3-305 or a record under Section 409.4-411(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the commissioner or filed

under this Act and is provided to the commissioner only on the condition that the record will not be subject to public examination or disclosure;

(4) a nonpublic record received from a person specified in Section 409.6-608(a);

(5) any social security number, residential address unless used as a business address, and residential telephone number contained in a record that is filed; and

(6) a record obtained by the commissioner through a designee of the commissioner that a rule or order under this Act determines has been:

(A) expunged from the commissioner's records by the designee; or

(B) determined to be nonpublic or nondisclosable by that designee if the commissioner finds the determination to be in the public interest and for the protection of investors.

(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in Section 409.6-608(a), the commissioner may disclose a record obtained in connection with an audit or inspection under Section 409.4-411(d) or a record obtained in connection with an investigation under Section 409.6-602.

409.6-608. (a) The commissioner shall, in its discretion, cooperate, coordinate, consult, and, subject to Section 409.6-607, share records and information with the securities regulator of another State, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, States, and foreign governments.

(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this Act, the commissioner shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

(1) maximizing effectiveness of regulation for the protection of investors;

(2) maximizing uniformity in federal and state regulatory standards; and

(3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(1) establishing or employing one or more designees as a central depository for

registration and notice filings under this Act and for records required or allowed to be maintained under this Act;

- (2) developing and maintaining uniform forms;
- (3) conducting a joint examination or investigation;
- (4) holding a joint administrative hearing;
- (5) instituting and prosecuting a joint civil or administrative proceeding;
- (6) sharing and exchanging personnel;
- (7) coordinating registrations under Sections 409.3-301 and 409.4-401 through 409.4-404 and exemptions under Section 409.2-203;
- (8) sharing and exchanging records, subject to Section 409.6-607;
- (9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
- (10) formulating common systems and procedures;
- (11) notifying the public of proposed rules, forms, statements of policy, and guidelines;
- (12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and
- (13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

409.6-609. (a) Except as otherwise provided in this Act, any interested person aggrieved by any order of the commissioner under any provision of this Act, or by any refusal or failure of the commissioner to make an order pursuant to any of said provisions, shall be entitled to a hearing before the commissioner in accordance with the provisions of chapter 536, RSMo. A final order issued by the commissioner under this Act is subject to judicial review in accordance with the provisions of chapter 536, RSMo in the circuit court of Cole County.

(b) A rule adopted under this Act is subject to judicial review in accordance with the provisions of chapter 536, RSMo in the circuit court of Cole County.

409.6-610. (a) Sections 409.3-301, 409.3-302, 409.4-401(a), 409.4-402(a), 409.4-403(a), 409.4-404(a), 409.5-501, 409.5-506, 409.5-509, and 409.5-510 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this State or the offer to purchase or the purchase is made and accepted in this State.

(b) Sections 409.4-401(a), 409.4-402(a), 409.4-403(a), 409.4-404(a), 409.5-501, 409.5-506, 409.5-509, and 409.5-510 do not apply to a person that purchases or offers to

purchase a security unless the offer to purchase or the purchase is made in this State or the offer to sell or the sale is made and accepted in this State.

(c) For the purpose of this section, an offer to sell or to purchase a security is made in this State, whether or not either party is then present in this State, if the offer:

(1) originates from within this State; or

(2) is directed by the offeror to a place in this State and received at the place to which it is directed.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in this State, whether or not either party is then present in this State, if the acceptance:

(1) is communicated to the offeror in this State and the offeree reasonably believes the offeror to be present in this State and the acceptance is received at the place in this State to which it is directed; and

(2) has not previously been communicated to the offeror, orally or in a record, outside this State.

(e) An offer to sell or to purchase is not made in this State when a publisher circulates or there is circulated on the publisher's behalf in this State a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this State, or that is published in this State but has had more than two thirds of its circulation outside this State during the previous 12 months or when a radio or television program or other electronic communication originating outside this State is received in this State. A radio or television program, or other electronic communication is considered as having originated in this State if either the broadcast studio or the originating source of transmission is located in this State, unless:

(1) the program or communication is syndicated and distributed from outside this State for redistribution to the general public in this State;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this State for redistribution to the general public in this State;

(3) the program or communication is an electronic communication that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in this State, but which is not intended for distribution to the general public in this State.

(f) Sections 409.4-403(a), 409.4-404(a), 409.4-405(a), 409.5-502, 409.5-505, and 409.5-506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this State, whether or not either party is then present in this State.

409.6-611. (a) A consent to service of process complying with Section 409.6-611 required by this Act must be signed and filed in the form required by a rule or order under this Act. A consent appointing the commissioner the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this Act or a rule adopted or order issued under this Act after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) If a person, including a nonresident of this State, engages in an act, practice, or course of business prohibited or made actionable by this Act or a rule adopted or order issued under this Act and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the commissioner as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the commissioner, but it is not effective unless:

(1) the plaintiff, which may be the commissioner, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the commissioner in a proceeding before the commissioner, allows.

(d) Service pursuant to subsection (c) may be used in a proceeding before the commissioner or by the commissioner in a civil action in which the commissioner is the moving party.

(e) If process is served under subsection (c), the court, or the commissioner in a proceeding before the commissioner, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

409.6-612. If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

409.7-701. This Act takes effect on September 1, 2003.

409.7-702. The following act is repealed:

Uniform Securities Act of 1956, Section 409.101 to 409.421, RSMo 2000.

409.7-703. (a) The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this Act or may be instituted on the basis of conduct occurring before the effective date of this Act, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of this Act, whichever is earlier.

(b) All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this Act had not been enacted. They are considered to have been filed, issued, or imposed under this Act, but are exclusively governed by the predecessor act.

(c) The predecessor act exclusively applies to an offer or sale made within one year after the effective date of this Act pursuant to an offering made in good faith before the effective date of this Act on the basis of an exemption available under the predecessor act.

409.9-900. Sections 409.9-900 to 409.9-929 may be cited as the "Missouri Takeover Bid Disclosure Act".

409.9-901. As used in sections 409.9-900 to 409.9-929, the following terms shall have the following meanings:

(1) "Takeover bid", the acquisition of or offer to acquire by an offeror from an offeree, pursuant to a tender offer or request or invitation for tenders, any equity security of a target company, if after acquisition thereof the offeror would, directly or indirectly, be a beneficial owner of more than five percent of any class of the issued and outstanding equity securities of such target company. Such term does not include:

(a) Bids made by a dealer for his own account in the ordinary course of his business of buying and selling such security;

(b) An offer to acquire such equity security solely in exchange for other

securities, or the acquisition of such equity security pursuant to such offer, for the sole account of the offeror, in good faith and not for the purpose of avoiding this section, and not involving any public offering of such other securities within the meaning of section 4 of title I of the Securities Act of 1933, (48 Stat. 77, 15 U.S.C. 77d (2)); as amended;

(c) Any other offer to acquire an equity security, or the acquisition of such equity security pursuant to such offer, for the sole account of the offeror, from not more than fifty offerees, in good faith and not for the purpose of avoiding the provisions of sections 409.9-900 to 409.9-929;

(d) Any offer or class of offer where, prior to making the offer, the offeror beneficially owns, directly or indirectly, a majority of the voting equity securities of the target company;

(2) "Offeror", a person who makes, or in any way participates or aids in making, a takeover bid, and includes persons acting jointly or in concert, or who intend to exercise jointly or in concert any voting rights attached to the securities for which such takeover bid is made. An "offeror" includes an issuer of securities whose securities are or are to be the subject of a takeover bid whether or not the issuer, upon acquisition, will become the beneficial owner of such securities. An "offeror" does not include any bank or broker-dealer in securities loaning funds to the offeror in the ordinary course of the business of the bank or broker-dealer in securities and not otherwise participating in the takeover bid, or any bank, broker-dealer in securities, attorney, accountant or consultant furnishing information or advice to an offeror and not otherwise participating in the takeover bid;

(3) "Offeree", the beneficial owner, residing in this state, of securities which an offeror acquires or offers to acquire in connection with a takeover bid;

(4) "Target company", a resident domestic corporation as defined in subdivision (13) of subsection 1 of section 351.459, RSMo;

(5) "Equity security", any stock, bond, or other obligation of a target company, the holder of which has the right to vote for the election of members of the board of directors of such target company. Equity security includes any right, option or warrant to purchase an equity security.

409.9-902. 1. No offeror shall make a takeover bid unless as soon as practicable on the date of commencement of the takeover bid he files with the commissioner of securities and delivers to the target company at its principal executive offices a registration statement containing the information required by section 409.9-903.

2. An offeror shall make full and fair disclosure to offerees of the material information set forth in the registration statement filed pursuant to subsection 1 of

this section.

3. No solicitation or recommendation to the offerees of a target company to accept or reject a takeover bid shall be made by or on behalf of an offeror or a target company unless at the time copies of such solicitation or recommendation are first published, sent or given to such offerees, the person making such solicitation or recommendation has filed copies of the solicitation or recommendation with the commissioner of securities of this state.

