

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 380
92ND GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organization, Veterans' Affairs and Elections, April 10, 2003, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

1406S.04C

AN ACT

To repeal sections 409.101, 409.102, 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, and 409.421, RSMo, and to enact in lieu thereof fifty-three 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, 409.201, 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409.409, 409.410, 409.411, 409.412, 409.413, 409.414, 409.415, 409.416, 409.418, 409.420, and 409.421, RSMo, are repealed and fifty-three new sections enacted in lieu thereof, to be known as sections 409.1-101, 409.1-102, 409.1-103, 409.1-104, 409.1-105, 409.2-201, 409.2-202,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, 409.5-501, 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, 409.7-701, 409.7-702, and 409.7-703, to read as follows:

409.1-101. Sections 409.1-101 to 409.7-703 may be cited as the "Missouri Securities Act of 2003" 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

7 performing similar functions is an agent only if the individual otherwise
8 comes within the term. The term does not include an individual excluded by
9 rule adopted or order issued under this act.

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

12 (3) "Bank" means:

13 (A) A banking institution organized under the laws of the United
14 States;

15 (B) A member bank of the Federal Reserve System;

16 (C) Any other banking institution, whether incorporated or not, doing
17 business under the laws of a state or of the United States, a substantial
18 portion of the business of which consists of receiving deposits or exercising
19 fiduciary powers similar to those permitted to be exercised by national banks
20 under the authority of the Comptroller of the Currency pursuant to Section
21 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and
22 examined by a state or federal agency having supervision over banks, and
23 which is not operated for the purpose of evading this act; and

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

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

29 (A) An agent;

30 (B) An issuer;

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

38 (D) An international banking institution; or

39 (E) A person excluded by rule adopted or order issued under this act.

40 (5) "Depository institution" means:

41 (A) A bank; or

42 (B) A savings institution, trust company, credit union, or similar
43 institution that is organized or chartered under the laws of a state or of the
44 United States, authorized to receive deposits, and supervised and examined
45 by an official or agency of a state or the United States if its deposits or share

46 accounts are insured to the maximum amount authorized by statute by the
47 Federal Deposit Insurance Corporation, the National Credit Union Share
48 Insurance Fund, or a successor authorized by federal law. The term does not
49 include:

50 (i) An insurance company or other organization primarily engaged in
51 the business of insurance;

52 (ii) A Morris Plan bank; or

53 (iii) An industrial loan company.

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

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

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

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

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

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

68 (A) A depository institution, a trust company organized or chartered
69 under the laws of this state, or an international banking institution;

70 (B) An insurance company;

71 (C) A separate account of an insurance company;

72 (D) An investment company as defined in the Investment Company Act
73 of 1940;

74 (E) A broker-dealer registered under the Securities Exchange Act of
75 1934;

76 (F) An employee pension, profit-sharing, or benefit plan if the plan has
77 total assets in excess of ten million dollars or its investment decisions are
78 made by a named fiduciary, as defined in the Employee Retirement Income
79 Security Act of 1974, that is a broker-dealer registered under the Securities
80 Exchange Act of 1934, an investment adviser registered or exempt from
81 registration under the Investment Advisers Act of 1940, an investment adviser
82 registered under this act, a depository institution, or an insurance company;

83 (G) A plan established and maintained by a state, a political
84 subdivision of a state, or an agency or instrumentality of a state or a political

85 subdivision of a state for the benefit of its employees, if the plan has total
86 assets in excess of ten million dollars or its investment decisions are made by
87 a duly designated public official or by a named fiduciary, as defined in the
88 Employee Retirement Income Security Act of 1974, that is a broker-dealer
89 registered under the Securities Exchange Act of 1934, an investment adviser
90 registered or exempt from registration under the Investment Advisers Act of
91 1940, an investment adviser registered under this act, a depository
92 institution, or an insurance company;

93 (H) A trust, if it has total assets in excess of ten million dollars, its
94 trustee is a depository institution, and its participants are exclusively plans
95 of the types identified in subparagraph (F) or (G), regardless of the size of
96 their assets, except a trust that includes as participants self-directed
97 individual retirement accounts or similar self-directed plans;

98 (I) An organization described in Section 501(c)(3) of the Internal
99 Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust
100 or similar business trust, limited liability company, or partnership, not
101 formed for the specific purpose of acquiring the securities offered, with total
102 assets in excess of ten million dollars;

103 (J) A small business investment company licensed by the Small
104 Business Administration under Section 301(c) of the Small Business
105 Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of
106 ten million dollars;

107 (K) A private business development company as defined in Section
108 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-
109 2(a)(22)) with total assets in excess of ten million dollars;

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

111 (M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other
112 than Rule 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R.
113 230.144A);

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

116 (O) Any other person, other than an individual, of institutional
117 character with total assets in excess of ten million dollars not organized for
118 the specific purpose of evading this act; or

119 (P) Any other person specified by rule adopted or order issued under
120 this act.

121 (12) "Insurance company" means a company organized as an insurance
122 company whose primary business is writing insurance or reinsuring risks
123 underwritten by insurance companies and which is subject to supervision by

124 the insurance commissioner or a similar official or agency of a state.

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

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

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

140 (A) An investment adviser representative;

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

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

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

149 (E) A federal covered investment adviser;

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

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

154 (H) Any other person excluded by rule adopted or order issued under
155 this act.

156 (16) "Investment adviser representative" means an individual employed
157 by or associated with an investment adviser or federal covered investment
158 adviser and who makes any recommendations or otherwise gives investment
159 advice regarding securities, manages accounts or portfolios of clients,
160 determines which recommendation or advice regarding securities should be
161 given, provides investment advice or holds herself or himself out as providing
162 investment advice, receives compensation to solicit, offer, or negotiate for the

163 sale of or for selling investment advice, or supervises employees who perform
164 any of the foregoing. The term does not include an individual who:

165 (A) Performs only clerical or ministerial acts;

166 (B) Is an agent whose performance of investment advice is solely
167 incidental to the individual acting as an agent and who does not receive
168 special compensation for investment advisory services;

169 (C) Is employed by or associated with a federal covered investment
170 adviser, unless the individual has a "place of business" in this state as that
171 term is defined by rule adopted under Section 203A of the Investment
172 Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is:

173 (i) An "investment adviser representative" as that term is defined by
174 rule adopted under Section 203A of the Investment Advisers Act of 1940 (15
175 U.S.C. Section 80b-3a); or

176 (ii) Not a "supervised person" as that term is defined in Section
177 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-
178 2(a)(25)); or

179 (D) Is excluded by rule adopted or order issued under this act.

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

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

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

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

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

201 (19) "Offer to purchase" includes an attempt or offer to obtain, or

202 solicitation of an offer to sell, a security or interest in a security for
203 value. The term does not include a tender offer that is subject to Section
204 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

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

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

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

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

219 (22) "Predecessor act" means sections 409.101, 409.102 and 409.201 to
220 409.421, as repealed by this act.

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

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

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

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

240 (A) A security given or delivered with, or as a bonus on account of, a

241 purchase of securities or any other thing constituting part of the subject of
242 the purchase and having been offered and sold for value;

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

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

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

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

265 (A) Includes both a certificated and an uncertificated security;

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

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

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

278 (E) Includes as an "investment contract", among other contracts, an
279 interest in a limited partnership and a limited liability company and an

280 investment in a viatical settlement or similar agreement.

281 (29) "Self-regulatory organization" means a national securities exchange
282 registered under the Securities Exchange Act of 1934, a national securities
283 association of broker-dealers registered under the Securities Exchange Act
284 of 1934, a clearing agency registered under the Securities Exchange Act of
285 1934, or the Municipal Securities Rulemaking Board established under the
286 Securities Exchange Act of 1934.

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

289 (A) To execute or adopt a tangible symbol; or

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

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

409.1-103. "Securities Act of 1933" (15 U.S.C. Section 77a et seq.),
2 "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et seq.), "Public Utility
3 Holding Company Act of 1935" (15 U.S.C. Section 79 et seq.), "Investment
4 Company Act of 1940" (15 U.S.C. Section 80a-1 et seq.), "Investment Advisers
5 Act of 1940" (15 U.S.C. Section 80b-1 et seq.), "Employee Retirement Income
6 Security Act of 1974" (29 U.S.C. Section 1001 et seq.), "National Housing Act"
7 (12 U.S.C. Section 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. Section
8 1 et seq.), "Internal Revenue Code" (26 U.S.C. Section 1 et seq.), "Securities
9 Investor Protection Act of 1970" (15 U.S.C. Section 78aaa et seq.), "Securities
10 Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business
11 Investment Act of 1958" (15 U.S.C. Section 661 et seq.), and "Electronic
12 Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001 et
13 seq.) mean those statutes and the rules and regulations adopted under those
14 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
2 United States is also a reference to a successor agency or department.

409.1-105. This act modifies, limits, and supersedes the federal
2 Electronic Signatures in Global and National Commerce Act, but does not
3 modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section
4 7001(c)) or authorize electronic delivery of any of the notices described in
5 Section 103(b) of that act (15 U.S.C. Section 7003(b)). This act authorizes the
6 filing of records and signatures, when specified by provisions of this act or
7 by a rule adopted or order issued under this act, in a manner consistent with
8 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 to 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

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

43 (6) A federal covered security specified in Section 18(b)(1) of the
44 Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under
45 that provision or a security listed or approved for listing on another
46 securities market specified by rule under this act; a put or a call option
47 contract; a warrant; a subscription right on or with respect to such securities;
48 or an option or similar derivative security on a security or an index of
49 securities or foreign currencies issued by a clearing agency registered under
50 the Securities Exchange Act of 1934 and listed or designated for trading on
51 a national securities exchange, a facility of a national securities exchange, or
52 a facility of a national securities association registered under the Securities
53 Exchange Act of 1934 or an offer or sale, of the underlying security in
54 connection with the offer, sale, or exercise of an option or other security that
55 was exempt when the option or other security was written or issued; or an
56 option or a derivative security designated by the Securities and Exchange
57 Commission under Section 9(b) of the Securities Exchange Act of 1934 (15
58 U.S.C. Section 78i(b));

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

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

76 (B) To file a request for exemption authorization for which a rule
77 under this act may specify the scope of the exemption, the requirement of an
78 offering statement, the filing of sales and advertising literature, the filing of

79 consent to service of process complying with section 409.6-611, and grounds
80 for denial or suspension of the exemption; or

81 (C) To register under section 409.3-304;

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

88 (9) An equipment trust certificate with respect to equipment leased or
89 conditionally sold to a person, if any security issued by the person would be
90 exempt under this section or would be a federal covered security under
91 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
2 of sections 409.3-301 to 409.3-306 and 409.5-504:

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

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

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

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

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

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

25 (i) A description of the business and operations of the issuer;

26 (ii) The names of the issuer's executive officers and the names of the

27 issuer's directors, if any;

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

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

38 (E) The issuer of the security has a class of equity securities listed on
39 a national securities exchange registered under the Securities Exchange Act
40 of 1934 or designated for trading on the National Association of Securities
41 Dealers Automated Quotation System, unless the issuer of the security is a
42 unit investment trust registered under the Investment Company Act of 1940;
43 or the issuer of the security, including its predecessors, has been engaged in
44 continuous business for at least three years; or the issuer of the security has
45 total assets of at least two million dollars based on an audited balance sheet
46 as of a date within eighteen months before the date of the transaction or, in
47 the case of a reorganization or merger when the parties to the reorganization
48 or merger each had the audited balance sheet, a pro forma balance sheet for
49 the combined organization;

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

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

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

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

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

64 (i) A default has not occurred during the current fiscal year or within
65 the three previous fiscal years or during the existence of the issuer and any

66 predecessor if less than three fiscal years, in the payment of principal,
67 interest, or dividends on the security; and

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

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

77 (7) A nonissuer transaction executed by a bona fide pledgee without
78 the purpose of evading this act;

79 (8) A nonissuer transaction by a federal covered investment adviser
80 with investments under management in excess of one hundred million dollars
81 acting in the exercise of discretionary authority in a signed record for the
82 account of others;

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

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

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

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

95 (B) A general solicitation or general advertisement of the transaction
96 is not made; and

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

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

102 (13) A sale or offer to sell to:

103 (A) An institutional investor;

104 (B) A federal covered investment adviser; or

105 (C) Any other person exempted by rule adopted or order issued under
106 this act;

107 (14) A sale or an offer to sell securities of an issuer, if part of a single
108 issue in which:

109 (A) Not more than twenty-five purchasers are present in this state
110 during any twelve consecutive months, other than those designated in
111 paragraph (13);

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

114 (C) A commission or other remuneration is not paid or given, directly
115 or indirectly, to a person other than a broker-dealer registered under this act
116 or an agent registered under this act for soliciting a prospective purchaser
117 in this state; and

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

120 (15) A transaction under an offer to existing security holders of the
121 issuer, including persons that at the date of the transaction are holders of
122 convertible securities, options, or warrants, if a commission or other
123 remuneration, other than a standby commission, is not paid or given, directly
124 or indirectly, for soliciting a security holder in this state;

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

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

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

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

137 (A) A registration statement has been filed under this act, but is not
138 effective;

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

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

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

149 **(19) A rescission offer, sale, or purchase under section 409.5-510;**

150 **(20) An offer or sale of a security to a person not a resident of this state**
151 **and not present in this state if the offer or sale does not constitute a violation**
152 **of the laws of the state or foreign jurisdiction in which the offeree or**
153 **purchaser is present and is not part of an unlawful plan or scheme to evade**
154 **this act;**

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

162 **(A) Directors; general partners; trustees, if the issuer is a business**
163 **trust; officers; consultants; and advisors;**

164 **(B) Family members who acquire such securities from those persons**
165 **through gifts or domestic relations orders;**

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

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

172 **(22) A transaction involving:**

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

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

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

186 (23) A nonissuer transaction in an outstanding security by or through
187 a broker-dealer registered or exempt from registration under this act, if the
188 issuer is a reporting issuer in a foreign jurisdiction designated by this
189 paragraph or by rule adopted or order issued under this act; has been subject
190 to continuous reporting requirements in the foreign jurisdiction for not less
191 than one hundred-eighty days before the transaction; and the security is
192 listed on the foreign jurisdiction's securities exchange that has been
193 designated by this paragraph or by rule adopted or order issued under this
194 act, or is a security of the same issuer that is of senior or substantially equal
195 rank to the listed security or is a warrant or right to purchase or subscribe
196 to any of the foregoing. For purposes of this paragraph, Canada, together
197 with its provinces and territories, is a designated foreign jurisdiction and The
198 Toronto Stock Exchange, Inc., is a designated securities exchange. After an
199 administrative hearing in compliance with chapter 536, RSMo, the
200 commissioner, by rule adopted or order issued under this act, may revoke the
201 designation of a securities exchange under this paragraph, if the
202 commissioner finds that revocation is necessary or appropriate in the public
203 interest and for the protection of investors.

