

FIRST REGULAR SESSION

SENATE BILL NO. 383

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIGGINS.

Read 1st time February 1, 1999, and 1,000 copies ordered printed.

L1767.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 409.303, 409.305, 409.402, 409.408, 409.410, 409.412 and 409.823, RSMo 1994, and sections 409.201, 409.202, 409.204, 409.401, 409.406, 409.407 and 409.415, RSMo Supp. 1998, relating to the regulation of securities, and to enact in lieu thereof fourteen new sections relating to the same subject.

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

Section A. Sections 409.303, 409.305, 409.402, 409.408, 409.410, 409.412 and 409.823, RSMo 1994, and sections 409.201, 409.202, 409.204, 409.401, 409.406, 409.407 and 409.415, RSMo Supp. 1998, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 409.201, 409.202, 409.204, 409.303, 409.305, 409.401, 409.402, 409.406, 409.407, 409.408, 409.410, 409.412, 409.415 and 409.823, to read as follows:

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

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

(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),] **with investment advisor capacity**; 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] **and** the investment advisory activities performed are performed under the control and supervision of the broker-dealer with whom the agent is registered; or

[(4)] **(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.

(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) (1) A dealer that is located in Canada and has no office or other physical presence in this state may, provided the dealer is registered in accordance with this section, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

A. A person from Canada who temporarily resides in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States; or

B. A person from Canada who is a resident of this state, and whose transactions are in a self-directed tax advantage retirement plan in Canada of which the person is the holder or contributor.

(2) An associated person who represents a Canadian dealer registered under this section may, provided the agent is registered in accordance with this section, effect transactions in securities in this state as permitted for a dealer, under subsection (a).

(3) A Canadian dealer may register under this section provided that such dealer:

A. Files an application in the form required by the jurisdiction in which the dealer has a head office;

B. Files a consent to service of process;

C. Is registered as a dealer in good standing in the jurisdiction from which it is effecting transactions into this state and files evidence of such registration with the department;

D. Is a member of a self-regulatory organization or stock exchange in Canada.

(4) An associated person who represents a Canadian dealer registered under this section in effecting transactions in securities in this state may register under this section provided that such person:

A. Files an application in the form required by the jurisdiction in which the dealer has its head office;

B. Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence of such registration with the department.

(5) If the department finds that the applicant is of good repute and character and has complied with the provisions of this chapter, the department shall register the applicant.

(6) A Canadian dealer registered under this section shall:

A. Maintain its provincial or territorial registration and its membership in a self-

regulatory organization or stock exchange in good standing;

B. Provide the department upon request with its books and records relating to its business in this state as a dealer;

C. Provide the department notice of each civil, criminal, or administrative action initiated against the dealer;

D. Disclose to its clients in this state that the dealer and its agents are not subject to the full regulatory requirements under this chapter;

E. Correct any inaccurate information within thirty days, if the information contained in the application form becomes inaccurate for any reason before or after the dealer becomes registered.

(7) An associated person of a Canadian dealer registered under this section shall:

A. Maintain provincial or territorial registration in good standing;

B. Provide the department with notice of each civil, criminal, or administrative action initiated against such person;

C. Through the dealer, correct any inaccurate information within thirty days, if the information contained in the application form becomes inaccurate for any reason before or after the associated person becomes registered.

(8) Renewal applications for Canadian dealers and associated persons under this section must be filed before December thirty-first each year. Every applicant for registration or renewal registration under this section shall pay the fee for dealers and associated persons under this chapter.

(g) Every registration pursuant to this section or notice filing pursuant to section 409.202(b) expires [one year from its effective date] **December thirty-first of each year** unless renewed.

[(g)] (h) 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)] (i) 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 **or order** 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.]; **and**
- (7) The commissioner may also require such additional information as he deems necessary to establish the qualifications and the good business repute of the applicant.

(b) An applicant or registrant who fails to furnish, within a reasonable time to be fixed, by the commissioner, information as required by the commissioner pursuant to the provisions of this section may be denied, suspended, revoked or canceled.

(c) 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)] (d) 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)] (e) 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)] (f) 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)] (g) 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)] (h) 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).

409.204. (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 he 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 under 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 liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under 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 agents or employees if he is a broker-dealer, or his adviser representatives or employees if he is 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 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 under this clause, and he 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.

An agent registered in Missouri transferring from one Missouri registered broker-dealer to another Missouri registered broker-dealer shall automatically have a temporary permit to transact securities business for one hundred twenty days following the date their application becomes complete and nondeficient, unless the commissioner has issued an order of denial or summary postponement under this section. The one hundred twenty-day temporary permit creates no property right for the agent or the broker dealer. During the one hundred twenty-day temporary permit the agent's application may be denied or summarily postponed under this section by the commissioner; however, if no denial or postponement has been entered during the period of the temporary permit, the agent will have a registration in Missouri. The commissioner shall have one hundred twenty days from the date of an initial or renewal registration in which to issue a revocation or suspension on the basis of a fact or transaction which was known to him when the registration became effective.

(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 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 he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his 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 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 under 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 under 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, **or has failed to respond to requests for information or has any other deficiency in the file after six months of such request**, 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 under 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 or investment adviser under 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 under 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, **investment adviser** or investment adviser **representative** under 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, **investment adviser** or investment adviser **representative** 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.

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] **One copy** 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.

409.305. (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] **an initial** filing fee of one hundred dollars. **Every person renewing a registration statement, except registration statements filed under subsection (j) of this section, shall pay a renewal 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] **unless renewed. A registration statement may only be renewed one time for a one-year period.** 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.