409.9-903. 1. The registration statement required to be filed pursuant to subsection 1 of section 409.9-902 shall include:

(1) Copies of all prospectuses, brochures, advertisements, circulars, letters, or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer;

(2) The identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected;

(3) The exact title and number of shares outstanding of the class of equity securities being sought, the number of such securities being sought and the consideration being offered therefor;

(4) The source and amount of funds or other consideration used or to be used in acquiring any equity security, including a statement describing any securities, other than the existing capital stock or long-term debt of the offeror, which are being offered in exchange for the equity securities of the target company and also including copies of all loan or credit agreements and letters of commitment used or to be used to secure financing for the acquisition of any equity security of the target company;

(5) A statement of any plans or proposals which the offeror, upon gaining control, may have to liquidate the target company, sell its assets, effect a merger or consolidation of it, or make any other major change in its business, corporate structure, management personnel, or policies of employment;

(6) The number of shares of any equity security of the target company of which each offeror is beneficial or record owner or has a right to acquire, directly or indirectly, together with the name and address of each person defined in this section as an offeror;

(7) Particulars as to any contracts, arrangements, or understandings to which an offeror is party with respect to any equity security of the target company, including without limitation transfers of any equity security, joint ventures, loans or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or

understandings have been entered into;

(8) Complete information on the organization and operations of the offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long-term debt, financial statements for the current period and for the three most recent annual accounting periods, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past five years, the names of all directors and executive officers together with biographical summaries of each for the preceding three years to date;

(9) A statement as to the potential impact, if any, of the offeror's plans or proposals on the residents of this state, including any material change in the location of the target company's offices or business activities within this state; any plant or facility relocation; any plant or facility closings; any significant reduction in the workforce at an individual plant or facility; any other material change in the number, job classification, compensation, or other terms and conditions of employment of persons employed by the target company in this state; any material change in the relationships of the target company with suppliers or customers within this state, or any other material changes in the target company's business, corporate structure, management, personnel or activities which would have a substantial impact on residents of this state;

(10) Particulars as to any pension plans; profit sharing plans; savings plans; educational opportunities; relocation adjustments; labor relations records, including violations of the federal National Labor Relations Act, Occupational Safety and Health Act of 1970, Fair Labor Standards Act, or Employee Retirement and Income Security Act, as amended, finally adjudicated or settled within five years of the commencement of the takeover bid; earnings and dividend growth; community activities; and charitable, cultural, educational and civic contributions of the offeror;

(11) If the offeror is a natural person, information concerning his identity and background, including without limitation financial statements for the current and three preceding years, a description of his business activities and affiliations during that time period, and a description of any pending or administrative proceedings, other than routine and immaterial litigation, to which the offeror is a party or of which any of his property is the subject; and

(12) If debt securities or preferred stock are either offered in the takeover bid

or used as a source of funds in making the takeover bid, the investment rating, if any, by a generally recognized rating service of such debt security or preferred stock.

2. If any material change occurs in the facts set forth in the registration statement required by subsection 1 of section 409.9-902, the offeror who filed such statement shall promptly notify the commissioner of securities and the target company of such change in writing or by telephone confirmed in writing and shall amend the registration statement, to reflect such change promptly but not later than the date such change is first published, sent or given to offerees.

3. The commissioner of securities may permit the omission of any information required by subsection 1 of this section to be included in the registration statement if he determines that such information is immaterial or otherwise unnecessary for the protection of offerees.

409.9-910. 1. The commissioner of securities may conduct such investigation as he deems necessary concerning any takeover bid for the purpose of determining compliance with the requirements of sections 409.9-900 to 409.9-929. As part of such investigation the commissioner of securities may require persons to file statements in writing and under oath with his office, subpoena witnesses, compel their attendance, examine them under oath and require the production of books, records, documents and papers.

2. In the event the commissioner of securities determines that any person is violating or about to violate any provision of sections 409.9-900 to 409.9-929, or any order, rule or regulation issued pursuant thereto, he may seek, in court, an injunction temporarily or permanently barring that person from making or taking part in or continuing a takeover bid or from taking up or paying for shares tendered by offerees pursuant to a takeover bid, and the court may grant the relief applied for or so much thereof as it may deem proper.

409.9-911. 1. Every person who willfully violates any provision of sections 409.9-900 to 409.9-929 shall be guilty of a class A misdemeanor.

2. Every person who violates any provision of sections 409.9-900 to 409.9-929 shall be subject to a civil penalty of one thousand dollars per violation if a natural person or ten thousand dollars per violation if a corporation. When the violation is the failure to file a registration statement as required by subsection 1 of section 409.9-902 the failure to file a solicitation or recommendation as required by subsection 3 of section 409.9-902 or the failure to amend such registration statement as required by subsection 2 of section 409.9-903 each business day of nonregistration or failure to file a recommendation or solicitation or failure to amend constitutes a separate violation. The penalty imposed by this section shall be cumulative and more than one

penalty shall be recoverable in the same action in any court of competent jurisdiction.

409.9-912. 1. Sections 409.9-900 to 409.9-929 shall be administered by the commissioner of securities and employees designated by him. The commissioner of securities is hereby empowered to promulgate, alter, amend or revoke rules and regulations necessary to carry out the purposes of sections 409.9-900 to 409.9-929.

2. The commissioner of securities may establish fees for the filing of any registration statement, not to exceed two thousand five hundred dollars, to recover the costs of administering sections 409.9-900 to 409.9-929. Such fees may vary according to the maximum consideration payable by the offeror for the securities which are the subject of the takeover bid.

409.9-913. The attorney general may prosecute every person charged with the commission of a criminal offense arising from the violation of any provision of sections 409.9-900 to 409.9-929. In all such proceedings, the attorney general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the prosecuting attorney would otherwise be authorized or required to exercise or perform; or the attorney general may in his discretion transmit evidence, proof and information as to such offense to the prosecuting attorney of the county or counties in which the alleged violation has occurred, and every prosecuting attorney to whom such evidence, proof and information is so transmitted shall forthwith proceed to prosecute any corporation, company, association, or officer, manager or agent thereof, or any firm or person charged with such violation. In any such proceeding, wherein the attorney general has appeared either in person or by deputy, the prosecuting attorney shall only exercise such powers and perform such duties as are required of him by the attorney general or the deputy attorney general so appearing.

409.9-914. 1. Every nonresident offeror, whether or not such offeror has filed a registration statement, except a foreign corporation which has appointed and keeps a resident agent in this state, shall be deemed to have appointed the secretary of state as his agent upon whom may be served any lawful process, authorized by sections 409.9-900 to 409.9-929, with the same effect as though served upon the offeror personally.

2. Service of process pursuant to this section shall be accomplished by leaving a copy of the process in the office of the secretary of state, but it shall not be effective unless notice of the service and a copy of the process is sent by certified or registered mail to the nonresident offeror served, at his last known address.

409.9-920. 1. No person shall make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any takeover bid or any solicitation of offerees in opposition to or in favor of any such takeover bid.

2. Fraudulent, deceptive or manipulative acts or practices include without limitation those acts and practices prescribed by rules and regulations which the commissioner of securities is hereby empowered to adopt, promulgate, amend and rescind as is necessary to carry out the provisions of this section.

409.9-921. Sections 409.9-900 to 409.9-929 shall not apply when:

(1) The offeror or the target company is a public utility or a public utility holding company as defined in section 2 of the Public Utility Holding Company Act of 1935, (49 Stat. 803, 15 U.S.C. 79), as amended, and the takeover bid is subject to approval by the appropriate federal agency as provided in such act;

(2) The offeror or the target company is a bank or a bank holding company as subject to the Bank Holding Company Act of 1956, (70 Stat. 133, 12 U.S.C. 1841), and subsequent amendments thereto, and the takeover bid is subject to approval by the appropriate federal agency as provided in such act;

(3) The offeror or the target company is a savings and loan holding company as defined in section 2 of the Savings and Loan Holding Company Amendments of 1967, (82 Stat. 5,12 U.S.C. 1730A) the takeover bid is subject to approval by the appropriate federal agency as provided in such act;

(4) The offeror and the target company are banks and the offer is part of a merger transaction subject to approval by appropriate federal or state supervisory authorities.

409.9-927. In the event any provision or application of sections 409.9-900 to 409.9-929 is held illegal or invalid for any reason, such holding shall not affect the legality or validity of any other provision or application thereof.

409.9-928. Additional requirements, when applicable. If the takeover bid is not subject to the requirements of section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78n(d), the following additional requirements shall apply to the takeover bid:

(1) The takeover bid shall be made on the same terms to all offerees holding the same class or series of securities;

(2) The period of time within which equity securities may be deposited pursuant to a takeover bid shall not be less than thirty business days;

(3) Equity securities deposited pursuant to a takeover bid may be withdrawn

at any time until the expiration of thirty business days after the commencement of the takeover bid and at any time after the expiration of sixty-five days from the commencement of the takeover bid, if the shares have not been purchased, and until the expiration of ten business days following the date of commencement of another offeror's takeover bid for the same equity securities if the shares have not been purchased and if the bidder has received notice or otherwise has knowledge of the commencement of such takeover bid;

(4) Where a takeover bid is made for less than all the outstanding equity securities of a class and where a greater number of such securities is deposited pursuant thereto than the offeror is bound or willing to take up and pay for, the securities taken up and paid for by the offeror shall be taken up and paid for as nearly as possible on a pro rata basis, disregarding fractions, according to the number of securities deposited by each shareholder;

(5) Where an offeror increases the consideration offered in a takeover bid, the offeror shall pay the increased consideration for all equity securities accepted, whether such securities have been accepted by the offeror before or after the increase in consideration;

(6) Within ten days of the filing of a registration statement as required by section 409.9-902 the commissioner of securities may schedule a public hearing or hearings or conduct such investigation as he deems necessary concerning any takeover bid for the purpose of determining compliance with the requirements of sections 409.9-900 to 409.9-929. Any such hearing or investigation shall be declared by order of the commissioner of securities. Any initial hearing shall commence within twenty days of the filing of a registration statement;

(7) In the event the commissioner of securities shall schedule a public hearing or otherwise conduct an investigation pursuant to subdivision (6) of this section, the commissioner of securities may also, in his discretion, issue an order staying the offeror from purchasing or paying for any shares tendered in response to its takeover bid at any time prior to such purchasing or paying for shares tendered. Every person shall comply with every such order;

(8) In the event the attorney shall issue a stay payment order pursuant to subdivision (7) of this section, the commissioner of securities shall, no later than thirty days from the issuance of such stay payment order, issue an order containing his findings of fact and conclusions of law;

(9) Any stay payment order issued by the commissioner of securities pursuant to subdivision (7) of this section shall automatically expire within sixty days from its issuance except where the commissioner of securities has in his order containing

findings of fact and conclusions of law conditioned the purchase and payment for shares tendered upon changes or modifications in the registration statement, in which event any stay payment order shall be vacated by the commissioner of securities after he is satisfied that such changes or modifications have been publicly disseminated to offerees;

(10) The commissioner of securities may apply, on notice to the offeror and the target company, to a court of competent jurisdiction, and such court may grant an application, for good cause, to extend any of the time periods set forth in this section if an extension is necessary for the protection of offerees.