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

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

9 (b) A person does not violate section 409.3-301, 409.3-303 to 409.3-306,
10 409.5-504, or 409.5-510 by an offer to sell, offer to purchase, sale, or purchase
11 effected after the entry of an order issued under this section if the person did
12 not know, and in the exercise of reasonable care could not have known, of the

13 order.

2 **409.3-301. It is unlawful for a person to offer or sell a security in this state unless:**

3 **(1) The security is a federal covered security;**

4 **(2) The security, transaction, or offer is exempted from registration under sections 409.2-201 to 409.2-203; or**

6 **(3) The security is registered under this act.**

2 **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 to 409.2-203, a rule adopted or order issued under this act may require the filing of any or all of the following records:**

6 **(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;**

11 **(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**

15 **(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.**

21 **(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.**

31 **(c) 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)),**

33 a rule under this act may require a notice filing by or on behalf of an issuer
34 to include a copy of Form D, including the Appendix, as promulgated by the
35 Securities and Exchange Commission, and a consent to service of process
36 complying with section 409.6-611 signed by the issuer not later than fifteen
37 days after the first sale of the federal covered security in this state and the
38 payment of a fee of one hundred dollars; and the payment of a fee of fifty
39 dollars for any late filing.

40 (d) Except with respect to a federal security under Section 18(b)(1) of
41 the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the commissioner
42 finds that there is a failure to comply with a notice or fee requirement of this
43 section, the commissioner may issue a stop order suspending the offer and
44 sale of a federal covered security in this state. If the deficiency is corrected,
45 the stop order is void as of the time of its issuance and no penalty may be
46 imposed by the commissioner.

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

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

8 (1) A copy of the latest form of prospectus filed under the Securities
9 Act of 1933;

10 (2) A copy of the articles of incorporation and bylaws or their
11 substantial equivalents currently in effect; a copy of any agreement with or
12 among underwriters; a copy of any indenture or other instrument governing
13 the issuance of the security to be registered; and a specimen, copy, or
14 description of the security that is required by rule adopted or order issued
15 under this act;

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

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

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

25 (1) A stop order under subsection (d) or section 409.3-306 or issued by

26 the Securities and Exchange Commission is not in effect and a proceeding is
27 not pending against the issuer under section 409.3-306; and

28 (2) The registration statement has been on file for at least twenty days
29 or a shorter period provided by rule adopted or order issued under this act.

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

41 (e) If the federal registration statement becomes effective before each
42 of the conditions in this section is satisfied or is waived by the commissioner,
43 the registration statement is automatically effective under this act when all
44 the conditions are satisfied or waived. If the registrant notifies the
45 commissioner of the date when the federal registration statement is expected
46 to become effective, the commissioner shall promptly notify the registrant by
47 telegram, telephone, or electronic means and promptly confirm this notice by
48 a record, indicating whether all the conditions are satisfied or waived and
49 whether the commissioner intends the institution of a proceeding under
50 section 409.3-306. The notice by the commissioner does not preclude the
51 institution of such a proceeding.

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

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

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

13 (2) With respect to each director and officer of the issuer, and other

14 person having a similar status or performing similar functions, the person's
15 name, address, and principal occupation for the previous five years; the
16 amount of securities of the issuer held by the person as of the thirtieth day
17 before the filing of the registration statement; the amount of the securities
18 covered by the registration statement to which the person has indicated an
19 intention to subscribe; and a description of any material interest of the
20 person in any material transaction with the issuer or a significant subsidiary
21 effected within the previous three years or proposed to be effected;

22 (3) With respect to persons covered by paragraph (2), the aggregate
23 sum of the remuneration paid to those persons during the previous twelve
24 months and estimated to be paid during the next twelve months, directly or
25 indirectly, by the issuer, and all predecessors, parents, subsidiaries, and
26 affiliates of the issuer;

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

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

35 (6) With respect to a person on whose behalf any part of the offering
36 is to be made in a nonissuer distribution, the person's name and address; the
37 amount of securities of the issuer held by the person as of the date of the
38 filing of the registration statement; a description of any material interest of
39 the person in any material transaction with the issuer or any significant
40 subsidiary effected within the previous three years or proposed to be effected;
41 and a statement of the reasons for making the offering;

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

49 (8) The kind and amount of securities to be offered; the proposed
50 offering price or the method by which it is to be computed; any variation at
51 which a proportion of the offering is to be made to a person or class of
52 persons other than the underwriters, with a specification of the person or

53 class; the basis on which the offering is to be made if otherwise than for cash;
54 the estimated aggregate underwriting and selling discounts or commissions
55 and finders' fees, including separately cash, securities, contracts, or anything
56 else of value to accrue to the underwriters or finders in connection with the
57 offering or, if the selling discounts or commissions are variable, the basis of
58 determining them and their maximum and minimum amounts; the estimated
59 amounts of other selling expenses, including legal, engineering, and
60 accounting charges; the name and address of each underwriter and each
61 recipient of a finder's fee; a copy of any underwriting or selling group
62 agreement under which the distribution is to be made or the proposed form
63 of any such agreement whose terms have not yet been determined; and a
64 description of the plan of distribution of any securities that are to be offered
65 otherwise than through an underwriter;

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

78 (10) A description of any stock options or other security options
79 outstanding, or to be created in connection with the offering, and the amount
80 of those options held or to be held by each person required to be named in
81 paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold ten
82 percent or more in the aggregate of those options;

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

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

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

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

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

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

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

119 **(18) Any additional information or records required by rule adopted**
120 **or order issued under this act.**

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

125 **(1) A stop order is not in effect and a proceeding is not pending under**
126 **section 409.3-306;**

127 **(2) The commissioner has not issued an order under section 409.3-306**
128 **delaying effectiveness; and**

129 **(3) The applicant or registrant has not requested that effectiveness be**
130 **delayed.**

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

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

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

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

148 (3) Payment pursuant to such a sale; or

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

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

4 (b) A person filing a registration statement shall pay a filing fee of one
5 hundred dollars. Each person shall pay a registration fee equal to one-
6 twentieth of one percent of the amount by which the maximum aggregate
7 offering price at which the registered securities are to be offered in this state
8 exceeds one hundred thousand dollars. In no case shall the registration fee
9 be more than nine hundred dollars. If a registration statement is withdrawn
10 before the effective date or a preeffective stop order is issued under section
11 409.3-306, the commissioner shall retain a filing fee of one hundred dollars. A
12 person filing a renewal of a registration statement shall pay a filing fee of one
13 hundred dollars.

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

16 (1) The amount of securities to be offered in this state;

17 (2) The states in which a registration statement or similar record in
18 connection with the offering has been or is to be filed; and

19 (3) Any adverse order, judgment, or decree issued in connection with
20 the offering by a state securities regulator, the Securities and Exchange

21 **Commission, or a court.**

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

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

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

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

48 **(h) Except while a stop order is in effect under section 409.3-306, a**
49 **registration statement is effective for one year after its effective date, or for**
50 **any longer period designated in an order under this act during which the**
51 **security is being offered or distributed in a nonexempted transaction by or**
52 **for the account of the issuer or other person on whose behalf the offering is**
53 **being made or by an underwriter or broker-dealer that is still offering part**
54 **of an unsold allotment or subscription taken as a participant in the**
55 **distribution. A registration statement remains effective for each additional**
56 **year by filing a renewal as described by rule adopted or order issued under**
57 **this act. For the purposes of a nonissuer transaction, all outstanding**
58 **securities of the same class identified in the registration statement as a**
59 **security registered under this act are considered to be registered while the**

60 registration statement is effective. If any securities of the same class are
61 outstanding, a registration statement may not be withdrawn until one year
62 after its effective date. A registration statement may be withdrawn only with
63 the approval of the commissioner.

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

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

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

5 (1) The registration statement as of its effective date or before the
6 effective date in the case of an order denying effectiveness, an amendment
7 under section 409.3-305(j) as of its effective date, or a report under section
8 409.3-305(i), is incomplete in a material respect or contains a statement that,
9 in the light of the circumstances under which it was made, was false or
10 misleading with respect to a material fact;

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

19 (3) The security registered or sought to be registered is the subject of
20 a permanent or temporary injunction of a court of competent jurisdiction or
21 an administrative stop order or similar order issued under any federal,
22 foreign, or state law other than this act applicable to the offering, but the

23 commissioner may not institute a proceeding against an effective registration
24 statement under this paragraph more than one year after the date of the
25 order or injunction on which it is based, and the commissioner may not issue
26 an order under this paragraph on the basis of an order or injunction issued
27 under the securities act of another state unless the order or injunction was
28 based on conduct that would constitute, as of the date of the order, a ground
29 for a stop order under this section;

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

32 (5) With respect to a security sought to be registered under section
33 409.3-303, there has been a failure to comply with the undertaking required
34 by section 409.3-303(b)(4);

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

37 (7) The offering:

38 (A) Will work or tend to work a fraud upon purchasers or would so
39 operate;

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

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

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

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

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

62 order becomes final. If a hearing is requested or ordered, the commissioner,
63 after notice of and opportunity for hearing for each person subject to the
64 order, may modify or vacate the order or extend the order until final
65 determination.

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

67 (1) Appropriate notice to the applicant or registrant, the issuer, and
68 the person on whose behalf the securities are to be or have been offered;

69 (2) An opportunity for hearing before the commissioner; and

70 (3) Findings of fact and conclusions of law in a record in accordance
71 with the provisions of chapter 536, RSMo, and procedural rules promulgated
72 by the commissioner.

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

409.3-307. The commissioner may waive or modify, in whole or in part,
2 any or all of the requirements of sections 409.3-302, 409.3-303, and 409.3-304(b)
3 or the requirement of any information or record in a registration statement
4 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
2 state as a broker-dealer unless the person is registered under this act as a
3 broker-dealer or is exempt from registration as a broker-dealer under
4 subsection (b) or (d).

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

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

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

10 (B) A broker-dealer registered under this act or not required to be
11 registered as a broker-dealer under this act;

12 (C) An institutional investor;

13 (D) A nonaffiliated federal covered investment adviser with
14 investments under management in excess of one hundred million dollars
15 acting for the account of others pursuant to discretionary authority in a
16 signed record;

17 (E) A bona fide preexisting customer whose principal place of
18 residence is not in this state and the person is registered as a broker-dealer
19 under the Securities Exchange Act of 1934 or not required to be registered
20 under the Securities Exchange Act of 1934 and is registered under the

21 securities act of the state in which the customer maintains a principal place
22 of residence;

23 (F) A bona fide preexisting customer whose principal place of
24 residence is in this state but was not present in this state when the customer
25 relationship was established, if:

26 (i) The broker-dealer is registered under the Securities Exchange Act
27 of 1934 or not required to be registered under the Securities Exchange Act of
28 1934 and is registered under the securities laws of the state in which the
29 customer relationship was established and where the customer had
30 maintained a principal place of residence; and

31 (ii) Within forty-five days after the customer's first transaction in this
32 state, the person files an application for registration as a broker-dealer in
33 this state and a further transaction is not effected more than seventy-five
34 days after the date on which the application is filed, or, if earlier, the date on
35 which the commissioner notifies the person that the commissioner has denied
36 the application for registration or has stayed the pendency of the application
37 for good cause;

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

44 (H) Any other person exempted by rule adopted or order issued under
45 this act; and

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

51 (c) It is unlawful for a broker-dealer, or for an issuer engaged in
52 offering, offering to purchase, purchasing, or selling securities in this state,
53 directly or indirectly, to employ or associate with an individual to engage in
54 an activity related to securities transactions in this state if the registration
55 of the individual is suspended or revoked or the individual is barred from
56 employment or association with a broker-dealer, an issuer, an investment
57 adviser, or a federal covered investment adviser by an order of the
58 commissioner under this act, the Securities and Exchange Commission, or a
59 self-regulatory organization. A broker-dealer or issuer does not violate this

60 subsection if the broker-dealer or issuer did not know and in the exercise of
61 reasonable care could not have known, of the suspension, revocation, or
62 bar. Upon request from a broker-dealer or issuer and for good cause, an
63 order under this act may modify or waive, in whole or in part, the application
64 of the prohibitions of this subsection to the broker-dealer.

