

SECOND REGULAR SESSION

HOUSE BILL NO. 1896

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BRINGER.

4837L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 409.1-102, 409.2-202, 409.3-304, 409.4-401, 409.4-404, 409.4-408, 409.4-412, 409.5-501, 409.6-604, and 409.6-607, RSMo, and to enact in lieu thereof ten new sections relating to the Missouri securities act.

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

Section A. Sections 409.1-102, 409.2-202, 409.3-304, 409.4-401, 409.4-404, 409.4-408, 409.4-412, 409.5-501, 409.6-604, and 409.6-607, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 409.1-102, 409.2-202, 409.3-304, 409.4-401, 409.4-404, 409.4-408, 409.4-412, 409.5-501, 409.6-604, and 409.6-607, to read as follows:

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

- (1) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act.
- (2) "Commissioner" means the commissioner of securities appointed by the secretary of state.
- (3) "Bank" means:
- (A) A banking institution organized under the laws of the United States;
- (B) A member bank of the Federal Reserve System;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

25 (A) An agent;

26 (B) An issuer;

27 (C) A bank, a trust company organized or chartered under the laws of this state, or a
28 savings institution, if its activities as a broker-dealer are limited to those specified in subsections
29 3(a)(4)(B)(i) to (vi), (viii) to (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and
30 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a
31 bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange
32 Act of 1934 (15 U.S.C. Section 78c(a)(4));

33 (D) An international banking institution; or

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

35 (5) "Depository institution" means:

36 (A) A bank; or

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

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

45 (ii) A Morris Plan bank; or

46 (iii) An industrial loan company **that is not an insured depository institution as**
47 **defined in Section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) or**
48 **any successor federal statute.**

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

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

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

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

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

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

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

62 (B) An insurance company;

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

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

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

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

72 (G) A plan established and maintained by a state, a political subdivision of a state, or an
73 agency or instrumentality of a state or a political subdivision of a state for the benefit of its
74 employees, if the plan has total assets in excess of ten million dollars or its investment decisions
75 are made by a duly designated public official or by a named fiduciary, as defined in the
76 Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the
77 Securities Exchange Act of 1934, an investment adviser registered or exempt from registration
78 under the Investment Advisers Act of 1940, an investment adviser registered under this act, a
79 depository institution, or an insurance company;

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

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

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

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

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

95 (M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule
96 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

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

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

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

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

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

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

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

118 (A) An investment adviser representative;

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

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

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

126 (E) A federal covered investment adviser;

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

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

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

132 (16) "Investment adviser representative" means an individual employed by or associated
133 with an investment adviser or federal covered investment adviser and who makes any
134 recommendations or otherwise gives investment advice regarding securities, manages accounts
135 or portfolios of clients, determines which recommendation or advice regarding securities should
136 be given, provides investment advice or holds herself or himself out as providing investment
137 advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling
138 investment advice, or supervises employees who perform any of the foregoing. The term does
139 not include an individual who:

140 (A) Performs only clerical or ministerial acts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

201 (A) A security given or delivered with, or as a bonus on account of, a purchase of
202 securities or any other thing constituting part of the subject of the purchase and having been
203 offered and sold for value;

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

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

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

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

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

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

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

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

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

236 (29) "Self-regulatory organization" means a national securities exchange registered under
237 the Securities Exchange Act of 1934, a national securities association of broker-dealers
238 registered under the Securities Exchange Act of 1934, a clearing agency registered under the
239 Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established
240 under the Securities Exchange Act of 1934.

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

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

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

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

2 409.2-202. The following transactions are exempt from the requirements of sections
2 409.3-301 to 409.3-306 and 409.5-504:

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

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

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

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

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

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

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

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

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

28 (iv) An audited income statement for each of the issuer's two immediately previous fiscal
29 years or for the period of existence of the issuer, whichever is shorter, or, in the case of a
30 reorganization or merger when each party to the reorganization or merger had audited income
31 statements, a pro forma income statement; [or] **and**

32 (E) **Any one of the following requirements is met:**

33 (i) The issuer of the security has a class of equity securities listed on a national securities
34 exchange registered under **Section 6 of** the Securities Exchange Act of 1934 or designated for
35 trading on the National Association of Securities Dealers Automated Quotation [System, unless]
36 **systems;**