409.9-929. Any offeree whose equity securities are the subject of a takeover bid and who has been injured by any violation of sections 409.9-900 to 409.9-929 may bring an action in his or her own name to enjoin such unlawful act or practice and to recover actual damages together with reasonable attorney fees in the event the offeree is successful.

[409.101. It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly

- (1) to employ any device, scheme, or artifice to defraud,**
- (2) 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**
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.]**

[409.102. (a) It is unlawful for any person who receives, directly or indirectly, 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:

- (1) To employ any device, scheme, or artifice to defraud the other person;**
- (2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or**
- (3) Acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this subparagraph shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction.**

(b) In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(c) Except as may be permitted by rule or order of the commissioner, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) 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;

(2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) 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.

(d) Subparagraph (c)(1) 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 subparagraph (c)(2) 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 or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(e) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

(1) The commissioner by rule prohibits custody; or
(2) In the absence of rule, the investment adviser fails to notify the commissioner that he has or may have custody.

(f) The commissioner may by rule or order adopt exemptions from subparagraph (a)(3) and subparagraphs (c)(1), (c)(2) and (c)(3) of this section where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of sections 409.101 to 409.419.]

[409.107. No investment firm, legal firm offering bond counsel services, or any

persons having an interest in any such firms shall be involved in any manner in the issuance of bonds authorized by an election in which the firm or person made any contribution of any kind whatsoever to any campaign in support of the bond election.]

[409.201. (a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under sections 409.101 to 409.419.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered under sections 409.101 to 409.419. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under sections 409.101 to 409.419, or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent, as well as the broker-dealer or issuer, shall promptly notify the commissioner.

(c) It is unlawful for any person to transact business in this state as an investment adviser unless:

(1) He is so registered under sections 409.101 to 409.419; or

(2) He is registered as a broker-dealer under sections 409.101 to 409.419 without the imposition of a condition under section 409.204(b)(5), or

(3) He has no place of business in this state; and

(A) His only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or

(B) During the preceding twelve-month period has had not more than five clients, other than those specified in subparagraph (A) of this section, who are residents of this state.

(d) It is unlawful for any person to transact business in this state as an investment adviser representative unless:

(1) He is so registered under sections 409.101 to 409.419;

(2) He is registered as an investment adviser or as a broker-dealer under sections 409.101 to 409.419 without the imposition of a condition under section 409.204(b)(5);

(3) He is registered as an agent under sections 409.101 to 409.419 without the imposition of a condition under section 409.204(b)(5) only to the extent that the investment advisory activities performed are performed under the control and supervision of the broker-dealer with whom the agent is registered; or

(4) He has no place of business in this state; and
(A) His only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or

(B) During the preceding twelve-month period has had not more than five clients, other than those specified in subparagraph (A) of this section, who are residents of this state.

(e) It is unlawful for any:

(1) Person required to be registered as an investment adviser pursuant to this act to employ an investment adviser representative unless the investment adviser representative is registered under sections 409.101 to 409.419, provided that the registration of an investment adviser representative is not effective during any period when he is not employed by an investment adviser registered under sections 409.101 to 409.419; or

(2) Federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless such investment adviser representative is registered pursuant to sections 409.101 to 409.419, or is exempt from registration. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser (in the case of 409.201(e)(1)) or the investment adviser representative (in the case of 409.201(e)(2)) shall promptly notify the commissioner.

(f) Every registration pursuant to this section or notice filing pursuant to section 409.202(b) expires one year from its effective date unless renewed.

(g) Except with respect to advisers whose only clients are those described in section 409.201(c)(3) of this act, it is unlawful for any federal covered adviser to conduct advisory business in this state unless such person complies with the provisions of section 409.202(b) and (c).

(h) Notwithstanding the provisions of sections 409.202(b) and (c), until October 10, 1999, the commissioner may require the registration of a federal covered adviser who refuses to pay to the commissioner the fee required by section 409.202(c). The refusal to remit the fee required by section 409.202(c), within fifteen days following the adviser's receipt of written notification from the commissioner regarding the nonpayment or underpayment of such fees, shall be proper ground for the entry of an order by the

commissioner prohibiting such person from engaging in business as an investment adviser or federal covered adviser in this state until such registration is effective.]

[409.202. (a) A broker-dealer, agent, investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the commissioner or his designee an application, together with a consent to service of process pursuant to section 409.415(g) and paying the fee herein prescribed. The application shall contain whatever information the commissioner by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client, if the applicant is an investment adviser. The commissioner may also require such additional information as he deems necessary to establish the qualifications and the good business repute of the applicant. If no denial order is in effect, and no proceeding is pending under section 409.204, registration becomes effective at noon of the thirtieth day after an application is filed. The commissioner may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.

(b) Except with respect to federal covered advisers whose only clients are those described in section 409.201(c)(3), a federal covered adviser shall file with the commissioner, prior to acting as a federal covered adviser in this state, such documents as have been filed with the Securities and Exchange Commission as the commissioner, by rule or order, may require.

(c) Fees:

(1) Every applicant for initial registration as a broker-dealer or as an investment adviser shall pay a filing fee of two hundred dollars;

(2) Every applicant for renewal registration as a broker-dealer or an investment adviser shall pay a filing fee of one hundred dollars;

(3) Every applicant for initial or renewal registration as an agent or an investment adviser representative shall pay a filing fee of fifty dollars, except that, no person shall be required by this subsection to pay a fee as both an agent and an investment adviser representative;

(4) Every person acting as a federal covered adviser in this state shall pay an initial notice filing fee of two hundred dollars;

(5) Every person acting as a federal covered adviser in this state shall pay a renewal notice filing fee of one hundred dollars; and

(6) When an application or notice is denied or withdrawn, the commissioner shall retain all of the fee.

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, and a federal covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(e) The commissioner may by rule require a minimum capital for registered broker-dealers subject to the limitations of section 15 of the Securities Exchange Act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over the same and those investment advisers who do not.

(f) The commissioner may by rule require registered broker-dealers, agents, and investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts up to twenty-five thousand dollars, subject to the limitations of section 15 of the Securities Exchange Act of 1934 (for broker-dealers), and subject to the limitations of section 222 of the Investment Advisers Act of 1940 (for investment advisers), and may determine their conditions. Any appropriate deposit of cash or security shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital, or, in the case of an investment adviser whose minimum financial requirements, which may be defined by rule, exceeds one hundred thousand dollars, or any agent of any such registrant. Every bond shall provide for suit thereon by any person who has a cause of action under section 409.411, and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under sections 409.101 to 409.419. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of section 409.411(f).]

[409.203. (a) Every registered broker-dealer and investment adviser shall make

and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner by rule prescribes, except as provided by section 15 of the Securities Exchange Act of 1934 (for broker-dealers), and section 222 of the Investment Advisers Act of 1940 (for investment advisers). All records so required, with respect to an investment adviser, shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records.

(b) To the extent determined by the commissioner in his discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of the requirement of investment advisers to make full disclosure under sections 409.101 to 409.419.

(c) Every registered broker-dealer and investment adviser shall file such financial reports as the commissioner by rule prescribes, except as provided by section 15 of the Securities Exchange Act of 1934 (in the case of a broker-dealer), and section 222 of the Investment Advisers Act of 1940 (in the case of an investment adviser).

(d) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall file a correcting amendment promptly if the document is filed with respect to a registrant, or when such amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under section 409.201(b).

(e) All the records referred to in subsection (a) are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.]

[409.204. (a) The commissioner may by order deny, suspend, or revoke any registration or bar or censure any registrant or any officer, director, partner or person occupying a similar status or performing similar functions for a registrant, from employment with a registered broker-dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state, if the commissioner finds (1) that the order is in the public interest and (2)

that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

- (A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
- (B) Has willfully violated or willfully failed to comply with any provision of sections 409.101 to 409.419 or a predecessor act or any rule or order pursuant to sections 409.101 to 409.419 or a predecessor act;
- (C) Has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;
- (D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
- (E) Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;
- (F) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940 or the Commodity Exchange Act, or the securities or commodities law of any other state;
- (G) Has engaged in dishonest or unethical practices in the securities business;
- (H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser pursuant to this clause without a finding of insolvency as to the broker-dealer or investment adviser;
- (I) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b) of this section;
- (J) Has failed reasonably to supervise his or her agents or employees if he or she is a broker-dealer, or adviser representatives or employees if an investment adviser; for the purposes of this clause no person shall be deemed to have failed reasonably to

supervise any person if there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violations by such other person, and such person has reasonably discharged the duties and obligations incumbent upon him or her by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with;

(K) Has failed to pay the proper filing fee; but the commissioner may enter only a denial order pursuant to this clause, and he or she shall vacate any such order when the deficiency has been corrected; or

(L) Has been denied the right to do business in the securities industry, or the person's respective authority to do business in the securities industry has been revoked by any other state, federal or foreign governmental agency or self-regulatory organization for cause, or is the subject of a final order in a criminal action for securities or fraud related violations of the law of any state, federal, or foreign governmental unit, or within the last ten years the person has been the subject of a final order in a civil, injunctive or administrative action for securities or fraud related violations of the law of any state, federal, or foreign governmental unit.

(b) The following provisions govern the application of section 409.204(a)(2)(I):

(1) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer himself if he or she is an individual or (B) an agent of the broker-dealer.