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

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

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

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

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

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

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

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

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

9 (2) An individual who represents a broker-dealer that is exempt under
10 section 409.4-401(b) or (d);

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

16 **(4) An individual who represents an issuer and who effects transactions**
17 **in the issuer's securities exempted by section 409.2-202, other than section**
18 **409.2-202(11) and (14);**

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

26 **(6) An individual who represents a broker-dealer registered in this**
27 **state under section 409.4-401(a) or exempt from registration under section**
28 **409.4-401(b) in the offer and sale of securities for an account of a nonaffiliated**
29 **federal covered investment adviser with investments under management in**
30 **excess of one hundred million dollars acting for the account of others**
31 **pursuant to discretionary authority in a signed record;**

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

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

36 **(9) Any other individual exempted by rule adopted or order issued**
37 **under this act.**

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

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

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

409.4-403. (a) It is unlawful for a person to transact business in this
2 **state as an investment adviser unless the person is registered under this act**
3 **as an investment adviser or is exempt from registration as an investment**
4 **adviser under subsection (b).**

5 **(b) The following persons are exempt from the registration**

6 requirement of subsection (a):

7 (1) A person without a place of business in this state that is registered
8 under the securities act of the state in which the person has its principal
9 place of business if its only clients in this state are:

10 (A) Federal covered investment advisers, investment advisers
11 registered under this act, or broker-dealers registered under this act;

12 (B) Institutional investors;

13 (C) Bona fide preexisting clients whose principal places of residence
14 are not in this state if the investment adviser is registered under the
15 securities act of the state in which the clients maintain principal places of
16 residence; or

17 (D) Any other client exempted by rule adopted or order issued under
18 this act;

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

22 (3) Any other person exempted by rule adopted or order issued under
23 this act.

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

36 (d) It is unlawful for an investment adviser to employ or associate with
37 an individual required to be registered under this act as an investment
38 adviser representative who transacts business in this state on behalf of the
39 investment adviser unless the individual is registered under section 409.4-
40 404(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
2 this state as an investment adviser representative unless the individual is
3 registered under this act as an investment adviser representative or is
4 exempt from registration as an investment adviser under subsection (b).

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

7 **(1) An individual who is employed by or associated with an investment**
8 **adviser that is exempt from registration under section 409.4-403(b) or a**
9 **federal covered investment adviser that is excluded from the notice filing**
10 **requirements of section 409.4-405; and**

11 **(2) Any other individual exempted by rule adopted or order issued**
12 **under this act.**

13 **(c) The registration of an investment adviser representative is not**
14 **effective while the investment adviser representative is not employed by or**
15 **associated with an investment adviser registered under this act or a federal**
16 **covered investment adviser that has made or is required to make a notice**
17 **filing under section 409.4-405.**

18 **(d) An individual may transact business as an investment adviser**
19 **representative for more than one investment adviser or federal covered**
20 **investment adviser unless a rule adopted or order issued under this act**
21 **prohibits or limits an individual from acting as an investment adviser**
22 **representative for more than one investment adviser or federal covered**
23 **investment adviser.**

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

35 **(f) An investment adviser registered under this act, a federal covered**
36 **investment adviser that has filed a notice under section 409.4-405, or a**
37 **broker-dealer registered under this act is not required to employ or associate**
38 **with an individual as an investment adviser representative if the only**
39 **compensation paid to the individual for a referral of investment advisory**
40 **clients is paid to an investment adviser registered under this act, a federal**
41 **covered investment adviser who has filed a notice under section 409.4-405, or**
42 **a broker-dealer registered under this act with which the individual is**
43 **employed or associated as an investment adviser representative.**

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

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

**8 (1) A federal covered investment adviser without a place of business
9 in this state if its only clients in this state are:**

**10 (A) Federal covered investment advisers, investment advisers
11 registered under this act, and broker-dealers registered under this act;**

12 (B) Institutional investors;

**13 (C) Bona fide preexisting clients whose principal places of residence
14 are not in this state; or**

**15 (D) Other clients specified by rule adopted or order issued under this
16 act;**

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

**21 (3) Any other person excluded by rule adopted or order issued under
22 this act.**

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

**29 (d) The notice under subsection (c) becomes effective upon its filing,
30 and shall expire on December thirty-first each year, unless renewed.**

**409.4-406. (a) A person shall register as a broker-dealer, agent,
2 investment adviser, or investment adviser representative by filing an
3 application and a consent to service of process complying with section 409.6-
4 611, and paying the fee specified in section 409.4-410 and any reasonable fees
5 charged by the designee of the commissioner for processing the filing. The
6 application must contain:**

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

9 (2) Upon request by the commissioner, any other financial or other

10 information or record that the commissioner determines is appropriate.

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

14 (c) If an order is not in effect and a proceeding is not pending under
15 section 409.4-412, registration becomes effective at noon on the forty-fifth day
16 after a completed application is filed, unless the registration is denied. A rule
17 adopted or order issued under this act may set an earlier effective date or
18 may defer the effective date until noon on the forty-fifth day after the filing
19 of any amendment completing the application.

20 (d) A registration is effective until midnight on December thirty-first
21 of the year for which the application for registration is filed. Unless an order
22 is in effect under section 409.4-412, a registration may be automatically
23 renewed each year by filing such records as are required by rule adopted or
24 order issued under this act, by paying the fee specified in section 409.4-410,
25 and by paying costs charged by the designee of the commissioner for
26 processing the filings.

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

409.4-407. (a) A broker-dealer or investment adviser may succeed to the
2 current registration of another broker-dealer or investment adviser or a
3 notice filing of a federal covered investment adviser, and a federal covered
4 investment adviser may succeed to the current registration of an investment
5 adviser or notice filing of another federal covered investment adviser, by
6 filing as a successor an application for registration pursuant to section 409.4-
7 401 or 409.4-403 or a notice pursuant to section 409.4-405 for the unexpired
8 portion of the current registration or notice filing.

9 (b) A broker-dealer or investment adviser that changes its form of
10 organization or state of incorporation or organization may continue its
11 registration by filing an amendment to its registration if the change does not
12 involve a material change in its financial condition or management. The
13 amendment becomes effective when filed or on a date designated by the
14 registrant in its filing. The new organization is a successor to the original
15 registrant for the purposes of this act. If there is a material change in
16 financial condition or management, the broker-dealer or investment adviser
17 shall file a new application for registration. A predecessor registered under

18 **this act shall stop conducting its securities business other than winding down**
19 **transactions and shall file for withdrawal of broker-dealer or investment**
20 **adviser registration within forty-five days after filing its amendment to effect**
21 **succession.**

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

26 **(d) A change of control of a broker-dealer or investment adviser may**
27 **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
2 **employment by or association with a broker-dealer or issuer, or if an**
3 **investment adviser representative registered under this act terminates**
4 **employment by or association with an investment adviser or federal covered**
5 **investment adviser, or if either registrant terminates activities that require**
6 **registration as an agent or investment adviser representative, the broker-**
7 **dealer, issuer, investment adviser, or federal covered investment adviser shall**
8 **promptly file a notice of termination. If the registrant learns that the broker-**
9 **dealer, issuer, investment adviser, or federal covered investment adviser has**
10 **not filed the notice, the registrant may do so.**

11 **(b) If an agent registered under this act terminates employment by or**
12 **association with a broker-dealer registered under this act and begins**
13 **employment by or association with another broker-dealer registered under**
14 **this act; or if an investment adviser representative registered under this act**
15 **terminates employment by or association with an investment adviser**
16 **registered under this act; or, if a federal covered investment adviser, who has**
17 **filed a notice under section 409.4-405 and begins employment by or**
18 **association with another investment adviser registered under this act; or if**
19 **a federal covered investment adviser, who has filed a notice under section**
20 **409.4-405, upon the filing by or on behalf of the registrant, within thirty days**
21 **after the termination, of an application for registration that complies with the**
22 **requirement of section 409.4-406(a) and payment of the filing fee required**
23 **under section 409.4-410, the registration of the agent or investment adviser**
24 **representative, is:**

25 **(1) Immediately effective as of the date of the completed filing, if the**
26 **agent's Central Registration Depository record or successor record or the**
27 **investment adviser representative's Investment Adviser Registration**
28 **Depository record or successor record does not contain a new or amended**
29 **disciplinary disclosure within the previous twelve months; or**

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

35 (c) The commissioner may by order withdraw a temporary registration
36 if there are or were grounds for discipline as specified in section 409.4-412
37 and the commissioner does so within thirty days after the filing of the
38 application. If the commissioner does not withdraw the temporary
39 registration within the thirty-day period, registration becomes automatically
40 effective on the thirty-first day after filing.

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

44 (e) If the commissioner determines that a registrant or applicant for
45 registration is no longer in existence or has ceased to act as a broker-dealer,
46 agent, investment adviser, or investment adviser representative, or is the
47 subject of an adjudication of incapacity or is subject to the control of a
48 committee, conservator, or guardian, or cannot reasonably be located, a rule
49 adopted or order issued under this act may require the registration be
50 canceled or terminated or the application denied. The commissioner may
51 reinstate a canceled or terminated registration, with or without hearing, and
52 may make the registration retroactive.

409.4-409. Withdrawal of registration by a broker-dealer, agent,
2 investment adviser, or investment adviser representative becomes effective
3 sixty days after the filing of the application to withdraw or within any
4 shorter period as provided by rule adopted or order issued under this act
5 unless a revocation or suspension proceeding is pending when the application
6 is filed. If a proceeding is pending, withdrawal becomes effective when and
7 upon such conditions as required by rule adopted or order issued under this
8 act. The commissioner may institute a revocation or suspension proceeding
9 under section 409.4-412 within one year after the withdrawal became effective
10 automatically and issue a revocation or suspension order as of the last date
11 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
2 initially filing an application for registration as a broker-dealer and a fee of
3 one hundred dollars when filing a renewal of registration as a broker-dealer.
4 If the filing results in a denial or withdrawal, the commissioner shall retain the
5 entire fee.

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

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

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

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

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

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

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

7 **(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15**
8 **U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940**
9 **(15 U.S.C. Section 80b-22), a broker-dealer registered or required to be**
10 **registered under this act and an investment adviser registered or required**

11 to be registered under this act shall file such financial reports as are required
12 by a rule adopted or order issued under this act. If the information contained
13 in a record filed under this subsection is or becomes inaccurate or incomplete
14 in a material respect, the registrant shall promptly file a correcting
15 amendment.

16 (c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15
17 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940
18 (15 U.S.C. Section 80b-22):

19 (1) A broker-dealer registered or required to be registered under this
20 act and an investment adviser registered or required to be registered under
21 this act shall make and maintain the accounts, correspondence, memoranda,
22 papers, books, and other records required by rule adopted or order issued
23 under this act;

24 (2) Broker-dealer records required to be maintained under paragraph
25 (1) may be maintained in any form of data storage acceptable under Section
26 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they
27 are readily accessible to the commissioner; and

28 (3) Investment adviser records required to be maintained under
29 paragraph (1) may be maintained in any form of data storage required by rule
30 adopted or order issued under this act.

31 (d) The records of a broker-dealer registered or required to be
32 registered under this act and of an investment adviser registered or required
33 to be registered under this act are subject to such reasonable periodic,
34 special, or other audits or inspections by a representative of the
35 commissioner, within or without this state, as the commissioner considers
36 necessary or appropriate in the public interest and for the protection of
37 investors. An audit or inspection may be made at any time and without prior
38 notice. The commissioner may copy, and remove for audit or inspection
39 copies of, all records the commissioner reasonably considers necessary or
40 appropriate to conduct the audit or inspection. The commissioner may assess
41 a reasonable charge for conducting an audit or inspection under this
42 subsection.

43 (e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15
44 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940
45 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this act may
46 require a broker-dealer or investment adviser that has custody of or
47 discretionary authority over funds or securities of a customer or client to
48 obtain insurance or post a bond or other satisfactory form of security in an
49 amount not to exceed twenty-five thousand dollars. The commissioner may

50 **determine the requirements of the insurance, bond, or other satisfactory form**
51 **of security. Insurance or a bond or other satisfactory form of security may**
52 **not be required of a broker-dealer registered under this act whose net capital**
53 **exceeds, or of an investment adviser registered under this act whose**
54 **minimum financial requirements exceed, the amounts required by rule or**
55 **order under this act. The insurance, bond, or other satisfactory form of**
56 **security must permit an action by a person to enforce any liability on the**
57 **insurance, bond, or other satisfactory form of security if instituted within the**
58 **time limitations in section 409.5-509(j)(2).**

59 **(f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15**
60 **U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940**
61 **(15 U.S.C. Section 80b-22), an agent may not have custody of funds or**
62 **securities of a customer except under the supervision of a broker-dealer and**
63 **an investment adviser representative may not have custody of funds or**
64 **securities of a client except under the supervision of an investment adviser**
65 **or a federal covered investment adviser. A rule adopted or order issued**
66 **under this act may prohibit, limit, or impose conditions on a broker-dealer**
67 **regarding custody of funds or securities of a customer and on an investment**
68 **adviser regarding custody of securities or funds of a client.**

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

74 **(h) A rule adopted or order issued under this act may require an**
75 **individual registered under section 409.4-402 or 409.4-404 to participate in a**
76 **continuing education program approved by the Securities and Exchange**
77 **Commission and administered by a self-regulatory organization or, in the**
78 **absence of such a program, a rule adopted or order issued under this act may**
79 **require continuing education for an individual registered under section 409.4-**
80 **404.**

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

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

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

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

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

32 **(d) A person may be disciplined under subsections (a) to (c) if the**
33 **person:**

34 **(1) Has filed an application for registration in this state under this act**
35 **or the predecessor act within the previous ten years, which, as of the effective**
36 **date of registration or as of any date after filing in the case of an order**
37 **denying effectiveness, was incomplete in any material respect or contained**
38 **a statement that, in light of the circumstances under which it was made, was**
39 **false or misleading with respect to a material fact;**

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

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

47 **(4) Is enjoined or restrained by a court of competent jurisdiction in an**

48 action instituted by the commissioner under this act or the predecessor act,
49 a state, the Securities and Exchange Commission, or the United States from
50 engaging in or continuing an act, practice, or course of business involving an
51 aspect of a business involving securities, commodities, investments,
52 franchises, insurance, banking, or finance;

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

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

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

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

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

67 (E) The insurance regulator of a state denying, suspending, or revoking
68 the registration of an insurance agent; or

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

71 (6) Is the subject of an adjudication or determination, after notice and
72 opportunity for hearing, by the Securities and Exchange Commission, the
73 Commodity Futures Trading Commission; the Federal Trade Commission; a
74 federal depository institution regulator, or a depository institution,
75 insurance, or other financial services regulator of a state that the person
76 willfully violated the Securities Act of 1933, the Securities Exchange Act of
77 1934, the Investment Advisers Act of 1940, the Investment Company Act of
78 1940, or the Commodity Exchange Act, the securities or commodities law of
79 a state, or a federal or state law under which a business involving
80 investments, franchises, insurance, banking, or finance is regulated;

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

86 (8) Refuses to allow or otherwise impedes the commissioner from

87 **conducting an audit or inspection under section 409.4-411(d) or refuses access**
88 **to a registrant's office to conduct an audit or inspection under section 409.4-**
89 **411(d);**

90 **(9) Has failed to reasonably supervise an agent, investment adviser**
91 **representative, or other individual, if the agent, investment adviser**
92 **representative, or other individual was subject to the person's supervision**
93 **and committed a violation of this act or the predecessor act or a rule adopted**
94 **or order issued under this act or the predecessor act within the previous ten**
95 **years;**

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

99 **(11) After notice and opportunity for a hearing, has been found within**
100 **the previous ten years:**

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

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

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

112 **(12) Is the subject of a cease and desist order issued by the Securities**
113 **and Exchange Commission or issued under the securities, commodities,**
114 **investment, franchise, banking, finance, or insurance laws of a state;**

115 **(13) Has engaged in dishonest or unethical practices in the securities,**
116 **commodities, investment, franchise, banking, finance, or insurance business**
117 **within the previous ten years; or**

118 **(14) Is not qualified on the basis of factors such as training, experience,**
119 **and knowledge of the securities business. However, in the case of an**
120 **application by an agent for a broker-dealer that is a member of a self-**
121 **regulatory organization or by an individual for registration as an investment**
122 **adviser representative, a denial order may not be based on this paragraph if**
123 **the individual has successfully completed all examinations required by**
124 **subsection (e). The commissioner may require an applicant for registration**
125 **under section 409.4-402 or 409.4-404 who has not been registered in a state**

126 within the two years preceding the filing of an application in this state to
127 successfully complete an examination.