409.401. 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 **or fewer** 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":

(1) 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)] **(A)** 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)] **(B)** Manages accounts or portfolios of clients[.];

[(3)] **(C)** Determines which recommendation or advice regarding securities should be given[.]; or

[(4)] **(D)** Supervises employees who perform any of the foregoing.

(2) (A) A person who is employed by a federal covered adviser and who has a place of business in the state of Missouri is not an investment adviser representative if ten percent or less of that person's clients are natural persons, and the person:

(1) Does not, on a regular basis, solicit, meet with, or otherwise communicate with clients of the investment adviser; or

(2) Provides only investment advisory services by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(B) For purposes of this subsection, the following natural persons shall not be included as clients of the investment adviser:

(1) Persons who, immediately after entering into the investment advisory contract, have at least five hundred thousand dollars under management with the federal covered adviser; or

(2) Persons whom the federal adviser reasonably believes, immediately before entering into the investment advisory contract, to have a net worth (together with assets held jointly with a spouse) of more than one million dollars.

(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; **fractional or pooled interest in a viatical settlement contract**; 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 not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for 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 under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under 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 under the laws of any state and authorized to do business in this state;

(5) Any security issued by an agricultural cooperative corporation organized under 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 under subsection (b) hereof, 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 under 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 under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

[(C)] **(B)** Regulated in respect of its rates and charges by a governmental authority of the United States or any state; or

[(D)] **(C)** 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] **Tier I of the Chicago** 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 under subsection (b) hereof;

(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 under 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 under 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 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 under 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 under 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 under 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 under 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 he 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 under 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 under 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 under this subsection if he sustains the burden of proof that he 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 under clause (5) of subsection (a).

(f) In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it. **The exemptions provided in subsections (a) and (b) herein, except 409.402(a)(5), (a)(9), (a)(11), and (b)(11), are self-executing and do not require any filing with the division before claiming such exemption.**

(g) A person required to file for an exemption under this section shall pay a fee not to exceed one hundred dollars.

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. **The commissioner shall appoint, with the approval of the secretary of state, a person as assistant commissioner and delegate such of his powers and duties under this chapter to such assistant commissioner as he desires.**

(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. **Failure to respond fully and completely to such a request within fifteen days after receipt thereto, shall be the basis for the issuance of a cease and desist order.**

(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] **and** 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] failure** 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 **offer or** 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.]

(b) 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 issue a cease and desist order, with or without a prior hearing, against the person or persons engaged in the prohibited activities, directing them to cease and desist from further illegal activity.

(c) Whenever it appears to the commissioner that any person has willfully violated this act, a rule thereunder or an order of the commissioner under the act or has engaged in dishonest or unethical practices in the securities business, the commissioner may, after giving notice and opportunity for a hearing, issue an order which imposes an administrative assessment in an amount provided in paragraph (1) accompanied by written findings of fact and conclusions of law.

(1) The commissioner, in issuing an order under this subsection, may impose an administrative assessment of up to ten thousand dollars for a single violation or of up to fifty thousand dollars for multiple violations in a single proceeding or a series of related proceedings. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

(2) For purposes of determining the amount of administrative assessment to be imposed in an order issued under this subsection, the commissioner shall consider:

(A) The circumstances, nature, frequency, seriousness, magnitude, persistence and willfulness of the conduct constituting the violation;

(B) The scope of the violation, including the number of persons, both in and outside the state, affected by the conduct constituting the violation;

(C) The amount of restitution or compensation the violator has made and the number of persons in this state to whom the restitution or compensation has been made;

(D) Past and concurrent conduct of the violator that has given rise to any sanctions or judgment imposed by, or pleas of guilty or nolo contendere or settlement with, the commissioner or any securities administrator of any other state or other country, any court of competent jurisdiction, the Securities and Exchange Commission, the Commodity Futures Trading Commission, any other federal or state agency or any national securities association or national securities exchange as defined in the Securities Exchange Act of 1934;

(E) Any other factor that the commissioner finds 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.

(d) 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 provisions of the order.

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 **or has knowledge of the issuance of said order** 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.

409.412. (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. **The commencement of proceedings under subsection (c) does not, unless specifically ordered by the court, operate as a stay of the commissioner's order. Provided however, the review of an administrative assessment issued pursuant to subsection 409.408(b) shall operate as a stay of that assessment until the circuit court of Cole County issues its final order or decree.**

(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.

409.415. (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[.];

or

(3) An Internet solicitation originating outside this state is received in this state and the solicitation indicates that the securities are not being offered to persons in this state; the solicitation was not specifically directed, by or on behalf of the issuer, to any person in this state; and the solicitation does not result in an offer, sale or purchase of

the issuer's securities 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] certified** 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] certified** 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.

409.823. 1. If the commissioner believes, whether or not based upon an investigation conducted under section 409.820, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of sections 409.800 to 409.863 or any rule or order promulgated or issued under sections 409.800 to 409.863, the commissioner may:

- (1) Issue a cease and desist order;
- (2) Take disciplinary action against a licensed person as specified in section 409.863;
- (3) Issue an order imposing a civil penalty in **an** amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; or
- (4) Initiate any of the actions specified in subsection 2 of this section.

2. The commissioner may institute any of the following actions in the appropriate courts of this state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

- (1) An action for declaratory judgment;
- (2) An action for a prohibitory or mandatory injunction to enjoin the violation and to insure compliance with sections 409.800 to 409.863 or any rule or order of the commissioner;
- (3) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

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