(2) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (A) the investment adviser himself if he is an individual or (B) an investment adviser representative.

(3) The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer and that an investment adviser representative who will work under the supervision of a registered investment adviser need not have the same qualifications as an investment adviser.

(5) The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When the commissioner finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, the commissioner may by order condition the applicant's registration as a broker-dealer upon the applicant not transacting business in this state as an investment adviser.

(6) The commissioner may by rule provide for an examination, including an examination developed or approved by an organization of securities administrators, which examination may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him or her an investment adviser; provided, however, that no examination may be required of any person (1) who was registered as a broker-dealer or as an agent or who was a general partner or officer of a registered broker-dealer January 1, 1968, and (2) who has been continuously registered pursuant to this law since that time. The commissioner may by rule or order waive the examination requirement as to a person or class of persons if the commissioner determines that the examination is not necessary for the protection of advisory clients.

(c) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding pursuant to this section, including a proceeding to determine the completeness of an application or where the commissioner is requesting additional information regarding the application. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(e) Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser representative becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and

withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding pursuant to section 409.204(a)(2)(B) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) (1) If a proceeding is instituted to revoke or suspend a registration of any agent, broker-dealer, investment adviser, or investment adviser representative pursuant to sections 409.101 to 409.419, the commissioner shall refer the case to the administrative hearing commission. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The commissioner shall have the burden of proving a ground for suspension or revocation pursuant to sections 409.101 to 409.419.

(2) The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in those cases wherein a person files a petition with the commission, which petition states that the commissioner has denied any registration of any agent, broker-dealer or investment adviser pursuant to sections 409.101 to 409.419.

(3) Upon receipt of a written complaint or petition filed pursuant to subsections (1) and (2) of this subsection (f), the administrative hearing commission shall cause a copy of the complaint or petition to be served upon the appropriate parties in person or by certified mail, together with a notice of the place of and date upon which the hearing on the complaint or petition will be held.

(4) Hearing procedures, action by the commissioner in revoking, suspending or denying any registration of any agent, broker-dealer or investment adviser hereunder, judicial review of the decisions of the commissioner and of the administrative hearing commission, and all other procedural matters hereunder shall be governed by the provisions of sections 621.015 to 621.193, RSMo.

(g) An agent or investment adviser representative registered in this state transferring from one Missouri registered broker-dealer or investment adviser to another Missouri registered broker-dealer or investment adviser shall automatically have a temporary registration to transact securities business for thirty days following the date the application becomes complete and nondeficient, unless the commissioner has withdrawn the temporary registration or issued an order of denial or summary postponement pursuant to this section. The thirty-day temporary registration creates no property right for the agent, broker-dealer, investment adviser, or investment adviser's representative. During the thirty-day temporary registration, the agent's or investment adviser's application may be denied or summarily postponed by the commissioner pursuant to this section; however, if no denial or postponement has been entered during

the period of temporary registration, the agent or investment adviser representative shall have a registration in this state. However, the registration of the transferring agent or investment adviser representative is immediately effective as of the date the new employment or association began, if the application contains no new or amended disciplinary disclosure within the preceding three years.

(h) The commissioner shall have one hundred twenty days from the date of an initial or renewal registration in which to institute a proceeding to revoke or suspend a registration of any agent, broker-dealer, investment adviser, or investment adviser representative because of a fact or transaction that was known by the commissioner when the registration became effective.]

[409.301. It is unlawful for any person to offer or sell any security in this state unless:

- (1) It is registered under this act;
- (2) The security or transaction is exempted under section 409.402; or
- (3) It is a federal covered security.]

[409.302. (a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 409.303: any security whose issuer and any predecessors have been in continuous operation for at least five years if (A) there has been no default during the current fiscal year or within the three 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 (B) the issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least five percent of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within thirty days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within ninety days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three full fiscal years, equal to at least five percent of the amount (as measured in clause (i)) of all 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) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 409.305(c) and the consent to service of process required by section 409.415(g):

- (1) a statement demonstrating eligibility for registration by notification;
- (2) with respect to the issuer and any significant subsidiary; 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;
- (3) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;
- (4) a description of the security being registered;
- (5) the information and documents specified in clauses (8), (10) and (12) of section 409.304(b).

(c) If no stop order is in effect and no proceeding is pending under section 409.306, a registration statement under this section automatically becomes effective at two o'clock central time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.]

[409.303. (a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 409.305(c) and the consent to service of process required by section 409.415(g):

- (1) three copies of the latest form of prospectus filed under the Securities Act of 1933;
- (2) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;
- (3) if the commissioner requests, any other information, or copies of any other document; and
- (4) an undertaking to forward all future amendments to the federal prospectus,

other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) no stop order is in effect and no proceeding is pending under section 409.306; (2) the registration statement has been on file with the commissioner for at least fifteen days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in clauses (2) and (3). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under section 409.306; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

(d) Any security for which a prospectus or offering circular is required by any

regulation adopted by the Securities and Exchange Commission under Sections 3(b) or 3(c) of the Securities Act of 1933 to be filed with said commission for the same offering and for which a prospectus or offering circular has been so filed may be registered by coordination upon compliance with subsections (b) and (c) of this section in such manner as the commissioner by rule or order may prescribe. For purposes of any registration by coordination pursuant to this subsection the term "federal prospectus" shall mean the prospectus or offering circular filed with the Securities and Exchange Commission pursuant to any such regulation and the date on which the federal registration becomes effective shall be deemed to be the date on which the Securities and Exchange Commission notifies the issuer that the offering may commence.]

[409.304. (a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 409.305(c) and the consent to service of process required by section 409.415(g):

(1) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(3) with respect to persons covered by clause (2): the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;

(4) with respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (2) other than his occupation;

(5) with respect to every promoter if the issuer was organized within the past three years: the information specified in clause (2), any amount paid to him within that

period or intended to be paid to him, and the consideration for any such payment;

(6) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;

(7) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the

acquisition (including the cost of borrowing money to finance the acquisition);

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in clause (2), (4), (5), (6), or (8) and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(11) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(13) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;

(15) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(17) such additional information including appraisals, audits, examinations and engineering studies, at the expense of the applicant as the commissioner requires by rule or order.

(c) A registration statement under this section becomes effective when the commissioner so orders.

(d) The commissioner may by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) be sent or given to each person to whom an offer is made before or concurrently with (1) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs.]

[409.305. (a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

(b) Every person filing a registration statement, including registration statements filed under subsection (j) of this section, shall pay a filing fee of one hundred dollars. Except as provided in subsection (j) of this section, each person shall pay a registration fee equal to one-twentieth of one percent of the amount by which the maximum aggregate offering price at which the registered securities are to be offered in this state exceeds one hundred thousand dollars, but the registration fee shall in no case be more than nine hundred dollars.

When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under section 409.306, the commissioner shall retain the filing fee. The commissioner may by rule require that the filing fee be paid separately from the registration fee.

(c) Every registration statement shall specify (1) the amount of securities to be offered in this state; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) Any document filed under this act or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The commissioner may by rule or otherwise permit the omission of any item

of information or document from any registration statement.

(f) The commissioner may by rule or order require, as a condition of registration by qualification or coordination: (1) the deposit in escrow of any security of the issuer of the securities to be registered (i) issued to a promoter within the past three years, (ii) to be issued to a promoter, (iii) issued to a promoter for a consideration substantially different from the public offering price within the past ten years or (iv) issued to any person for a consideration other than cash; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(g) The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order.

(h) Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution except during the time a stop order is in effect under section 409.306. A registration statement may be withdrawn only in the discretion of the commissioner.

(i) The commissioner may by rule or order require any issuer whose securities have been registered hereunder to file reports, not more often than quarterly, as may be required to adequately disclose the financial condition and to adequately disclose any changes in management and control of the issuer.

(j) Any person filing a registration statement involving securities issued by an investment company or securities of a similar character involving a continuous offering, may request registration of an indefinite amount of securities. For each registration statement involving an indefinite amount of securities effective under this act, the issuer shall annually file a report with the commissioner within sixty days after the end of the issuer's fiscal year. The report shall state the dollar amount of securities sold in this state during the issuer's previous fiscal year. The issuer shall at the same time submit a registration fee at the rate of one-twentieth of one percent of the amount of securities sold in this state during that previous fiscal year, but in no case shall the registration fee exceed three thousand dollars. When the effectiveness of a registration statement

involving an indefinite amount of securities is terminated, the issuer shall promptly file the report with the registration fee as required by this section for the period from the last report to the termination of effectiveness.]

[409.306. (a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds (1) that the order is in the public interest and (2) that

(A) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness or any amendment under section 409.305(j) as of its effective date, or any report under section 409.305(i) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) any provision of this act or any rule, order, or condition lawfully imposed under this act has been willfully violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(C) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering, but (i) the commissioner may not institute a proceeding against an effective registration statement under clause (C) more than one year from the date of the order or injunction relied on, and (ii) he may not enter an order under clause (C) on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(D) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(E) (i) the offering has worked or tended to work a fraud upon purchasers or would so operate; or (ii) any aspect of the offering is substantially unfair, unjust, inequitable or oppressive, or (iii) the enterprise or business of the issuer is based upon unsound business principles;

(F) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(G) when a security is sought to be registered by notification, it is not eligible for

such registration;

(H) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 409.303(b)(3) and (4); or

(I) the applicant or registrant has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause and he shall vacate any such order when the deficiency has been corrected. The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next thirty days.

(b) The commissioner may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify each person specified in subsection (c) that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing to each person specified in subsection (c), may modify or vacate the order or extend it until final determination.

(c) No stop order may be entered under any part of this section except the first sentence of subsection (b) without (1) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

(d) The commissioner may vacate or modify a stop order if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.]