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

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

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

152 (1) Appropriate notice to the applicant or registrant;

153 (2) Opportunity for hearing; and

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

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

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

165 facts.

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

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

182 (l) Hearing procedures before the commissioner or the administrative
183 hearing commission and judicial review of the decisions and orders of the
184 commissioner and of the administrative hearing commission, and all other
185 procedural matters pursuant to this act shall be governed by the provisions
186 of chapter 536, RSMo. Hearings before the administrative hearing
187 commission shall also be governed by the provisions of chapter 621, RSMo.

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

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

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

7 (3) To engage in an act, practice, or course of business that operates
8 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
2 compensation, either directly or indirectly or through publications or
3 writings, as to the value of securities or the advisability of investing in,
4 purchasing, or selling securities or that, for compensation and as part of a
5 regular business, issues or promulgates analyses or reports relating to
6 securities:

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

8 or

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

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

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

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

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

409.5-504. (a) Except as otherwise provided in subsection (b), a rule
2 **adopted or order issued under this act may require the filing of a prospectus,**
3 **pamphlet, circular, form letter, advertisement, sales literature, or other**
4 **advertising record relating to a security or investment advice, addressed or**
5 **intended for distribution to prospective investors, including clients or**
6 **prospective clients of a person registered or required to be registered as an**
7 **investment adviser under this act.**

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

409.5-505. It is unlawful for a person to make or cause to be made, in
2 **a record that is used in an action or proceeding or filed under this act, a**
3 **statement that, at the time and in the light of the circumstances under which**
4 **it is made, is false or misleading in a material respect, or, in connection with**
5 **the statement, to omit to state a material fact necessary to make the**
6 **statement made, in the light of the circumstances under which it was made,**

7 not false or misleading.

2 **409.5-506.** The filing of an application for registration, a registration
3 statement, a notice filing under this act, the registration of a person, the
4 notice filing by a person, or the registration of a security under this act does
5 not constitute a finding by the commissioner that a record filed under this act
6 is true, complete, and not misleading. The filing or registration or the
7 availability of an exemption, exception, preemption, or exclusion for a
8 security or a transaction does not mean that the commissioner has passed
9 upon the merits or qualifications of, or recommended or given approval to,
10 a person, security, or transaction. It is unlawful to make, or cause to be
11 made, to a purchaser, customer, client, or prospective customer or client a
representation inconsistent with this section.

2 **409.5-507.** A broker-dealer, agent, investment adviser, federal covered
3 investment adviser, or investment adviser representative is not liable to
4 another broker-dealer, agent, investment adviser, federal covered investment
5 adviser, or investment adviser representative for defamation relating to a
6 statement that is contained in a record required by the commissioner, or
7 designee of the commissioner, the Securities and Exchange Commission, or
8 a self-regulatory organization, unless the person knew, or should have known
9 at the time that the statement was made, that it was false in a material
10 respect or the person acted in reckless disregard of the statement's truth or
falsity.

2 **409.5-508. (a)** A person that willfully violates this act, or a rule adopted
3 or order issued under this act, except Section 409.5-504 or the notice filing
4 requirements of section 409.3-302 or 409.4-405, or that willfully violates
5 section 409.5-505 knowing the statement made to be false or misleading in a
6 material respect, upon conviction, shall be fined not more than one million
7 dollars or imprisoned not more than ten years, or both. An individual
8 convicted of violating a rule or order under this act may be fined, but may not
9 be imprisoned, if the individual did not have knowledge of the rule or order.

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

2 **(c)** This act does not limit the power of this state to punish a person for
3 conduct that constitutes a crime under other laws of this state.

2 **409.5-509. (a)** Enforcement of civil liability under this section is subject
3 to the Securities Litigation Uniform Standards Act of 1998.

2 **(b)** A person is liable to the purchaser if the person sells a security in
3 violation of section 409.3-301 or, by means of an untrue statement of a
4

5 material fact or an omission to state a material fact necessary in order to
6 make the statement made, in light of the circumstances under which it is
7 made, not misleading, the purchaser not knowing the untruth or omission and
8 the seller not sustaining the burden of proof that the seller did not know and,
9 in the exercise of reasonable care, could not have known of the untruth or
10 omission. An action under this subsection is governed by the following:

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

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

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

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

34 (1) The seller may maintain an action to recover the security, and any
35 income received on the security, costs, and reasonable attorneys' fees
36 determined by the court, upon the tender of the purchase price, or for actual
37 damages as provided in paragraph (3).

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

43 (3) Actual damages in an action arising under this subsection is the

44 difference between the price at which the security was sold and the value the
45 security would have had at the time of the sale in the absence of the
46 purchaser's conduct causing liability, and interest at the rate of eight percent
47 per year from the date of the sale of the security, costs, and reasonable
48 attorneys' fees determined by the court.

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

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

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

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

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

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

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

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

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

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

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

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

106 (j) A person may not obtain relief:

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

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

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

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

122 (m) The rights and remedies provided by this act are in addition to any
123 other rights or remedies that may exist, but this act does not create a cause
124 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
2 not maintain an action under section 409.5-509 if:

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

5 (A) An offer stating the respect in which liability under section 409.5-
6 509 may have arisen and fairly advising the purchaser, seller, or recipient of
7 investment advice of that person's rights in connection with the offer, and
8 any financial or other information necessary to correct all material
9 misrepresentations or omissions in the information that was required by this
10 act to be furnished to that person at the time of the purchase, sale, or
11 investment advice;

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

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

33 (D) If the basis for relief under this section may have been a violation
34 of section 409.5-509(d); and if the customer is a purchaser, an offer to pay as
35 specified in subparagraph (B); or, if the customer is a seller, an offer to
36 tender or to pay as specified in subparagraph (C);

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

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

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

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

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

56 **(5) The purchaser, seller, or recipient of investment advice that accepts**
57 **the offer under paragraph (1) in a record within the period specified under**
58 **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
2 **securities who shall be appointed by and act under the direction of the**
3 **secretary of state, and shall receive compensation as provided by law.**

4 **(b) The attorney general shall appear on behalf of and represent the**
5 **commissioner in all proceedings before the administrative hearing**
6 **commission, and in the circuit court of any county of the state or any city not**
7 **within a county, or any court of another state in all civil enforcement actions**
8 **brought under this act. The attorney general may appoint attorneys**
9 **employed by the secretary of state as special assistant attorneys general to**
10 **appear on behalf of and represent the commissioner.**

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

18 **(d) This act does not create or diminish a privilege or exemption that**
19 **exists at common law, by statute or rule, or otherwise.**

20 **(e) The commissioner may develop and implement investor education**
21 **initiatives to inform the public about investing in securities, with particular**
22 **emphasis on the prevention and detection of securities fraud. In developing**
23 **and implementing these initiatives, the commissioner may collaborate with**
24 **public and nonprofit organizations with an interest in investor**
25 **education. The commissioner may accept a grant or donation from a person**
26 **that is not affiliated with the securities industry or from a nonprofit**
27 **organization, regardless of whether the organization is affiliated with the**
28 **securities industry, to develop and implement investor education**
29 **initiatives. This subsection does not authorize the commissioner to require**
30 **participation or monetary contributions of a registrant in an investor**
31 **education program.**

32 **(f) The "Investor Education and Protection Fund" is created to provide**
33 **funds for the purposes identified in subsection (e). Notwithstanding the**
34 **provisions of section 33.080, RSMo, any funds remaining in the secretary of**
35 **state's investor education and protection fund at the end of any biennium**
36 **shall not be transferred to the general revenue fund.**

409.6-602. (a) The commissioner may:

2 **(1) Conduct public or private investigations within or outside of this**
3 **state which the commissioner considers necessary or appropriate to**
4 **determine whether a person has violated, is violating, or is about to violate**
5 **this act or a rule adopted or order issued under this act, or to aid in the**
6 **enforcement of this act or in the adoption of rules and forms under this act;**

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

11 **(3) Publish a record concerning an action, proceeding, or an**
12 **investigation under, or a violation of, this act or a rule adopted or order**
13 **issued under this act if the commissioner determines it is necessary or**
14 **appropriate in the public interest and for the protection of investors; and**

15 **(4) Appoint special investigators to aid in investigations conducted**
16 **pursuant to this act. Under such appointment by the commissioner, special**
17 **investigators who meet the qualifications of a law enforcement officer**
18 **pursuant to chapter 590, RSMo, shall have the authority as peace officers to**
19 **serve subpoenas and all other process, and while investigating criminal**
20 **violations of this act to participate in the making of arrests and the**

21 application for search warrants. Such special investigators shall coordinate
22 arrests and seizure of evidence with other state or federal law enforcement
23 officers.

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

29 (c) If a person does not appear or refuses to testify, file a statement,
30 produce records, or otherwise does not obey a subpoena as required by the
31 commissioner under this act, the commissioner may apply to the circuit court
32 of any county of the state or any city not within a county, or a court of
33 another state to enforce compliance. The court may:

34 (1) Hold the person in contempt;

35 (2) Order the person to appear before the commissioner;

36 (3) Order the person to testify about the matter under investigation or
37 in question;

38 (4) Order the production of records;

39 (5) Grant injunctive relief, including restricting or prohibiting the offer
40 or sale of securities or the providing of investment advice;

41 (6) Impose a civil penalty of not less than ten thousand dollars and not
42 greater than fifty thousand dollars for each violation; and

43 (7) Grant any other necessary or appropriate relief.

44 (d) This section does not preclude a person from applying to the circuit
45 court of any county of the state or any city not within a county for relief from
46 a request to appear, testify, file a statement, produce records, or obey a
47 subpoena.

48 (e) An individual is not excused from attending, testifying, filing a
49 statement, producing a record or other evidence, or obeying a subpoena of the
50 commissioner under this act or in an action or proceeding instituted by the
51 commissioner under this act on the grounds that the required testimony,
52 statement, record, or other evidence, directly or indirectly, may tend to
53 incriminate the individual or subject the individual to a criminal fine,
54 penalty, or forfeiture. If the individual refuses to testify, file a statement, or
55 produce a record or other evidence on the basis of the individual's privilege
56 against self-incrimination, the commissioner may apply to the circuit court
57 of any county of the state or any city not within a county to compel the
58 testimony, the filing of the statement, the production of the record, or the
59 giving of other evidence. The testimony, record, or other evidence compelled

60 under such an order may not be used, directly or indirectly, against the
61 individual in a criminal case, except in a prosecution for perjury or contempt
62 or otherwise failing to comply with the order.

63 (f) At the request of the securities regulator of another state or a
64 foreign jurisdiction, the commissioner may provide assistance if the
65 requesting regulator states that it is conducting an investigation to determine
66 whether a person has violated, is violating, or is about to violate a law or rule
67 of the other state or foreign jurisdiction relating to securities matters that
68 the requesting regulator administers or enforces. The commissioner may
69 provide the assistance by using the authority to investigate and the powers
70 conferred by this section as the commissioner determines is necessary or
71 appropriate. The assistance may be provided without regard to whether the
72 conduct described in the request would also constitute a violation of this act
73 or other law of this state if occurring in this state. In deciding whether to
74 provide the assistance, the commissioner may consider whether the
75 requesting regulator is permitted and has agreed to provide assistance
76 reciprocally within its state or foreign jurisdiction to the commissioner on
77 securities matters when requested; whether compliance with the request
78 would violate or prejudice the public policy of this state; and the availability
79 of resources and employees of the commissioner to carry out the request for
80 assistance.

409.6-603. (a) If the commissioner believes that a person has engaged,
2 is engaging, or is about to engage in an act, practice, or course of business
3 constituting a violation of this act or a rule adopted or order issued under
4 this act or that a person has, is, or is about to engage in an act, practice, or
5 course of business that materially aids a violation of this act or a rule
6 adopted or order issued under this act, the commissioner may maintain an
7 action in the circuit court of any county of the state or any city not within a
8 county to enjoin the act, practice, or course of business and to enforce
9 compliance with this act or a rule adopted or order issued under this act.

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

12 (1) Issue a permanent or temporary injunction, restraining order, or
13 declaratory judgment;

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

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

18 (B) Ordering the commissioner to take charge and control of a

19 defendant's property, including investment accounts and accounts in a
20 depository institution, rents, and profits; to collect debts; and to acquire and
21 dispose of property;

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

28 (D) Ordering the payment of prejudgment and post-judgment interest;
29 and

30 (E) Ordering the payment to the investor education and protection
31 fund of an amount equal to ten percent of the total rescission, restitution, or
32 disgorgement ordered, or such other amount as awarded by the court; or

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

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

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

39 (e) The commissioner may create an "Investor Restitution Fund" for the
40 purpose of preserving and distributing to aggrieved investors, disgorgement
41 or restitution funds obtained through enforcement proceedings under this
42 act. In addition to the equitable powers of the court authorized above, the
43 court may order that such funds be paid into the investor restitution fund for
44 distribution to aggrieved investors. It shall be the duty of the commissioner
45 to distribute such funds to those persons injured by the unlawful acts,
46 practices, or courses of business. Such funds may or may not be in interest-
47 bearing accounts, but any interest, which accrues to any such account, shall
48 be paid to the credit of the investor education and protection
49 fund. Notwithstanding the provisions of section 33.080, RSMo, any funds
50 remaining in the secretary of state's investor restitution fund at the end of
51 any biennium shall not be transferred to the general revenue fund, but if the
52 commissioner is unable with reasonable efforts to ascertain the aggrieved
53 investors, then the funds may be transferred to the investor education and
54 protection fund.

409.6-604. (a) If the commissioner determines that a person has
2 engaged, is engaging, or is about to engage in an act, practice, or course of
3 business constituting a violation of this act or a rule adopted or order issued

4 under this act or that a person has materially aided, is materially aiding, or
5 is about to materially aid an act, practice, or course of business constituting
6 a violation of this act or a rule adopted or order issued under this act, the
7 commissioner may:

8 (1) Issue an order directing the person to cease and desist from
9 engaging in the act, practice, or course of business or to take other action
10 necessary or appropriate to comply with this act;

11 (2) Issue an order denying, suspending, revoking, or conditioning the
12 exemptions for a broker-dealer under section 409.4-401(b)(1)(D) or (F) or an
13 investment adviser under section 409.4-403(b)(1)(C); or

14 (3) Issue an order under section 409.2-204.

15 (b) An order under subsection (a) is effective on the date of
16 issuance. Upon issuance of the order, the commissioner shall promptly serve
17 each person subject to the order with a copy of the order and a notice that
18 the order has been entered. The order must include a statement whether the
19 commissioner will seek a civil penalty or costs of the investigation, a
20 statement of the reasons for the order, and notice that, within fifteen days
21 after receipt of a request in a record from the person, the matter will be
22 scheduled for a hearing. If a person subject to the order does not request a
23 hearing and none is ordered by the commissioner within thirty days after the
24 date of service of the order, the order becomes final as to that person by
25 operation of law. If a hearing is requested or ordered, the commissioner,
26 after notice of and opportunity for hearing to each person subject to the
27 order, may modify or vacate the order or extend it until final determination.

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

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

37 (e) In a final order, the commissioner may charge the actual cost of an
38 investigation or proceeding for a violation of this act or a rule adopted or
39 order issued under this act. These funds may be paid into the investor
40 education and protection fund.

41 (f) If a petition for judicial review of a final order is not filed in
42 accordance with section 409.6-609, the commissioner may file a certified copy

43 of the final order with the clerk of a court of competent jurisdiction. The
44 order so filed has the same effect as a judgment of the court and may be
45 recorded, enforced, or satisfied in the same manner as a judgment of the
46 court.

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

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

409.6-605. (a) The commissioner may:

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

6 (2) By rule, define terms, whether or not used in this act, but those
7 definitions may not be inconsistent with this act; and

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

10 (b) Under this act, a rule or form may not be adopted or amended, or
11 an order issued or amended, unless the commissioner finds that the rule,
12 form, order, or amendment is necessary or appropriate in the public interest
13 or for the protection of investors and is consistent with the purposes intended
14 by this act. In adopting, amending, and repealing rules and forms, section
15 409.6-608 applies in order to achieve uniformity among the states and
16 coordination with federal laws in the form and content of registration
17 statements, applications, reports, and other records, including the adoption
18 of uniform rules, forms, and procedures.

19 (c) Subject to Section 15(h) of the Securities Exchange Act and Section
20 222 of the Investment Advisers Act of 1940, the commissioner may require that
21 a financial statement filed under this act be prepared in accordance with
22 generally accepted accounting principles in the United States and comply

23 with other requirements specified by rule adopted or order issued under this
24 act. A rule adopted or order issued under this act may establish:

25 (1) Subject to Section 15(h) of the Securities Exchange Act and Section
26 222 of the Investment Advisors Act of 1940, the form and content of financial
27 statements required under this act;

28 (2) Whether unconsolidated financial statements must be filed; and

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

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

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

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

44 (g) Any rule or portion of a rule, as that term is defined in section
45 536.010, RSMo, that is created under the authority delegated in this act shall
46 become effective only if it complies with and is subject to all of the provisions
47 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section
48 and chapter 536, RSMo, are nonseverable and if any of the powers vested with
49 the general assembly pursuant to chapter 536, RSMo, to review, to delay the
50 effective date or to disapprove and annul a rule are subsequently held
51 unconstitutional, then the grant of rulemaking authority and any rule
52 proposed or adopted after August 28, 2003, shall be invalid and void.

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

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

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

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

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

7 **(1) A record obtained by the commissioner in connection with an audit**
8 **or inspection under section 409.4-411(d) or an investigation under section**
9 **409.6-602;**

10 **(2) A part of a record filed in connection with a registration statement**
11 **under sections 409.3-301 and 409.3-303 to 409.3-305 or a record under section**
12 **409.4-411(d) that contains trade secrets or confidential information if the**
13 **person filing the registration statement or report has asserted a claim of**
14 **confidentiality or privilege that is authorized by law;**

15 **(3) A record that is not required to be provided to the commissioner or**
16 **filed under this act and is provided to the commissioner only on the condition**
17 **that the record will not be subject to public examination or disclosure;**

18 **(4) A nonpublic record received from a person specified in section**
19 **409.6-608(a);**

20 **(5) Any Social Security number, residential address unless used as a**
21 **business address, and residential telephone number contained in a record**
22 **that is filed; and**

23 **(6) A record obtained by the commissioner through a designee of the**
24 **commissioner that a rule or order under this act determines has been:**

25 **(A) Expunged from the commissioner's records by the designee; or**

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

29 **(c) If disclosure is for the purpose of a civil, administrative, or criminal**
30 **investigation, action, or proceeding or to a person specified in section 409.6-**
31 **608(a), the commissioner may disclose a record obtained in connection with**

32 an audit or inspection under section 409.4-411(d) or a record obtained in
33 connection with an investigation under section 409.6-602.

2 409.6-608. (a) The commissioner shall, in the discretion of the
3 commissioner, cooperate, coordinate, consult, and, subject to section 409.6-
4 607, share records and information with the securities regulator of another
5 state, Canada, a Canadian province or territory, a foreign jurisdiction, the
6 Securities and Exchange Commission, the United States Department of
7 Justice, the Commodity Futures Trading Commission, the Federal Trade
8 Commission, the Securities Investor Protection Corporation, the attorney
9 general, a self-regulatory organization, a national or international
10 organization of securities regulators, a federal or state banking and insurance
11 regulator, and a governmental law enforcement agency to effectuate greater
12 uniformity in securities matters among the federal government, self-
13 regulatory organizations, states, and foreign governments.

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

19 (1) Maximizing effectiveness of regulation for the protection of
20 investors;

21 (2) Maximizing uniformity in federal and state regulatory standards;
22 and

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

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

27 (1) Establishing or employing one or more designees as a central
28 depository for registration and notice filings under this act and for records
29 required or allowed to be maintained under this act;

30 (2) Developing and maintaining uniform forms;

31 (3) Conducting a joint examination or investigation;

32 (4) Holding a joint administrative hearing;

33 (5) Instituting and prosecuting a joint civil or administrative
34 proceeding;

35 (6) Sharing and exchanging personnel;

36 (7) Coordinating registrations under sections 409.3-301 and 409.4-401
37 to 409.4-404 and exemptions under section 409.2-203;

(8) Sharing and exchanging records, subject to section 409.6-607;

38 **(9) Formulating rules, statements of policy, guidelines, forms, and**
39 **interpretative opinions and releases;**

40 **(10) Formulating common systems and procedures;**

41 **(11) Notifying the public of proposed rules, forms, statements of policy,**
42 **and guidelines;**

43 **(12) Attending conferences and other meetings among securities**
44 **regulators, which may include representatives of governmental and private**
45 **sector organizations involved in capital formation, deemed necessary or**
46 **appropriate to promote or achieve uniformity; and**

47 **(13) Developing and maintaining a uniform exemption from**
48 **registration for small issuers, and taking other steps to reduce the burden of**
49 **raising investment capital by small businesses.**

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

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

409.6-610. (a) Sections 409.3-301, 409.3-302, 409.4-401(a), 409.4-402(a),
2 **409.4-403(a), 409.4-404(a), 409.5-501, 409.5-506, 409.5-509, and 409.5-510 do not**
3 **apply to a person that sells or offers to sell a security unless the offer to sell**
4 **or the sale is made in this state or the offer to purchase or the purchase is**
5 **made and accepted in this state.**

6 **(b) Sections 409.4-401(a), 409.4-402(a), 409.4-403(a), 409.4-404(a), 409.5-**
7 **501, 409.5-506, 409.5-509, and 409.5-510 do not apply to a person that purchases**
8 **or offers to purchase a security unless the offer to purchase or the purchase**
9 **is made in this state or the offer to sell or the sale is made and accepted in**
10 **this state.**

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

14 **(1) Originates from within this state; or**

15 **(2) Is directed by the offeror to a place in this state and received at the**
16 **place to which it is directed.**

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

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

23 (2) Has not previously been communicated to the offeror, orally or in
24 a record, outside this state.

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

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

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

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

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

47 (f) Sections 409.4-403(a), 409.4-404(a), 409.4-405(a), 409.5-502, 409.5-505,
48 and 409.5-506 apply to a person if the person engages in an act, practice, or
49 course of business instrumental in effecting prohibited or actionable conduct
50 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
2 409.6-611 required by this act must be signed and filed in the form required
3 by a rule or order under this act. A consent appointing the commissioner the
4 person's agent for service of process in a noncriminal action or proceeding
5 against the person, or the person's successor or personal representative under

6 this act or a rule adopted or order issued under this act after the consent is
7 filed, has the same force and validity as if the service were made personally
8 on the person filing the consent. A person that has filed a consent complying
9 with this subsection in connection with a previous application for
10 registration or notice filing need not file an additional consent.

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

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

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

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

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

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

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

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

409.7-702. The following act is repealed: Missouri Securities Act of
2 1956, as amended, RSMo, 2002.

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.

[409.101. 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:

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

55 (f) The commissioner may by rule or order adopt exemptions from
56 subparagraph (a)(3) and subparagraphs (c)(1), (c)(2) and (c)(3) of this
57 section where such exemptions are consistent with the public interest and
58 within the purposes fairly intended by the policy and provisions of sections
59 409.101 to 409.419.]

2 [409.201. (a) It is unlawful for any person to transact business in
3 this state as a broker-dealer or agent unless he is registered under
4 sections 409.101 to 409.419.

5 (b) It is unlawful for any broker-dealer or issuer to employ an
6 agent unless the agent is registered under sections 409.101 to
7 409.419. The registration of an agent is not effective during any period
8 when he is not associated with a particular broker-dealer registered under
9 sections 409.101 to 409.419, or a particular issuer. When an agent begins
10 or terminates a connection with a broker-dealer or issuer, or begins or
11 terminates those activities which make him an agent, the agent, as well
12 as the broker-dealer or issuer, shall promptly notify the commissioner.

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

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

16 (2) He is registered as a broker-dealer under sections 409.101 to
17 409.419 without the imposition of a condition under section 409.204(b)(5),
18 or

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

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

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

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

- 32 (1) He is so registered under sections 409.101 to 409.419;
- 33 (2) He is registered as an investment adviser or as a broker-dealer
- 34 under sections 409.101 to 409.419 without the imposition of a condition
- 35 under section 409.204(b)(5);
- 36 (3) He is registered as an agent under sections 409.101 to 409.419
- 37 without the imposition of a condition under section 409.204(b)(5) only to
- 38 the extent that the investment advisory activities performed are performed
- 39 under the control and supervision of the broker-dealer with whom the
- 40 agent is registered; or
- 41 (4) He has no place of business in this state; and
- 42 (A) His only clients in this state are investment companies as
- 43 defined in the Investment Company Act of 1940, other investment
- 44 advisers, federal covered advisers, broker-dealers, banks, trust companies,
- 45 savings and loan associations, insurance companies, employee benefit
- 46 plans with assets of not less than one million dollars, and governmental
- 47 agencies or instrumentalities, whether acting for themselves or as trustees
- 48 with investment control, or other institutional investors as are designated
- 49 by rule or order of the commissioner; or
- 50 (B) During the preceding twelve-month period has had not more
- 51 than five clients, other than those specified in subparagraph (A) of this
- 52 section, who are residents of this state.
- 53 (e) It is unlawful for any:
- 54 (1) Person required to be registered as an investment adviser
- 55 pursuant to this act to employ an investment adviser representative
- 56 unless the investment adviser representative is registered under sections
- 57 409.101 to 409.419, provided that the registration of an investment adviser
- 58 representative is not effective during any period when he is not employed
- 59 by an investment adviser registered under sections 409.101 to 409.419; or
- 60 (2) Federal covered adviser to employ, supervise, or associate with
- 61 an investment adviser representative having a place of business located
- 62 in this state, unless such investment adviser representative is registered
- 63 pursuant to sections 409.101 to 409.419, or is exempt from
- 64 registration. When an investment adviser representative begins or
- 65 terminates employment with an investment adviser, the investment
- 66 adviser (in the case of 409.201(e)(1)) or the investment adviser
- 67 representative (in the case of 409.201(e)(2)) shall promptly notify the
- 68 commissioner.
- 69 (f) Every registration pursuant to this section or notice filing
- 70 pursuant to section 409.202(b) expires one year from its effective date

71 unless renewed.