[409.307. (a) The commissioner, by rule or order, may require the filing of any or all of the following documents with respect to a covered security under section 18(b)(2) of the Securities Act of 1933:

(1) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or a notice form adopted by the commissioner in lieu thereof, together with a consent to service of process signed by the issuer and with a filing fee of one hundred dollars;

(2) After the initial offer of such federal covered security in this state, all documents that are part of an amendment to a federal registration statement filed with

the Securities and Exchange Commission under the Securities Act of 1933, shall be filed concurrently with the commissioner;

(3) A report of the value of such federal covered securities offered or sold in this state, together with a filing fee at the rate of one- twentieth of one percent of the amount of securities sold in this state during the previous fiscal year, but in no case shall the filing fee exceed three thousand dollars or be less than one hundred dollars;

(4) Until October 10, 1999, if the fee required under this section has not been promptly paid following a written request by the commissioner, the commissioner may require the registration of that federal covered security. The refusal to remit the fee required by this section, within fifteen days following the issuer's receipt of written notification from the commissioner regarding the nonpayment or underpayment of such fee, shall be proper ground for the entry of an order by the commissioner prohibiting the offer or sale of securities until such registration is effective. The offer or sale in this state of federal covered security, prior to the effectiveness of such registration shall constitute a violation of this act.

(b) With respect to any security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than fifteen days after the first sale of such covered security in this state, together with a filing fee of one hundred dollars.

(c) The commissioner, by rule or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a covered security under section 18(b)(3) or (4) of the Securities Act of 1933.

(d) The commissioner may issue a stop order suspending the offer and sale of a covered security, except a covered security under section 18(b)(1) of the Securities Act of 1933, if he finds that (1) the order is in the public interest and (2) there is a failure to comply with any condition established under this section.

(e) The commissioner, by rule or order, may waive any or all of the provisions of this section.]

[409.401. When used in sections 409.101 to 409.419, unless the context otherwise requires:

(a) "Commissioner" means the commissioner of securities;

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents (1) an issuer in (a) effecting transactions in a security exempted by clause (1), (2), (3), (4), (6), (9), (10) or (11) of section 409.402(a), (b) effecting transactions in a security exempted by clause (5)

of section 409.402(a), provided such individual prior to the transactions files with the commissioner information on (A) his relationship to the issuer and its affiliates, (B) his proposed methods of soliciting the transactions including sales literature to be used, and (C) commissions and other remuneration he is to receive for effecting the transactions, and such additional information as the commissioner may require, (c) effecting transactions exempted by section 409.402(b), (d) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, (e) effecting transactions in a covered security as described in sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933; (2) a broker-dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934; or (3) effecting transactions with such other persons as the commissioner may by rule or order designate. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition;

(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution, or trust company, or (4) a person who has no place of business in this state if (A) he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) the person has fewer than five clients in the state of Missouri, or (5) such other persons as the commissioner may by rule or order designate;

(d) "Federal covered adviser" means a person who is (1) registered pursuant to section 203 of the Investment Advisers Act of 1940; or (2) is excluded from the definition of "investment adviser" pursuant to section 202(a)(11) of the Investment Advisers Act of 1940;

(e) "Federal covered security" means any security that is a covered security pursuant to section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder;

(f) "Fraud", "deceit", and "defraud" are not limited to common-law deceit;

(g) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;

(h) "Investment adviser" means any person who, for compensation, engages in

the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation; except that "investment adviser" does not include (1) an investment adviser representative; (2) a bank, savings institution, or trust company; (3) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (4) a broker-dealer or his agent whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (5) a publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; (6) any person that is a federal covered adviser; or (7) such other persons not within the intent of this subsection as the commissioner may by rule or order designate;

(i) "Investment adviser representative" means any partner, officer, director or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered pursuant to sections 409.101 to 409.419, or who has a place of business located in this state and is employed by or associated with a federal covered adviser; and who does any of the following: (1) makes any recommendations or otherwise renders advice regarding securities, except that investment adviser representative does not include an individual whose performance of these services is solely incidental to the conduct of his business as an "agent" of a broker-dealer and who receives no special compensation for them, (2) manages accounts or portfolios of clients, (3) determines which recommendation or advice regarding securities should be given, or (4) supervises employees who perform any of the foregoing;

(j) "Issuer" means any person who issues or proposes to issue any security, except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant

to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas, or mining titles or leases, or in payments out of production under such titles or leases there is not considered to be any "issuer";

(k) "Non-issuer" means not directly or indirectly for the benefit of the issuer;

(l) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(m) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subsection do not include (A) any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash;

(n) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisers Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1968;

(o) "Security" means any note; stock; treasury stock; bond; debenture; evidence

of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; limited partnership interest; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period;

(p) "State" means any state, territory, or possession of the United States, the District of Columbia and Puerto Rico;

(q) "Cooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing and/or furnishing farm supplies and/or farm business services; provided, however, that such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements: (1) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, and (2) the association does not pay dividends on stock or membership capital in excess of eight percent per year, and in any case to the following: (3) the association does at least twenty-five percent of its business with its members; further, all business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.]

[409.402. (a) The following securities are exempted from sections 409.301 and 409.403:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is

recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized pursuant to the laws of the United States, or any bank, savings institution, or trust company organized and supervised pursuant to the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized pursuant to the laws of any state and authorized to do business in this state;

(5) Any security issued by an agricultural cooperative corporation organized pursuant to the laws of this state and operated as an agricultural "cooperative association" if the commissioner is notified in writing thirty days, or such shorter period of time as the commissioner may by rule or order specify, before any such security is sold or offered for sale other than in transactions exempted pursuant to subsection (b) of this section, which notification shall contain the form of prospectus or other sales literature intended to be used in connection with the offering of such security together with financial statements;

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised pursuant to the laws of this state;

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company pursuant to the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or the Midwest Stock Exchange or any other duly organized stock exchange approved by the commissioner by rule or order; any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association if the commissioner is notified in writing thirty days, or such shorter period

of time as the commissioner may by rule or order specify, before any such security is sold or offered for sale other than in transactions exempted pursuant to subsection (b) of this section;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any security offered, sold, issued, distributed or transferred in connection with an employees' stock ownership, savings, pension, profit-sharing, stock bonus, or similar benefit plan or trust (including a self-employed persons retirement plan), provided, in the case of plans or trusts which are not qualified pursuant to section 401 of the Internal Revenue Code of 1954 and which provide for contributions by employees, if the commissioner is notified in writing thirty days before the inception of the plan or, with respect to plans which are in effect on January 1, 1968, within sixty days thereafter (or within thirty days before they are reopened if they are closed on January 1, 1968). The commissioner may for good cause shown accept written notification at any time before the issuance of any such security in this state or any security offered, sold, issued, distributed or transferred in connection with an employees' stock purchase or stock option plan. In the case of issuers who do not have a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 the commissioner may for good cause shown accept notification in writing before the first issuance of interests or participations under a stock purchase plan or before the first exercise of options under a stock option plan.

(b) The following transactions are exempted from sections 409.301 and 409.403 except that no transaction in a certificate of interest or participation, including a limited partnership interest, in an oil, gas or mining title or lease, or in payments out of production or under such a title or lease shall be so exempted:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security if (A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order to buy if the broker-dealer acts as agent for the purchaser and receives no commission or other compensation from any source other than the purchase; but the commissioner may by rule require that the purchaser acknowledge upon a specified form that his or her order to buy was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this act;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profitsharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction by an issuer in a security of its own issue if immediately thereafter the total number of persons who are known to the issuer to have any direct or indirect record or beneficial interest in any of its securities (but not including persons with whom transactions have been exempted by paragraph (8) of this subsection) does not exceed twenty-five and if no commission or other remuneration is paid or given to anyone for procuring or soliciting the transaction;

(10) Any transaction by an issuer in a security of its own issue if (A) during the twelve months' period ending immediately after such transaction the issuer will have made no more than fifteen transactions exempted by this paragraph (other than transactions also exempted by paragraphs (8) and (9), and (B) the issuer reasonably believes that the buyer is purchasing for investment and the buyer so represents in writing and (C) no commission or other remuneration is paid or given to anyone for procuring or soliciting the sale; but the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of prior transactions permitted by clause (A) or waive the conditions in clauses (B) or (C) with or without the substitution of a limitation on remuneration;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days;

(12) Any offer (but not a sale) of a security for which registration statements have been filed pursuant to both this act and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending pursuant to either act;

(13) Any nonissuer transaction by a person who does not control, or who is not controlled by or under common control with, the issuer in a security which has been (and securities which are of the same class as securities of the same issuer which have been) either registered for sale pursuant to the laws of this state regulating the sale of securities or lawfully sold in this state as a security exempt from such registration;

(14) Any nonissuer transaction in a security which at the time of such transaction would be eligible for registration by notification;

(15) Any nonissuer transaction by a person who does not control, and is not controlled by or under common control with, the issuer if (i) the transaction is at a price reasonably related to the current market price, and (ii) the security is registered with the Securities and Exchange Commission pursuant to section 12 of the Securities Exchange Act of 1934 and the issuer files reports with the Securities and Exchange Commission pursuant to section 13 of that act;

(16) Any patronage distributions of an agricultural cooperative corporation received by a patron or member in the form of capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice.

(c) The commissioner may by rule or order exempt from sections 409.301 and 409.403 any other transaction not exempted in subsection (b), and may by order withdraw or condition the exemption as the commissioner deems necessary in the public interest.

(d) The commissioner may by order deny or revoke any exemption specified in clause (9) or (11) of subsection (a) or in subsection (b) with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the

specified exemptions pending final determination of any proceeding pursuant to this subsection. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order pursuant to this subsection may operate retroactively. No person may be considered to have violated section 409.301 or 409.403 by reason of any offer or sale effected after the entry of an order pursuant to this subsection if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.

(e) The commissioner may by order after a hearing deny or revoke any exemption for a security issued by an agricultural cooperative corporation not qualifying pursuant to clause (5) of subsection (a).

(f) In any proceeding pursuant to this act, the burden of proving an exemption, qualification as a federal covered security, or an exception from a definition is upon the person claiming it.

(g) A person required to file for an exemption pursuant to this section shall pay a fee not to exceed one hundred dollars.]

[409.403. The commissioner may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempted by section 409.402 or the security is a federal covered security or the transaction is with respect to a federal covered security.]

[409.404. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.]

[409.405. (a) Neither (1) the fact that an application for registration or a registration statement has been filed under this chapter nor (2) the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under this act is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of,

or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a).]

[409.406. (a) Sections 409.101 to 409.419 shall be administered by the commissioner of securities who shall act under the direction of the secretary of state, shall be appointed and shall receive compensation as provided by law.

(b) It is unlawful for the secretary of state, the commissioner or any other officers or employees of the secretary of state or of the commissioner to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of sections 409.101 to 409.419 authorizes the secretary of state, the commissioner or any other officers or employees of the secretary of state or of the commissioner to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under sections 409.101 to 409.419. No provision of sections 409.101 to 409.419 either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the secretary of state, the commissioner or any other officers or employees of the secretary of state or of the commissioner.]

[409.407. (a) The commissioner in his discretion:

(1) May make such public or private investigations and inspections within or outside of this state as he deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder,

(2) May require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated, and

(3) May publish information concerning any violation of this act or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this act, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the circuit court of any county of the state or the city of St. Louis, upon application by the commissioner may issue to the person an order requiring him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence

if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) It shall be the duty of all officers of the state of Missouri charged with the enforcement of criminal law to render and furnish to the commissioner when requested all information and assistance in their possession or within their power.

(e) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise) except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(f) As settlement of an investigation the commissioner may receive a fine from any party, receive a payment to the secretary of state's investor education fund, create a restitution fund for Missouri investors, or receive a voluntary payment for the cost of the investigation. Notwithstanding the provisions of section 33.080, RSMo, any moneys remaining in the secretary of state's investor education fund at the end of any biennium shall not be transferred to the general revenue fund.

(g) The commissioner may issue and apply to enforce subpoenas and subpoenas duces tecum in this state at the request of a securities agency or the administrator of another state if the activities constituting the alleged violation for which the information is sought would be a violation of sections 409.101 to 409.418 if the activities had occurred in this state.

(h) The commissioner may appoint such special investigators to aid in investigation of persons under sections 409.101 to 409.419. Such investigators shall have all authority of a law enforcement officer meeting the requirements of chapter 590, RSMo, except the authority to carry weapons.]

[409.408. (a) The commissioner may require any person, who is selling or offering for sale or who is about to sell or offer for sale or who has sold or offered for sale any security within this state, to file a statement of the claim of exemption or exception from a definition, if any, upon which such person is relying, and if at any time, in the opinion of the commissioner, the information contained in such statement filed is misleading, incorrect, inadequate or fails to establish the right of exemption or exception

from a definition, he may require such person to file such further information as may in his opinion be necessary to establish the claimed exemption or exception from a definition. The refusal to furnish information as required by order of the commissioner pursuant to the provisions of this subsection, within a reasonable time to be fixed by the commissioner, shall be proper ground for the entry of an order by the commissioner suspending the right to sell such security and/or suspending or canceling the registration of the broker-dealer, agent or investment adviser.

(b) Whenever it shall appear to the commissioner, either upon complaint or otherwise, that any person in connection with the purchase or sale of any security, including any security exempted under any of the provisions of section 409.402, or in connection with investment advisory activities, is acting or about to act fraudulently therein, or is employing or about to employ any device, scheme, or artifice to defraud or for obtaining money or property by means of any false pretense, representation, or attempting to make in the state of Missouri fictitious or pretended purchases or sales of any such security or to engage in unlawful investment advisory activities, or is engaged in or about to engage in any practice or transaction or course of business relating to the purchase or sale of any such security or the business of an investment adviser which is fraudulent or in violation of law and if the commissioner deems it in the public interest to do so, he may require such person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the subject matter, which he believes it to be in the interest of the public to investigate and may make or have made such further investigation as he may deem necessary, and if the commissioner shall believe, from evidence satisfactory to him, that such person is engaged or about to engage in any of the fraudulent or illegal practices or transactions above in this subsection referred to, he may issue and cause to be served upon such person and any other person or persons concerned or in any way participating in or about to participate in such fraudulent or illegal practices or transactions, an order prohibiting such person and such other person or persons from continuing such fraudulent or illegal practices or transactions or engaging therein or doing any act or acts in furtherance thereof and the commissioner shall have full power in each case to make such order or orders under this section as he may deem just and he may either prohibit the further sale by such person or persons of any securities connected with or related to said fraudulent or illegal practices or transaction, or he may fix the terms and conditions on which the sale of such securities may be made, or he may prohibit such person or persons from acting as an investment adviser, or he may fix the terms and conditions under which such person or persons may act as investment adviser, and it is hereby made unlawful for any person having been served with any such order, or having knowledge of the issuance of said order, and while

said order remains in effect, either as originally issued or as modified, to violate any of the provisions thereof.]

[409.409. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, he may in his discretion bring an action in the circuit court of any county of the state or the city of St. Louis to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.]

[409.410. (a) Any person who willfully violates any provision of this act, except section 409.404, or any person who has been personally served with any cease and desist order under this act who thereafter willfully violates the same, or any person who willfully violates section 409.404, knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than five hundred thousand dollars or imprisoned not more than ten years, or both.

(b) The commissioner may refer such evidence as is available concerning violations of this act or of any rule or order hereunder to the attorney general or the proper prosecuting attorney or circuit attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this act.

(c) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.]

[409.411. (a) Any person who:

(1) Offers or sells a security in violation of section 409.201(a), 409.301, or 409.405(b), or of any rule or order under section 409.403 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under section 409.304(d), 409.305(f), or 409.305(g); or

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission 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 (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him, who may sue either at law or in equity to recover the amount specified under subsection (j) of this section.

(b) Any person who:

(1) Engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities in violation of section 409.102, 409.201(c) or (d), 409.405(b); or

(2) Receives directly or indirectly any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice or course of business which operates or would operate as a fraud or deceit on such other person, is liable to that person who may sue either at law or in equity to recover the consideration paid for such advice and any loss due to such advice, together with interest at eight percent per year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice in the amount specified in subsection (j) of this section.

(c) Every person who directly or indirectly controls a person liable under subsections (a) and (b) of this section, including every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the conduct giving rise to the liability, and every broker-dealer or agent who materially aids in such conduct is also liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(d) Any tender specified in this section may be made at any time before entry of judgment.

(e) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(f) No person may sue under this section more than three years after the contract of sale, or the rendering of investment advice.

(g) No person may sue under this section (1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at eight percent per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty days of its receipt, or (2) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty days of its receipt.

(h) No person who has made or engaged in the performance of any contract in violation of any provision of sections 409.101 to 409.419 or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(i) Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of sections 409.101 to 409.419 or any rule or order hereunder is void.

(j) The amounts recoverable by a person damaged as a result of a violation of subsection (a) or (b) of this section shall be the consideration paid for the purchase of the security together with interest at eight percent per year from the date of payment, cost, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. "Damages" is the amount that would be recoverable upon the tender less the value of the security when the buyer disposed of it and interest at eight percent per year from the date of disposal. An action pursuant to a violation of subsection (b) of this section may not be maintained except by those persons who directly receive advice from the person charged with the violation. Any recovery under subsection (b) of this section must be offset by any recovery received from any source under subsection (a) of this section.

(k) The rights and remedies provided by sections 409.101 to 409.419 are in addition to any other rights or remedies that may exist at law or in equity, but sections 409.101 to 409.419 do not create any cause of action not specified in this section or section 409.202(e).]

[409.412. (a) Except as otherwise provided in section 409.204, any interested person aggrieved by any order of the commissioner under any provision of this chapter, or by any refusal or failure of the commissioner to make an order under any of said provisions, shall be entitled to a hearing before the commissioner in accordance with the provisions of chapter 536, RSMo.

(b) The circuit court of Cole County shall have jurisdiction in equity to review, modify, amend or annul any ruling, finding or order of the commissioner. At any hearing in the course of such proceeding, a transcript of any testimony before the commissioner in such case, duly certified by the commissioner, shall be admitted as evidence.

(c) Any such final order or decree of the circuit court of Cole County may be reexamined and affirmed, reversed or modified by the supreme court of the state of Missouri upon appeal by either party to be taken in the same manner and under the same rules as exist or may be hereafter provided in cases of appeals from decrees

rendered in circuit court.

(d) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

(e) Every hearing in an administrative proceeding shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.]

[409.413. (a) The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this act, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with the provisions of this act. For the purpose of rules and forms, the commissioner may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

(b) No rule, form, or order may be made, amended, or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms the commissioner may cooperate with the securities commissioners of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) The commissioner may by rule or order prescribe (1) the form and content of financial statements required under this act, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) All rules and forms of the commissioner shall be published.

(e) No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.]

[409.414. (a) A document is filed when it is received by the commissioner and all original documents so filed shall be kept by the commissioner as a part of the permanent records of his office.

(b) The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension, or revocation orders which have ever been entered under this

act. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application or report may be made available to the public under such rules as the commissioner prescribes; provided, however, that the commissioner shall have power to place in a separate file not open to the public except on his special order, any information which he deems in justice to the person filing the same should not be made public.

(d) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The commissioner in his discretion may honor requests from interested persons for interpretative opinions, and may make a charge therefor not to exceed the sum of one hundred dollars; provided, however, that the commissioner shall, when requested by any member of the general assembly, render such interpretative opinion without charge and within a reasonable time.