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

76 (h) Notwithstanding the provisions of sections 409.202(b) and (c),
77 until October 10, 1999, the commissioner may require the registration of
78 a federal covered adviser who refuses to pay to the commissioner the fee
79 required by section 409.202(c). The refusal to remit the fee required by
80 section 409.202(c), within fifteen days following the adviser's receipt of
81 written notification from the commissioner regarding the nonpayment or
82 underpayment of such fees, shall be proper ground for the entry of an
83 order by the commissioner prohibiting such person from engaging in
84 business as an investment adviser or federal covered adviser in this state
85 until such registration is effective.]

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

- 8 (1) The applicant's form and place of organization;
- 9 (2) The applicant's proposed method of doing business;
- 10 (3) The qualifications and business history of the applicant; in the
11 case of a broker-dealer or investment adviser, the qualifications and
12 business history of any partner, officer or director, any person occupying
13 a similar status or performing similar functions, or any person directly or
14 indirectly controlling the broker-dealer or investment adviser;
- 15 (4) Any injunction or administrative order or conviction of a
16 misdemeanor involving a security or any aspect of the securities business
17 and any conviction of a felony;
- 18 (5) The applicant's financial condition and history; and
- 19 (6) Any information to be furnished or disseminated to any client
20 or prospective client, if the applicant is an investment adviser. The
21 commissioner may also require such additional information as he deems
22 necessary to establish the qualifications and the good business repute of
23 the applicant. If no denial order is in effect, and no proceeding is pending
24 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

23 amendment promptly if the document is filed with respect to a registrant,
24 or when such amendment is required to be filed with the Securities and
25 Exchange Commission if the document is filed with respect to a federal
26 covered adviser, unless notification of the correction has been given under
27 section 409.201(b).

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

[409.204. (a) The commissioner may by order deny, suspend, or
2 revoke any registration or bar or censure any registrant or any officer,
3 director, partner or person occupying a similar status or performing
4 similar functions for a registrant, from employment with a registered
5 broker-dealer or investment adviser, or restrict or limit a registrant as to
6 any function or activity of the business for which registration is required
7 in this state, if the commissioner finds (1) that the order is in the public
8 interest and (2) that the applicant or registrant or, in the case of a
9 broker-dealer or investment adviser, any partner, officer, or director, any
10 person occupying a similar status or performing similar functions, or any
11 person directly or indirectly controlling the broker-dealer or investment
12 adviser:

13 (A) Has filed an application for registration which as of its
14 effective date, or as of any date after filing in the case of an order denying
15 effectiveness, was incomplete in any material respect or contained any
16 statement which was, in light of the circumstances under which it was
17 made, false or misleading with respect to any material fact;

18 (B) Has willfully violated or willfully failed to comply with any
19 provision of sections 409.101 to 409.419 or a predecessor act or any rule
20 or order pursuant to sections 409.101 to 409.419 or a predecessor act;

21 (C) Has been convicted, within the past ten years, of any
22 misdemeanor involving a security or any aspect of the securities business,
23 or any felony;

24 (D) Is permanently or temporarily enjoined by any court of
25 competent jurisdiction from engaging in or continuing any conduct or
26 practice involving any aspect of the securities business;

27 (E) Is the subject of an order of the commissioner denying,
28 suspending, or revoking registration as a broker-dealer, agent, investment
29 adviser, or investment adviser representative;

30 (F) Is the subject of an adjudication or determination, after notice
31 and opportunity for hearing, within the past ten years by a securities or
32 commodities agency or administrator of another state or a court of
33 competent jurisdiction that the person has willfully violated the Securities
34 Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers
35 Act of 1940, the Investment Company Act of 1940 or the Commodity
36 Exchange Act, or the securities or commodities law of any other state;

37 (G) Has engaged in dishonest or unethical practices in the
38 securities business;

39 (H) Is insolvent, either in the sense that his or her liabilities
40 exceed his or her assets or in the sense that he or she cannot meet
41 obligations as they mature; but the commissioner may not enter an order
42 against a broker-dealer or investment adviser pursuant to this clause
43 without a finding of insolvency as to the broker-dealer or investment
44 adviser;

45 (I) Is not qualified on the basis of such factors as training,
46 experience, and knowledge of the securities business, except as otherwise
47 provided in subsection (b) of this section;

48 (J) Has failed reasonably to supervise his or her agents or
49 employees if he or she is a broker-dealer, or adviser representatives or
50 employees if an investment adviser; for the purposes of this clause no
51 person shall be deemed to have failed reasonably to supervise any person
52 if there have been established procedures, and a system for applying such
53 procedures, which would reasonably be expected to prevent and detect,
54 insofar as practicable, any such violations by such other person, and such
55 person has reasonably discharged the duties and obligations incumbent
56 upon him or her by reason of such procedures and system without
57 reasonable cause to believe that such procedures and system were not
58 being complied with;

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

62 (L) Has been denied the right to do business in the securities

63 industry, or the person's respective authority to do business in the
64 securities industry has been revoked by any other state, federal or foreign
65 governmental agency or self-regulatory organization for cause, or is the
66 subject of a final order in a criminal action for securities or fraud related
67 violations of the law of any state, federal, or foreign governmental unit, or
68 within the last ten years the person has been the subject of a final order
69 in a civil, injunctive or administrative action for securities or fraud related
70 violations of the law of any state, federal, or foreign governmental unit.

71 (b) The following provisions govern the application of section
72 409.204(a)(2)(I):

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

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

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

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

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

97 (6) The commissioner may by rule provide for an examination,
98 including an examination developed or approved by an organization of
99 securities administrators, which examination may be written or oral or
100 both, to be taken by any class of or all applicants, as well as persons who
101 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,

16 within thirty days before the date of filing the registration statement,
17 whichever is higher, or book value on a day, selected by the registrant,
18 within ninety days of the date of filing the registration statement to the
19 extent that there is neither a readily determinable market price nor a cash
20 offering price), or (ii) which, if the issuer and any predecessors have not
21 had any security of the type specified in clause (i) outstanding for three
22 full fiscal years, equal to at least five percent of the amount (as measured
23 in clause (i)) of all securities which will be outstanding if all the securities
24 being offered or proposed to be offered (whether or not they are proposed
25 to be registered or offered in this state) are issued.

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

30 (1) a statement demonstrating eligibility for registration by
31 notification;

32 (2) with respect to the issuer and any significant subsidiary; its
33 name, address, and form of organization; the state (or foreign jurisdiction)
34 and the date of its organization; and the general character and location of
35 its business;

36 (3) with respect to any person on whose behalf any part of the
37 offering is to be made in a nonissuer distribution: his name and address;
38 the amount of securities of the issuer held by him as of the date of the
39 filing of the registration statement; and a statement of his reasons for
40 making the offering;

41 (4) a description of the security being registered;

42 (5) the information and documents specified in clauses (8), (10) and
43 (12) of section 409.304(b).

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

2 [409.303. (a) Any security for which a registration statement has
3 been filed under the Securities Act of 1933 in connection with the same
4 offering may be registered by coordination.

5 (b) A registration statement under this section shall contain the
6 following information and be accompanied by the following documents in
addition to the information specified in section 409.305(c) and the consent

7 to service of process required by section 409.415(g):

8 (1) three copies of the latest form of prospectus filed under the
9 Securities Act of 1933;

10 (2) if the commissioner by rule or otherwise requires, a copy of the
11 articles of incorporation and bylaws (or their substantial equivalents)
12 currently in effect, a copy of any agreements with or among underwriters,
13 a copy of any indenture or other instrument governing the issuance of the
14 security to be registered, and a specimen or copy of the security;

15 (3) if the commissioner requests, any other information, or copies
16 of any other document; and

17 (4) an undertaking to forward all future amendments to the federal
18 prospectus, other than an amendment which merely delays the effective
19 date of the registration statement, promptly and in any event not later
20 than the first business day after the day they are forwarded to or filed
21 with the Securities and Exchange Commission, whichever first occurs.

22 (c) A registration statement under this section automatically
23 becomes effective at the moment the federal registration statement
24 becomes effective if all the following conditions are satisfied: (1) no stop
25 order is in effect and no proceeding is pending under section 409.306; (2)
26 the registration statement has been on file with the commissioner for at
27 least fifteen days; and (3) a statement of the maximum and minimum
28 proposed offering prices and the maximum underwriting discounts and
29 commissions has been on file for two full business days or such shorter
30 period as the commissioner permits by rule or otherwise and the offering
31 is made within those limitations. The registrant shall promptly notify the
32 commissioner by telephone or telegram of the date and time when the
33 federal registration statement became effective and the content of the
34 price amendment, if any, and shall promptly file a post-effective
35 amendment containing the information and documents in the price
36 amendment. "Price amendment" means the final federal amendment
37 which includes a statement of the offering price, underwriting and selling
38 discounts or commissions, amount of proceeds, conversion rates, call
39 prices, and other matters dependent upon the offering price. Upon failure
40 to receive the required notification and post-effective amendment with
41 respect to the price amendment, the commissioner may enter a stop order,
42 without notice or hearing, retroactively denying effectiveness to the
43 registration statement or suspending its effectiveness until compliance
44 with this subsection, if he promptly notifies the registrant by telephone or
45 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

12 in which it is or will be engaged;

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

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

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

31 (5) with respect to every promoter if the issuer was organized
32 within the past three years: the information specified in clause (2), any
33 amount paid to him within that period or intended to be paid to him, and
34 the consideration for any such payment;

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

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

50 (8) the kind and amount of securities to be offered; the proposed

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

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

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

85 (11) the dates of, parties to, and general effect concisely stated of,
86 every management or other material contract made or to be made
87 otherwise than in the ordinary course of business if it is to be performed
88 in whole or in part at or after the filing of the registration statement or
89 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

129 (1) the first written offer made to him (otherwise than by means of a
130 public advertisement) by or for the account of the issuer or any other
131 person on whose behalf the offering is being made, or by any underwriter
132 or broker-dealer who is offering part of an unsold allotment or
133 subscription taken by him as a participant in the distribution, (2) the
134 confirmation of any sale made by or for the account of any such person, (3)
135 payment pursuant to any such sale, or (4) delivery of the security
136 pursuant to any such sale, whichever first occurs.]

2 [409.305. (a) A registration statement may be filed by the issuer,
3 any other person on whose behalf the offering is to be made, or a
4 registered broker-dealer.

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

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

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

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

27 (e) The commissioner may by rule or otherwise permit the omission
28 of any item of information or document from any registration statement.

29 (f) The commissioner may by rule or order require, as a condition
30 of registration by qualification or coordination: (1) the deposit in escrow
31 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

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

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

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

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

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

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

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

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

40 (G) when a security is sought to be registered by notification, it is
41 not eligible for such registration;

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

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

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

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

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

2 [409.307. (a) The commissioner, by rule or order, may require the
3 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:

4 (1) Prior to the initial offer of such federal covered security in this
5 state, all documents that are part of a federal registration statement filed
6 with the Securities and Exchange Commission under the Securities Act of
7 1933, or a notice form adopted by the commissioner in lieu thereof,
8 together with a consent to service of process signed by the issuer and with
9 a filing fee of one hundred dollars;

10 (2) After the initial offer of such federal covered security in this
11 state, all documents that are part of an amendment to a federal
12 registration statement filed with the Securities and Exchange Commission
13 under the Securities Act of 1933, shall be filed concurrently with the
14 commissioner;

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

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

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

37 (c) The commissioner, by rule or order, may require the filing of
38 any document filed with the Securities and Exchange Commission under
39 the Securities Act of 1933, with respect to a covered security under section
40 18(b)(3) or (4) of the Securities Act of 1933.

41 (d) The commissioner may issue a stop order suspending the offer
42 and sale of a covered security, except a covered security under section

43 18(b)(1) of the Securities Act of 1933, if he finds that (1) the order is in the
44 public interest and (2) there is a failure to comply with any condition
45 established under this section.