(f) An exemplification of the record under the hand and the seal of the commissioner shall be good and sufficient evidence of any record made or entered by said commissioner. A certificate under the hand and seal of the commissioner showing that the securities in question have not been recorded in the register of qualified securities, shall constitute prima facie evidence that such securities have not been qualified for sale pursuant to the provisions of this chapter, and shall be admissible in evidence in any proceeding to enforce the provisions of this chapter.]

[409.415. (a) Sections 409.101, 409.201(a), 409.301, 409.307, 409.405, and 409.411 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

(b) Sections 409.101, 409.201(a), and 409.405 apply to persons who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state or (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer); provided, however, if an offer is directed to an offeree in a state other than this state and that offer would be lawful if made in such other state, then for the purposes of this section such offer is not made in this state.

(d) For the purpose of this section, an offer to buy or to sell is accepted in this

state when acceptance (1) is communicated to the offeror in this state and (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months, or (2) a radio or television program originating outside this state is received in this state.

(f) Sections 409.102 and 409.201(c), as well as section 409.405 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this act and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner in such form as he by rule prescribes, an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this act or any rule or order hereunder, and he has not filed a consent to service of process under subsection (g) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commissioner or his successor in office to be his

attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.]

[409.416. Sections 409.101 to 409.418 may be cited as the "Missouri Uniform Securities Act".]

[409.418. (a) Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before January 1, 1968, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two years after January 1, 1968.

(b) All effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if this act had not been passed. They are considered to have been filed, entered, or imposed under this act, but are governed by prior law.

(c) Prior law applies in respect of any offer or sale made within one year after January 1, 1968, pursuant to an offering begun in good faith before January 1, 1968, on the basis of an exemption available under prior law.

(d) Judicial review of all administrative orders as to which review proceedings have not been instituted by January 1, 1968, are governed by section 409.412, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty days after January 1, 1968.]

[409.420. (a) To encourage uniform interpretation and administration of sections 409.101 to 409.419 and effective securities regulation and enforcement, the commissioner

may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or another country, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization of securities officials or agencies, and any governmental law enforcement or regulatory agency.

(b) The cooperation authorized by subsection (a) of this section includes, but is not limited to, the following actions:

- (1) Establishing a central depository for registration under sections 409.101 to 409.419 and for documents or records required or allowed to be maintained under sections 409.101 to 409.419;
- (2) Making a joint registration examination or investigation;
- (3) Holding a joint administrative hearing;
- (4) Filing and prosecuting a joint civil or administrative proceeding;
- (5) Sharing and exchanging personnel;
- (6) Sharing and exchanging information and documents subject to the restrictions of 15 CSR 30-50.020(10); and

(7) Formulating, in accordance with chapter 536, RSMo, rules or proposed rules on matters such as statements of policy, guidelines, and interpretative opinions and releases.]

[409.421. 1. No rule or portion of a rule promulgated under the authority of sections 409.101 to 409.420 shall become effective until it has been approved by the joint committee on administrative rules in accordance with the procedures provided in this section, and the delegation of the legislative authority to enact law by the adoption of such rules is dependent upon the power of the joint committee on administrative rules to review and suspend rules pending ratification by the senate and the house of representatives as provided in this section.

2. Upon filing any proposed rule with the secretary of state, the commissioner shall concurrently submit such proposed rule to the committee, which may hold hearings upon any proposed rule or portion thereof at any time.

3. A final order of rulemaking shall not be filed with the secretary of state until thirty days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the thirty-day period. If the committee does not disapprove such order of rulemaking within the thirty- day period, the commissioner may file such order of rulemaking with the secretary of state and the order of rulemaking shall be deemed approved.

4. The committee may, by majority vote of the members, suspend the order of

rulemaking or portion thereof by action taken prior to the filing of the final order of rulemaking only for one or more of the following grounds:

- (1) An absence of statutory authority for the proposed rule;
- (2) An emergency relating to public health, safety or welfare;
- (3) The proposed rule is in conflict with state law;
- (4) A substantial change in circumstance since enactment of the law upon which the proposed rule is based.

5. If the committee disapproves any rule or portion thereof, the commissioner shall not file such disapproved portion of any rule with the secretary of state and the secretary of state shall not publish in the Missouri Register any final order of rulemaking containing the disapproved portion.

6. If the committee disapproves any rule or portion thereof, the committee shall report its findings to the senate and the house of representatives. No rule or portion thereof disapproved by the committee shall take effect so long as the senate and the house of representatives ratify the act of the joint committee by resolution adopted in each house within thirty legislative days after such rule or portion thereof has been disapproved by the joint committee.

7. Upon adoption of a rule as provided in this section, any such rule or portion thereof may be suspended or revoked by the general assembly either by bill or, pursuant to section 8, article IV of the Constitution of Missouri, by concurrent resolution upon recommendation of the joint committee on administrative rules. The committee shall be authorized to hold hearings and make recommendations pursuant to the provisions of section 536.037, RSMo. The secretary of state shall publish in the Missouri Register, as soon as practicable, notice of the suspension or revocation.]

[409.500. Sections 409.500 to 409.566 may be cited as the "Missouri Takeover Bid Disclosure Act".]

[409.506. As used in sections 409.500 to 409.566, the following terms shall have the following meanings:

(1) "Takeover bid", the acquisition of or offer to acquire by an offeror from an offeree, pursuant to a tender offer or request or invitation for tenders, any equity security of a target company, if after acquisition thereof the offeror would, directly or indirectly, be a beneficial owner of more than five percent of any class of the issued and outstanding equity securities of such target company. Such term does not include:

- (a) Bids made by a dealer for his own account in the ordinary course of his business of buying and selling such security;
- (b) An offer to acquire such equity security solely in exchange for other securities, or the acquisition of such equity security pursuant to such offer, for the sole account of

the offeror, in good faith and not for the purpose of avoiding this section, and not involving any public offering of such other securities within the meaning of section 4 of title I of the Securities Act of 1933, (48 Stat. 77, 15 U.S.C. 77 d (2)); as amended;

(c) Any other offer to acquire an equity security, or the acquisition of such equity security pursuant to such offer, for the sole account of the offeror, from not more than fifty offerees, in good faith and not for the purpose of avoiding the provisions of sections 409.500 to 409.566;

(d) Any offer or class of offer where, prior to making the offer, the offeror beneficially owns, directly or indirectly, a majority of the voting equity securities of the target company;

(2) "Offeror", a person who makes, or in any way participates or aids in making, a takeover bid, and includes persons acting jointly or in concert, or who intend to exercise jointly or in concert any voting rights attached to the securities for which such takeover bid is made. An "offeror" includes an issuer of securities whose securities are or are to be the subject of a takeover bid whether or not the issuer, upon acquisition, will become the beneficial owner of such securities. An "offeror" does not include any bank or broker-dealer in securities loaning funds to the offeror in the ordinary course of the business of the bank or broker-dealer in securities and not otherwise participating in the takeover bid, or any bank, broker-dealer in securities, attorney, accountant or consultant furnishing information or advice to an offeror and not otherwise participating in the takeover bid;

(3) "Offeree", the beneficial owner, residing in this state, of securities which an offeror acquires or offers to acquire in connection with a takeover bid;

(4) "Target company", a resident domestic corporation as defined in subdivision (13) of subsection 1 of section 351.459, RSMo;

(5) "Equity security", any stock, bond, or other obligation of a target company, the holder of which has the right to vote for the election of members of the board of directors of such target company. Equity security includes any right, option or warrant to purchase an equity security.]

[409.511. 1. No offeror shall make a takeover bid unless as soon as practicable on the date of commencement of the takeover bid he files with the commissioner of securities and delivers to the target company at its principal executive offices a registration statement containing the information required by section 409.516.

2. An offeror shall make full and fair disclosure to offerees of the material information set forth in the registration statement filed pursuant to subsection 1 of this section.

3. No solicitation or recommendation to the offerees of a target company to accept

or reject a takeover bid shall be made by or on behalf of an offeror or a target company unless at the time copies of such solicitation or recommendation are first published, sent or given to such offerees, the person making such solicitation or recommendation has filed copies of the solicitation or recommendation with the commissioner of securities of this state.]

[409.516. 1. The registration statement required to be filed pursuant to subsection 1 of section 409.511 shall include:

(1) Copies of all prospectuses, brochures, advertisements, circulars, letters, or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer;

(2) The identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected;

(3) The exact title and number of shares outstanding of the class of equity securities being sought, the number of such securities being sought and the consideration being offered therefor;

(4) The source and amount of funds or other consideration used or to be used in acquiring any equity security, including a statement describing any securities, other than the existing capital stock or long-term debt of the offeror, which are being offered in exchange for the equity securities of the target company and also including copies of all loan or credit agreements and letters of commitment used or to be used to secure financing for the acquisition of any equity security of the target company;

(5) A statement of any plans or proposals which the offeror, upon gaining control, may have to liquidate the target company, sell its assets, effect a merger or consolidation of it, or make any other major change in its business, corporate structure, management personnel, or policies of employment;

(6) The number of shares of any equity security of the target company of which each offeror is beneficial or record owner or has a right to acquire, directly or indirectly, together with the name and address of each person defined in this section as an offeror;

(7) Particulars as to any contracts, arrangements, or understandings to which an offeror is party with respect to any equity security of the target company, including without limitation transfers of any equity security, joint ventures, loans or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into;

(8) Complete information on the organization and operations of the offeror, including without limitation the year of organization, form of organization, jurisdiction

in which it is organized, a description of each class of the offeror's capital stock and of its long-term debt, financial statements for the current period and for the three most recent annual accounting periods, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past five years, the names of all directors and executive officers together with biographical summaries of each for the preceding three years to date;

(9) A statement as to the potential impact, if any, of the offeror's plans or proposals on the residents of this state, including any material change in the location of the target company's offices or business activities within this state; any plant or facility relocation; any plant or facility closings; any significant reduction in the workforce at an individual plant or facility; any other material change in the number, job classification, compensation, or other terms and conditions of employment of persons employed by the target company in this state; any material change in the relationships of the target company with suppliers or customers within this state, or any other material changes in the target company's business, corporate structure, management, personnel or activities which would have a substantial impact on residents of this state;

(10) Particulars as to any pension plans; profit sharing plans; savings plans; educational opportunities; relocation adjustments; labor relations records, including violations of the federal National Labor Relations Act, Occupational Safety and Health Act of 1970, Fair Labor Standards Act, or Employee Retirement and Income Security Act, as amended, finally adjudicated or settled within five years of the commencement of the takeover bid; earnings and dividend growth; community activities; and charitable, cultural, educational and civic contributions of the offeror;

(11) If the offeror is a natural person, information concerning his identity and background, including without limitation financial statements for the current and three preceding years, a description of his business activities and affiliations during that time period, and a description of any pending or administrative proceedings, other than routine and immaterial litigation, to which the offeror is a party or of which any of his property is the subject; and

(12) If debt securities or preferred stock are either offered in the takeover bid or used as a source of funds in making the takeover bid, the investment rating, if any, by a generally recognized rating service of such debt security or preferred stock.

2. If any material change occurs in the facts set forth in the registration statement required by subsection 1 of section 409.511, the offeror who filed such statement shall promptly notify the commissioner of securities and the target company of

such change in writing or by telephone confirmed in writing and shall amend the registration statement, to reflect such change promptly but not later than the date such change is first published, sent or given to offerees.

3. The commissioner of securities may permit the omission of any information required by subsection 1 of this section to be included in the registration statement if he determines that such information is immaterial or otherwise unnecessary for the protection of offerees.]

[409.521. 1. The commissioner of securities may conduct such investigation as he deems necessary concerning any takeover bid for the purpose of determining compliance with the requirements of sections 409.500 to 409.566. As part of such investigation the commissioner of securities may require persons to file statements in writing and under oath with his office, subpoena witnesses, compel their attendance, examine them under oath and require the production of books, records, documents and papers.

2. In the event the commissioner of securities determines that any person is violating or about to violate any provision of sections 409.500 to 409.566, or any order, rule or regulation issued pursuant thereto, he may seek, in court, an injunction temporarily or permanently barring that person from making or taking part in or continuing a takeover bid or from taking up or paying for shares tendered by offerees pursuant to a takeover bid, and the court may grant the relief applied for or so much thereof as it may deem proper.]

[409.526. 1. Every person who willfully violates any provision of sections 409.500 to 409.566 shall be guilty of a class A misdemeanor.

2. Every person who violates any provision of sections 409.500 to 409.566 shall be subject to a civil penalty of one thousand dollars per violation if a natural person or ten thousand dollars per violation if a corporation. When the violation is the failure to file a registration statement as required by subsection 1 of section 409.511 the failure to file a solicitation or recommendation as required by subsection 3 of section 409.511 or the failure to amend such registration statement as required by subsection 2 of section 409.516 each business day of nonregistration or failure to file a recommendation or solicitation or failure to amend constitutes a separate violation. The penalty imposed by this section shall be cumulative and more than one penalty shall be recoverable in the same action in any court of competent jurisdiction.]

[409.531. 1. Sections 409.500 to 409.566 shall be administered by the commissioner of securities and employees designated by him. The commissioner of securities is hereby empowered to promulgate, alter, amend or revoke rules and regulations necessary to carry out the purposes of sections 409.500 to 409.566.

2. The commissioner of securities may establish fees for the filing of any

registration statement, not to exceed two thousand five hundred dollars, to recover the costs of administering sections 409.500 to 409.566. Such fees may vary according to the maximum consideration payable by the offeror for the securities which are the subject of the takeover bid.]

[409.536. The attorney general may prosecute every person charged with the commission of a criminal offense arising from the violation of any provision of sections 409.500 to 409.566. In all such proceedings, the attorney general may appear in person or by his deputy before any court of record or any grand jury and exercise all the powers and perform all the duties in respect of such actions or proceedings which the prosecuting attorney would otherwise be authorized or required to exercise or perform; or the attorney general may in his discretion transmit evidence, proof and information as to such offense to the prosecuting attorney of the county or counties in which the alleged violation has occurred, and every prosecuting attorney to whom such evidence, proof and information is so transmitted shall forthwith proceed to prosecute any corporation, company, association, or officer, manager or agent thereof, or any firm or person charged with such violation. In any such proceeding, wherein the attorney general has appeared either in person or by deputy, the prosecuting attorney shall only exercise such powers and perform such duties as are required of him by the attorney general or the deputy attorney general so appearing.]

[409.541. 1. Every nonresident offeror, whether or not such offeror has filed a registration statement, except a foreign corporation which has appointed and keeps a resident agent in this state, shall be deemed to have appointed the secretary of state as his agent upon whom may be served any lawful process, authorized by sections 409.500 to 409.566, with the same effect as though served upon the offeror personally.

2. Service of process pursuant to this section shall be accomplished by leaving a copy of the process in the office of the secretary of state, but it shall not be effective unless notice of the service and a copy of the process is sent by certified or registered mail to the nonresident offeror served, at his last known address.]

[409.546. 1. No person shall make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any takeover bid or any solicitation of offerees in opposition to or in favor of any such takeover bid.

2. Fraudulent, deceptive or manipulative acts or practices include without limitation those acts and practices prescribed by rules and regulations which the commissioner of securities is hereby empowered to adopt, promulgate, amend and rescind as is necessary to carry out the provisions of this section.]

[409.551. Sections 409.500 to 409.566 shall not apply when:

(1) The offeror or the target company is a public utility or a public utility holding company as defined in section 2 of the Public Utility Holding Company Act of 1935, (49 Stat. 803, 15 U.S.C. 79), as amended, and the takeover bid is subject to approval by the appropriate federal agency as provided in such act;

(2) The offeror or the target company is a bank or a bank holding company as subject to the Bank Holding Company Act of 1956, (70 Stat. 133, 12 U.S.C. 1841), and subsequent amendments thereto, and the takeover bid is subject to approval by the appropriate federal agency as provided in such act;

(3) The offeror or the target company is a savings and loan holding company as defined in section 2 of the Savings and Loan Holding Company Amendments of 1967, (82 Stat. 5, 12 U.S.C. 1730A), as amended, and the takeover bid is subject to approval by the appropriate federal agency as provided in such act;

(4) The offeror and the target company are banks and the offer is part of a merger transaction subject to approval by appropriate federal or state supervisory authorities.]

[409.556. In the event any provision or application of sections 409.500 to 409.566 is held illegal or invalid for any reason, such holding shall not affect the legality or validity of any other provision or application thereof.]

[409.561. If the takeover bid is not subject to the requirements of section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78n(d), the following additional requirements shall apply to the takeover bid:

(1) The takeover bid shall be made on the same terms to all offerees holding the same class or series of securities;

(2) The period of time within which equity securities may be deposited pursuant to a takeover bid shall not be less than thirty business days;

(3) Equity securities deposited pursuant to a takeover bid may be withdrawn at any time until the expiration of thirty business days after the commencement of the takeover bid and at any time after the expiration of sixty-five days from the commencement of the takeover bid, if the shares have not been purchased, and until the expiration of ten business days following the date of commencement of another offeror's takeover bid for the same equity securities if the shares have not been purchased and if the bidder has received notice or otherwise has knowledge of the commencement of such takeover bid;

(4) Where a takeover bid is made for less than all the outstanding equity securities of a class and where a greater number of such securities is deposited pursuant thereto than the offeror is bound or willing to take up and pay for, the securities taken

up and paid for by the offeror shall be taken up and paid for as nearly as possible on a pro rata basis, disregarding fractions, according to the number of securities deposited by each shareholder;

(5) Where an offeror increases the consideration offered in a takeover bid, the offeror shall pay the increased consideration for all equity securities accepted, whether such securities have been accepted by the offeror before or after the increase in consideration;

(6) Within ten days of the filing of a registration statement as required by section 409.511 the commissioner of securities may schedule a public hearing or hearings or conduct such investigation as he deems necessary concerning any takeover bid for the purpose of determining compliance with the requirements of sections 409.500 to 409.566. Any such hearing or investigation shall be declared by order of the commissioner of securities. Any initial hearing shall commence within twenty days of the filing of a registration statement;

(7) In the event the commissioner of securities shall schedule a public hearing or otherwise conduct an investigation pursuant to subdivision (6) of this section, the commissioner of securities may also, in his discretion, issue an order staying the offeror from purchasing or paying for any shares tendered in response to its takeover bid at any time prior to such purchasing or paying for shares tendered. Every person shall comply with every such order;

(8) In the event the attorney shall issue a stay payment order pursuant to subdivision (7) of this section, the commissioner of securities shall, no later than thirty days from the issuance of such stay payment order, issue an order containing his findings of fact and conclusions of law;

(9) Any stay payment order issued by the commissioner of securities pursuant to subdivision (7) of this section shall automatically expire within sixty days from its issuance except where the commissioner of securities has in his order containing findings of fact and conclusions of law conditioned the purchase and payment for shares tendered upon changes or modifications in the registration statement, in which event any stay payment order shall be vacated by the commissioner of securities after he is satisfied that such changes or modifications have been publicly disseminated to offerees;

(10) The commissioner of securities may apply, on notice to the offeror and the target company, to a court of competent jurisdiction, and such court may grant an application, for good cause, to extend any of the time periods set forth in this section if an extension is necessary for the protection of offerees.]

[409.566. Any offeree whose equity securities are the subject of a takeover bid and who has been injured by any violation of sections 409.500 to 409.566 may bring an

action in his or her own name to enjoin such unlawful act or practice and to recover actual damages together with reasonable attorney fees in the event the offeree is successful.]

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