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

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

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

4 (b) "Agent" means any individual other than a broker-dealer who
5 represents a broker-dealer or issuer in effecting or attempting to effect
6 purchases or sales of securities. "Agent" does not include an individual
7 who represents (1) an issuer in (a) effecting transactions in a security
8 exempted by clause (1), (2), (3), (4), (6), (9), (10) or (11) of section
9 409.402(a), (b) effecting transactions in a security exempted by clause (5)
10 of section 409.402(a), provided such individual prior to the transactions
11 files with the commissioner information on (A) his relationship to the
12 issuer and its affiliates, (B) his proposed methods of soliciting the
13 transactions including sales literature to be used, and (C) commissions
14 and other remuneration he is to receive for effecting the transactions, and
15 such additional information as the commissioner may require, (c) effecting
16 transactions exempted by section 409.402(b), (d) effecting transactions
17 with existing employees, partners or directors of the issuer if no
18 commission or other remuneration is paid or given directly or indirectly
19 for soliciting any person in this state, (e) effecting transactions in a
20 covered security as described in sections 18(b)(3) and 18(b)(4)(D) of the
21 Securities Act of 1933; (2) a broker-dealer in effecting transactions in this
22 state limited to those transactions described in section 15(h)(2) of the
23 Securities Exchange Act of 1934; or (3) effecting transactions with such
24 other persons as the commissioner may by rule or order designate. A
25 partner, officer, or director of a broker-dealer or issuer, or a person
26 occupying a similar status or performing similar functions, is an agent
27 only if he otherwise comes within this definition;

28 (c) "Broker-dealer" means any person engaged in the business of
29 effecting transactions in securities for the account of others or for his own
30 account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3)
31 a bank, savings institution, or trust company, or (4) a person who has no
32 place of business in this state if (A) he effects transactions in this state
33 exclusively with or through (i) the issuers of the securities involved in the
34 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

74 federal covered adviser; or (7) such other persons not within the intent of
75 this subsection as the commissioner may by rule or order designate;

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

90 (j) "Issuer" means any person who issues or proposes to issue any
91 security, except that (1) with respect to certificates of deposit, voting-trust
92 certificates, or collateral-trust certificates, or with respect to certificates
93 of interest or shares in an unincorporated investment trust not having a
94 board of directors or persons performing similar functions or of the fixed,
95 restricted management, or unit type, the term "issuer" means the person
96 or persons performing the acts and assuming the duties of depositor or
97 manager pursuant to the provisions of the trust or other agreement or
98 instrument under which the security is issued; and (2) with respect to
99 certificates of interest or participation in oil, gas, or mining titles or
100 leases, or in payments out of production under such titles or leases there
101 is not considered to be any "issuer";

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

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

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

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

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

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

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

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

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

141 (o) "Security" means any note; stock; treasury stock; bond;
142 debenture; evidence of indebtedness; certificate of interest or participation
143 in any profit-sharing agreement; collateral-trust certificate;
144 preorganization certificate or subscription; transferable share; investment
145 contract; limited partnership interest; voting-trust certificate; certificate
146 of deposit for a security; certificate of interest or participation in an oil,
147 gas, or mining title or lease or in payments out of production under such
148 a title or lease; or, in general, any interest or instrument commonly known
149 as a "security", or any certificate of interest or participation in, temporary
150 or interim certificate for, receipt for, guarantee of, or warrant or right to
151 subscribe to or purchase, any of the foregoing. "Security" does not include

152 any insurance or endowment policy or annuity contract under which an
153 insurance company promises to pay money either in a lump sum or
154 periodically for life or for some other specified period;

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

157 (q) "Cooperative association" means any association in which
158 farmers act together in processing, preparing for market, handling, and/or
159 marketing the farm products of persons so engaged, and also means any
160 association in which farmers act together in purchasing, testing, grading,
161 processing, distributing and/or furnishing farm supplies and/or farm
162 business services; provided, however, that such associations are operated
163 for the mutual benefit of the members thereof as such producers or
164 purchasers and conform to one or both of the following requirements: (1)
165 no member of the association is allowed more than one vote because of the
166 amount of stock or membership capital he may own therein, and (2) the
167 association does not pay dividends on stock or membership capital in
168 excess of eight percent per year, and in any case to the following:

169 (3) the association does at least twenty-five percent of its business
170 with its members; further, all business transacted by any cooperative
171 association for or on behalf of the United States or any agency or
172 instrumentality thereof shall be disregarded in determining the volume of
173 member and nonmember business transacted by such association.]

2 [409.402. (a) The following securities are exempted from sections
409.301 and 409.403:

3 (1) Any security (including a revenue obligation) issued or
4 guaranteed by the United States, any state, any political subdivision of a
5 state, or any agency or corporate or other instrumentality of one or more
6 of the foregoing; or any certificate of deposit for any of the foregoing;

7 (2) Any security issued or guaranteed by Canada, any Canadian
8 province, any political subdivision of any such province, any agency or
9 corporate or other instrumentality of one or more of the foregoing, or any
10 other foreign government with which the United States currently
11 maintains diplomatic relations, if the security is recognized as a valid
12 obligation by the issuer or guarantor;

13 (3) Any security issued by and representing an interest in or a debt
14 of, or guaranteed by, any bank organized pursuant to the laws of the
15 United States, or any bank, savings institution, or trust company
16 organized and supervised pursuant to the laws of any state;

17 (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

57 pursuant to subsection (b) of this section;

58 (10) Any commercial paper which arises out of a current
59 transaction or the proceeds of which have been or are to be used for
60 current transactions, and which evidences an obligation to pay cash within
61 nine months of the date of issuance, exclusive of days of grace, or any
62 renewal of such paper which is likewise limited, or any guarantee of such
63 paper or of any such renewal;

64 (11) Any security offered, sold, issued, distributed or transferred
65 in connection with an employees' stock ownership, savings, pension,
66 profit-sharing, stock bonus, or similar benefit plan or trust (including a
67 self-employed persons retirement plan), provided, in the case of plans or
68 trusts which are not qualified pursuant to section 401 of the Internal
69 Revenue Code of 1954 and which provide for contributions by employees,
70 if the commissioner is notified in writing thirty days before the inception
71 of the plan or, with respect to plans which are in effect on January 1,
72 1968, within sixty days thereafter (or within thirty days before they are
73 reopened if they are closed on January 1, 1968). The commissioner may
74 for good cause shown accept written notification at any time before the
75 issuance of any such security in this state or any security offered, sold,
76 issued, distributed or transferred in connection with an employees' stock
77 purchase or stock option plan. In the case of issuers who do not have a
78 class of securities registered pursuant to section 12 of the Securities
79 Exchange Act of 1934 the commissioner may for good cause shown accept
80 notification in writing before the first issuance of interests or
81 participations under a stock purchase plan or before the first exercise of
82 options under a stock option plan.

83 (b) The following transactions are exempted from sections 409.301
84 and 409.403 except that no transaction in a certificate of interest or
85 participation, including a limited partnership interest, in an oil, gas or
86 mining title or lease, or in payments out of production or under such a
87 title or lease shall be so exempted:

88 (1) Any isolated nonissuer transaction, whether effected through
89 a broker-dealer or not;

90 (2) Any nonissuer distribution of an outstanding security if (A) a
91 recognized securities manual contains the names of the issuer's officers
92 and directors, a balance sheet of the issuer as of a date within eighteen
93 months, and a profit and loss statement for either the fiscal year
94 preceding that date or the most recent year of operations, or (B) the
95 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

174 corporation received by a patron or member in the form of capital stock,
175 revolving fund certificate, retain certificate, certificate of indebtedness,
176 letter of advice, or other written notice.

177 (c) The commissioner may by rule or order exempt from sections
178 409.301 and 409.403 any other transaction not exempted in subsection (b),
179 and may by order withdraw or condition the exemption as the
180 commissioner deems necessary in the public interest.

181 (d) The commissioner may by order deny or revoke any exemption
182 specified in clause (9) or (11) of subsection (a) or in subsection (b) with
183 respect to a specific security or transaction. No such order may be entered
184 without appropriate prior notice to all interested parties, opportunity for
185 hearing, and written findings of fact and conclusions of law, except that
186 the commissioner may by order summarily deny or revoke any of the
187 specified exemptions pending final determination of any proceeding
188 pursuant to this subsection. Upon the entry of a summary order, the
189 commissioner shall promptly notify all interested parties that it has been
190 entered and of the reasons therefor and that within fifteen days of the
191 receipt of a written request the matter will be set down for hearing. If no
192 hearing is requested and none is ordered by the commissioner the order
193 will remain in effect until it is modified or vacated by the commissioner. If
194 a hearing is requested or ordered, the commissioner, after notice of and
195 opportunity for hearing to all interested persons, may modify or vacate the
196 order or extend it until final determination. No order pursuant to this
197 subsection may operate retroactively. No person may be considered to
198 have violated section 409.301 or 409.403 by reason of any offer or sale
199 effected after the entry of an order pursuant to this subsection if he or she
200 sustains the burden of proof that he or she did not know, and in the
201 exercise of reasonable care could not have known, of the order.

202 (e) The commissioner may by order after a hearing deny or revoke
203 any exemption for a security issued by an agricultural cooperative
204 corporation not qualifying pursuant to clause (5) of subsection (a).

205 (f) In any proceeding pursuant to this act, the burden of proving
206 an exemption, qualification as a federal covered security, or an exception
207 from a definition is upon the person claiming it.

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

2 [409.403. The commissioner may by rule or order require the filing
3 of any prospectus, pamphlet, circular, form letter, advertisement, or other
sales literature or advertising communication addressed or intended for

4 distribution to prospective investors, including clients or prospective
5 clients of an investment adviser, unless the security or transaction is
6 exempted by section 409.402 or the security is a federal covered security
7 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
2 made, in any document filed with the commissioner or in any proceeding
3 under this act, any statement which is, at the time and in the light of the
4 circumstances under which it is made, false or misleading in any material
5 respect.]

[409.405. (a) Neither (1) the fact that an application for
2 registration or a registration statement has been filed under this chapter
3 nor (2) the fact that a person or security is effectively registered
4 constitutes a finding by the commissioner that any document filed under
5 this act is true, complete, and not misleading. Neither any such fact nor
6 the fact that an exemption or exception is available for a security or a
7 transaction means that the commissioner has passed in any way upon the
8 merits or qualifications of, or recommended or given approval to, any
9 person, security, or transaction.

10 (b) It is unlawful to make, or cause to be made, to any prospective
11 purchaser, customer, or client any representation inconsistent with
12 subsection (a).]

[409.406. (a) Sections 409.101 to 409.419 shall be administered by
2 the commissioner of securities who shall act under the direction of the
3 secretary of state, shall be appointed and shall receive compensation as
4 provided by law.

5 (b) It is unlawful for the secretary of state, the commissioner or
6 any other officers or employees of the secretary of state or of the
7 commissioner to use for personal benefit any information which is filed
8 with or obtained by the commissioner and which is not made public. No
9 provision of sections 409.101 to 409.419 authorizes the secretary of state,
10 the commissioner or any other officers or employees of the secretary of
11 state or of the commissioner to disclose any such information except
12 among themselves or when necessary or appropriate in a proceeding or
13 investigation under sections 409.101 to 409.419. No provision of sections
14 409.101 to 409.419 either creates or derogates from any privilege which
15 exists at common law or otherwise when documentary or other evidence
16 is sought under a subpoena directed to the secretary of state, the
17 commissioner or any other officers or employees of the secretary of state
18 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

40 or produce evidence (documentary or otherwise) except that the individual
41 testifying is not exempt from prosecution and punishment for perjury or
42 contempt committed in testifying.

43 (f) As settlement of an investigation the commissioner may receive
44 a fine from any party, receive a payment to the secretary of state's
45 investor education fund, create a restitution fund for Missouri investors,
46 or receive a voluntary payment for the cost of the
47 investigation. Notwithstanding the provisions of section 33.080, RSMo,
48 any moneys remaining in the secretary of state's investor education fund
49 at the end of any biennium shall not be transferred to the general revenue
50 fund.

51 (g) The commissioner may issue and apply to enforce subpoenas
52 and subpoenas duces tecum in this state at the request of a securities
53 agency or the administrator of another state if the activities constituting
54 the alleged violation for which the information is sought would be a
55 violation of sections 409.101 to 409.418 if the activities had occurred in
56 this state.

57 (h) The commissioner may appoint such special investigators to aid
58 in investigation of persons under sections 409.101 to 409.419. Such
59 investigators shall have all authority of a law enforcement officer meeting
60 the requirements of chapter 590, RSMo, except the authority to carry
61 weapons.]

[409.408. (a) The commissioner may require any person, who is
2 selling or offering for sale or who is about to sell or offer for sale or who
3 has sold or offered for sale any security within this state, to file a
4 statement of the claim of exemption or exception from a definition, if any,
5 upon which such person is relying, and if at any time, in the opinion of the
6 commissioner, the information contained in such statement filed is
7 misleading, incorrect, inadequate or fails to establish the right of
8 exemption or exception from a definition, he may require such person to
9 file such further information as may in his opinion be necessary to
10 establish the claimed exemption or exception from a definition. The
11 refusal to furnish information as required by order of the commissioner
12 pursuant to the provisions of this subsection, within a reasonable time to
13 be fixed by the commissioner, shall be proper ground for the entry of an
14 order by the commissioner suspending the right to sell such security
15 and/or suspending or canceling the registration of the broker-dealer, agent
16 or investment adviser.

17 (b) Whenever it shall appear to the commissioner, either upon

18 complaint or otherwise, that any person in connection with the purchase
19 or sale of any security, including any security exempted under any of the
20 provisions of section 409.402, or in connection with investment advisory
21 activities, is acting or about to act fraudulently therein, or is employing
22 or about to employ any device, scheme, or artifice to defraud or for
23 obtaining money or property by means of any false pretense,
24 representation, or attempting to make in the state of Missouri fictitious
25 or pretended purchases or sales of any such security or to engage in
26 unlawful investment advisory activities, or is engaged in or about to
27 engage in any practice or transaction or course of business relating to the
28 purchase or sale of any such security or the business of an investment
29 adviser which is fraudulent or in violation of law and if the commissioner
30 deems it in the public interest to do so, he may require such person to file
31 a statement in writing, under oath or otherwise, as to all the facts and
32 circumstances concerning the subject matter, which he believes it to be in
33 the interest of the public to investigate and may make or have made such
34 further investigation as he may deem necessary, and if the commissioner
35 shall believe, from evidence satisfactory to him, that such person is
36 engaged or about to engage in any of the fraudulent or illegal practices or
37 transactions above in this subsection referred to, he may issue and cause
38 to be served upon such person and any other person or persons concerned
39 or in any way participating in or about to participate in such fraudulent
40 or illegal practices or transactions, an order prohibiting such person and
41 such other person or persons from continuing such fraudulent or illegal
42 practices or transactions or engaging therein or doing any act or acts in
43 furtherance thereof and the commissioner shall have full power in each
44 case to make such order or orders under this section as he may deem just
45 and he may either prohibit the further sale by such person or persons of
46 any securities connected with or related to said fraudulent or illegal
47 practices or transaction, or he may fix the terms and conditions on which
48 the sale of such securities may be made, or he may prohibit such person
49 or persons from acting as an investment adviser, or he may fix the terms
50 and conditions under which such person or persons may act as investment
51 adviser, and it is hereby made unlawful for any person having been served
52 with any such order, or having knowledge of the issuance of said order,
53 and while said order remains in effect, either as originally issued or as
54 modified, to violate any of the provisions thereof.]

[409.409. Whenever it appears to the commissioner that any
2 person has engaged or is about to engage in any act or practice

3 constituting a violation of any provision of this act or any rule or order
4 hereunder, he may in his discretion bring an action in the circuit court of
5 any county of the state or the city of St. Louis to enjoin the acts or
6 practices and to enforce compliance with this act or any rule or order
7 hereunder. Upon a proper showing a permanent or temporary injunction,
8 restraining order, or writ of mandamus shall be granted and a receiver or
9 conservator may be appointed for the defendant or the defendant's
10 assets. The court may not require the commissioner to post a bond.]

[409.410. (a) Any person who willfully violates any provision of
2 this act, except section 409.404, or any person who has been personally
3 served with any cease and desist order under this act who thereafter
4 willfully violates the same, or any person who willfully violates section
5 409.404, knowing the statement made to be false or misleading in any
6 material respect, shall upon conviction be fined not more than five
7 hundred thousand dollars or imprisoned not more than ten years, or both.

8 (b) The commissioner may refer such evidence as is available
9 concerning violations of this act or of any rule or order hereunder to the
10 attorney general or the proper prosecuting attorney or circuit attorney,
11 who may, with or without such a reference, institute the appropriate
12 criminal proceedings under this act.

13 (c) Nothing in this act limits the power of the state to punish any
14 person for any conduct which constitutes a crime by statute or at common
15 law.]

[409.411. (a) Any person who:

2 (1) Offers or sells a security in violation of section 409.201(a),
3 409.301, or 409.405(b), or of any rule or order under section 409.403 which
4 requires the affirmative approval of sales literature before it is used, or of
5 any condition imposed under section 409.304(d), 409.305(f), or 409.305(g);
6 or

7 (2) Offers or sells a security by means of any untrue statement of
8 a material fact or any omission to state a material fact necessary in order
9 to make the statements made, in the light of the circumstances under
10 which they are made, not misleading (the buyer not knowing of the
11 untruth or omission), and who does not sustain the burden of proof that
12 he did not know, and in the exercise of reasonable care could not have
13 known, of the untruth or omission, is liable to the person buying the
14 security from him, who may sue either at law or in equity to recover the
15 amount specified under subsection (j) of this section.

16 (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

56 the security, and he failed to accept the offer within thirty days of its
57 receipt, or (2) if the buyer received such an offer before suit and at a time
58 when he did not own the security, unless he rejected the offer in writing
59 within thirty days of its receipt.

60 (h) No person who has made or engaged in the performance of any
61 contract in violation of any provision of sections 409.101 to 409.419 or any
62 rule or order hereunder, or who has acquired any purported right under
63 any such contract with knowledge of the facts by reason of which its
64 making or performance was in violation, may base any suit on the
65 contract.

66 (i) Any condition, stipulation, or provision binding any person
67 acquiring any security or receiving any investment advice to waive
68 compliance with any provision of sections 409.101 to 409.419 or any rule
69 or order hereunder is void.

70 (j) The amounts recoverable by a person damaged as a result of a
71 violation of subsection (a) or (b) of this section shall be the consideration
72 paid for the purchase of the security together with interest at eight
73 percent per year from the date of payment, cost, and reasonable attorney's
74 fees, less the amount of any income received on the security, upon the
75 tender of the security, or for damages if he no longer owns the
76 security. "Damages" is the amount that would be recoverable upon the
77 tender less the value of the security when the buyer disposed of it and
78 interest at eight percent per year from the date of disposal. An action
79 pursuant to a violation of subsection (b) of this section may not be
80 maintained except by those persons who directly receive advice from the
81 person charged with the violation. Any recovery under subsection (b) of
82 this section must be offset by any recovery received from any source under
83 subsection (a) of this section.

84 (k) The rights and remedies provided by sections 409.101 to
85 409.419 are in addition to any other rights or remedies that may exist at
86 law or in equity, but sections 409.101 to 409.419 do not create any cause
87 of action not specified in this section or section 409.202(e).]

2 [409.412. (a) Except as otherwise provided in section 409.204, any
3 interested person aggrieved by any order of the commissioner under any
4 provision of this chapter, or by any refusal or failure of the commissioner
5 to make an order under any of said provisions, shall be entitled to a
6 hearing before the commissioner in accordance with the provisions of
chapter 536, RSMo.

7 (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

24 shall be prepared in accordance with generally accepted accounting
25 practices.

26 (d) All rules and forms of the commissioner shall be published.

27 (e) No provision of this act imposing any liability applies to any act
28 done or omitted in good faith in conformity with any rule, form, or order
29 of the commissioner, notwithstanding that the rule, form, or order may
30 later be amended or rescinded or be determined by judicial or other
31 authority to be invalid for any reason.]

2 [409.414. (a) A document is filed when it is received by the
3 commissioner and all original documents so filed shall be kept by the
4 commissioner as a part of the permanent records of his office.

5 (b) The commissioner shall keep a register of all applications for
6 registration and registration statements which are or have ever been
7 effective under this act and all denial, suspension, or revocation orders
8 which have ever been entered under this act. The register shall be open
9 for public inspection.

10 (c) The information contained in or filed with any registration
11 statement, application or report may be made available to the public
12 under such rules as the commissioner prescribes; provided, however, that
13 the commissioner shall have power to place in a separate file not open to
14 the public except on his special order, any information which he deems in
15 justice to the person filing the same should not be made public.

16 (d) Upon request and at such reasonable charges as he prescribes,
17 the commissioner shall furnish to any person photostatic or other copies
18 (certified under his seal of office if requested) of any entry in the register
19 or any document which is a matter of public record. In any proceeding or
20 prosecution under this act, any copy so certified is prima facie evidence of
21 the contents of the entry or document certified.

22 (e) The commissioner in his discretion may honor requests from
23 interested persons for interpretative opinions, and may make a charge
24 therefor not to exceed the sum of one hundred dollars; provided, however,
25 that the commissioner shall, when requested by any member of the
26 general assembly, render such interpretative opinion without charge and
27 within a reasonable time.

28 (f) An exemplification of the record under the hand and the seal of
29 the commissioner shall be good and sufficient evidence of any record made
30 or entered by said commissioner. A certificate under the hand and seal of
31 the commissioner showing that the securities in question have not been
recorded in the register of qualified securities, shall constitute prima facie

32 evidence that such securities have not been qualified for sale pursuant to
33 the provisions of this chapter, and shall be admissible in evidence in any
34 proceeding to enforce the provisions of this chapter.]

2 [409.415. (a) Sections 409.101, 409.201(a), 409.301, 409.307,
3 409.405, and 409.411 apply to persons who sell or offer to sell when (1) an
4 offer to sell is made in this state, or (2) an offer to buy is made and
5 accepted in this state.

6 (b) Sections 409.101, 409.201(a), and 409.405 apply to persons who
7 buy or offer to buy when (1) an offer to buy is made in this state, or (2) an
8 offer to sell is made and accepted in this state.

9 (c) For the purpose of this section, an offer to sell or to buy is made
10 in this state, whether or not either party is then present in this state,
11 when the offer (1) originates from this state or (2) is directed by the offeror
12 to this state and received at the place to which it is directed (or at any
13 post office in this state in the case of a mailed offer); provided, however,
14 if an offer is directed to an offeree in a state other than this state and that
15 offer would be lawful if made in such other state, then for the purposes of
16 this section such offer is not made in this state.

17 (d) For the purpose of this section, an offer to buy or to sell is
18 accepted in this state when acceptance (1) is communicated to the offeror
19 in this state and (2) has not previously been communicated to the offeror,
20 orally or in writing, outside this state; and acceptance is communicated to
21 the offeror in this state, whether or not either party is then present in this
22 state, when the offeree directs it to the offeror in this state reasonably
23 believing the offeror to be in this state and it is received at the place to
24 which it is directed (or at any post office in this state in the case of a
25 mailed acceptance).

26 (e) An offer to sell or to buy is not made in this state when (1) the
27 publisher circulates or there is circulated on his behalf in this state any
28 bona fide newspaper or other publication of general, regular, and paid
29 circulation which is not published in this state, or which is published in
30 this state but has had more than two-thirds of its circulation outside this
31 state during the past twelve months, or (2) a radio or television program
32 originating outside this state is received in this state.

33 (f) Sections 409.102 and 409.201(c), as well as section 409.405 so
34 far as investment advisers are concerned, apply when any act
35 instrumental in effecting prohibited conduct is done in this state, whether
36 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

76 may be necessary to afford the defendant or respondent reasonable
77 opportunity to defend.]

2 [409.416. Sections 409.101 to 409.418 may be cited as the
"Missouri Uniform Securities Act".]

2 [409.418. (a) Prior law exclusively governs all suits, actions,
2 prosecutions, or proceedings which are pending or may be initiated on the
3 basis of facts or circumstances occurring before January 1, 1968, except
4 that no civil suit or action may be maintained to enforce any liability
5 under prior law unless brought within any period of limitation which
6 applied when the cause of action accrued and in any event within two
7 years after January 1, 1968.

8 (b) All effective registrations under prior law, all administrative
9 orders relating to such registrations, and all conditions imposed upon such
10 registrations remain in effect so long as they would have remained in
11 effect if this act had not been passed. They are considered to have been
12 filed, entered, or imposed under this act, but are governed by prior law.

13 (c) Prior law applies in respect of any offer or sale made within one
14 year after January 1, 1968, pursuant to an offering begun in good faith
15 before January 1, 1968, on the basis of an exemption available under prior
16 law.

17 (d) Judicial review of all administrative orders as to which review
18 proceedings have not been instituted by January 1, 1968, are governed by
19 section 409.412, except that no review proceeding may be instituted unless
20 the petition is filed within any period of limitation which applied to a
21 review proceeding when the order was entered and in any event within
22 sixty days after January 1, 1968.]

2 [409.420. (a) To encourage uniform interpretation and
2 administration of sections 409.101 to 409.419 and effective securities
3 regulation and enforcement, the commissioner may cooperate with the
4 securities agencies or administrators of one or more states, Canadian
5 provinces or territories, or another country, the Securities and Exchange
6 Commission, the Commodity Futures Trading Commission, the Securities
7 Investor Protection Corporation, any self-regulatory organization, any
8 national or international organization of securities officials or agencies,
9 and any governmental law enforcement or regulatory agency.

10 (b) The cooperation authorized by subsection (a) of this section
11 includes, but is not limited to, the following actions:

12 (1) Establishing a central depository for registration under sections
13 409.101 to 409.419 and for documents or records required or allowed to be

- 14 maintained under sections 409.101 to 409.419;
- 15 (2) Making a joint registration examination or investigation;
- 16 (3) Holding a joint administrative hearing;
- 17 (4) Filing and prosecuting a joint civil or administrative
- 18 proceeding;
- 19 (5) Sharing and exchanging personnel;
- 20 (6) Sharing and exchanging information and documents subject to
- 21 the restrictions of 15 CSR 30-50.020(10); and
- 22 (7) Formulating, in accordance with chapter 536, RSMo, rules or
- 23 proposed rules on matters such as statements of policy, guidelines, and
- 24 interpretative opinions and releases.]

2 [409.421. 1. No rule or portion of a rule promulgated under the

3 authority of sections 409.101 to 409.420 shall become effective until it has

4 been approved by the joint committee on administrative rules in

5 accordance with the procedures provided in this section, and the

6 delegation of the legislative authority to enact law by the adoption of such

7 rules is dependent upon the power of the joint committee on

8 administrative rules to review and suspend rules pending ratification by

9 the senate and the house of representatives as provided in this section.

10 2. Upon filing any proposed rule with the secretary of state, the

11 commissioner shall concurrently submit such proposed rule to the

12 committee, which may hold hearings upon any proposed rule or portion

13 thereof at any time.

14 3. A final order of rulemaking shall not be filed with the secretary

15 of state until thirty days after such final order of rulemaking has been

16 received by the committee. The committee may hold one or more hearings

17 upon such final order of rulemaking during the thirty-day period. If the

18 committee does not disapprove such order of rulemaking within the thirty-

19 day period, the commissioner may file such order of rulemaking with the

20 secretary of state and the order of rulemaking shall be deemed approved.

21 4. The committee may, by majority vote of the members, suspend

22 the order of rulemaking or portion thereof by action taken prior to the

23 filing of the final order of rulemaking only for one or more of the following

24 grounds:

- 25 (1) An absence of statutory authority for the proposed rule;
- 26 (2) An emergency relating to public health, safety or welfare;
- 27 (3) The proposed rule is in conflict with state law;
- 28 (4) A substantial change in circumstance since enactment of the
- law upon which the proposed rule is based.

29 5. If the committee disapproves any rule or portion thereof, the
30 commissioner shall not file such disapproved portion of any rule with the
31 secretary of state and the secretary of state shall not publish in the
32 Missouri Register any final order of rulemaking containing the
33 disapproved portion.

34 6. If the committee disapproves any rule or portion thereof, the
35 committee shall report its findings to the senate and the house of
36 representatives. No rule or portion thereof disapproved by the committee
37 shall take effect so long as the senate and the house of representatives
38 ratify the act of the joint committee by resolution adopted in each house
39 within thirty legislative days after such rule or portion thereof has been
40 disapproved by the joint committee.

41 7. Upon adoption of a rule as provided in this section, any such
42 rule or portion thereof may be suspended or revoked by the general
43 assembly either by bill or, pursuant to section 8, article IV of the
44 Constitution of Missouri, by concurrent resolution upon recommendation
45 of the joint committee on administrative rules. The committee shall be
46 authorized to hold hearings and make recommendations pursuant to the
47 provisions of section 536.037, RSMo. The secretary of state shall publish
48 in the Missouri Register, as soon as practicable, notice of the suspension
49 or revocation.]

T