37 (ii) The issuer of the security is a unit investment trust registered under the Investment
38 Company Act of 1940; [or]

39 (iii) The issuer of the security, including its predecessors, has been engaged in
40 continuous business for at least three years; or

41 (iv) The issuer of the security has total assets of at least two million dollars based on an
42 audited balance sheet as of a date within eighteen months before the date of the transaction or,
43 in the case of a reorganization or merger when the parties to the reorganization or merger each
44 had [the] **such an** audited balance sheet, a pro forma balance sheet for the combined
45 organization;

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

49 (4) A nonissuer transaction by or through a broker-dealer registered or exempt from
50 registration under this act in an outstanding security if the guarantor of the security files reports

51 with the Securities and Exchange Commission under the reporting requirements of Section 13
52 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (13) A sale or offer to sell to:
90 (A) An institutional investor;
91 (B) A federal covered investment adviser; or
92 (C) Any other person exempted by rule adopted or order issued under this act;

93 (14) A sale or an offer to sell securities of an issuer, if **the transaction** is part of a single
94 issue in which:
95 (A) Not more than twenty-five purchasers are present in this state during any twelve
96 consecutive months, other than those designated in paragraph (13);
97 (B) A general solicitation or general advertising is not made in connection with the offer
98 to sell or sale of the securities;
99 (C) A commission or other remuneration is not paid or given, directly or indirectly, to
100 a person other than a broker-dealer registered under this act or an agent registered under this act
101 for soliciting a prospective purchaser in this state; and
102 (D) The issuer reasonably believes that all the purchasers in this state, other than those
103 designated in paragraph (13), are purchasing for investment;

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

108 (16) An offer to sell, but not a sale, of a security not exempt from registration under the
109 Securities Act of 1933 if:
110 (A) A registration or offering statement or similar record as required under the Securities
111 Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165
112 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and
113 (B) A stop order of which the offeror is aware has not been issued against the offeror by
114 the commissioner or the Securities and Exchange Commission, and an audit, inspection, or
115 proceeding that is public and that may culminate in a stop order is not known by the offeror to
116 be pending;

117 (17) An offer to sell, but not a sale, of a security exempt from registration under the
118 Securities Act of 1933 if:
119 (A) A registration statement has been filed under this act, but is not effective;
120 (B) A solicitation of interest is provided in a record to offerees in compliance with a rule
121 adopted by the commissioner under this act; and

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

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

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

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

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

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

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

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

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

150 (E) Current employees;

151 (22) A transaction involving:

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

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

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

163 (23) A nonissuer transaction in an outstanding security by or through a broker-dealer
164 registered or exempt from registration under this act, if the issuer is a reporting issuer in a foreign
165 jurisdiction designated by this paragraph or by rule adopted or order issued under this act; has
166 been subject to continuous reporting requirements in the foreign jurisdiction for not less than one
167 hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's
168 securities exchange that has been designated by this paragraph or by rule adopted or order issued
169 under this act, or is a security of the same issuer that is of senior or substantially equal rank to
170 the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For
171 purposes of this paragraph, Canada, together with its provinces and territories, is a designated
172 foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange.
173 After an administrative hearing in compliance with chapter 536, RSMo, the commissioner, by
174 rule adopted or order issued under this act, may revoke the designation of a securities exchange
175 under this paragraph, if the commissioner finds that revocation is necessary or appropriate in the
176 public interest and for the protection of investors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

96 (18) Any additional information or records required by rule adopted or order issued
97 under this act.

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

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

102 (2) The commissioner has not issued an order under section 409.3-306 delaying
103 effectiveness; and

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

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

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

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

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

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

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

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

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

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

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

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

11 (C) An institutional investor;

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

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

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

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

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

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

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

37 (2) A person that deals solely in United States government securities and is supervised
38 as a dealer in government securities by the Board of Governors of the Federal Reserve System,

39 the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of
40 Thrift Supervision.

41 (c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to
42 purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or
43 associate with an individual to engage in an activity related to securities transactions in this state
44 if the registration of the individual is suspended or revoked or the individual is barred from
45 employment or association with a broker-dealer, an issuer, an investment adviser, or a federal
46 covered investment adviser by an order of the commissioner under this act, the Securities and
47 Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not
48 violate this subsection if the broker-dealer or issuer did not know and in the exercise of
49 reasonable care could not have known, of the suspension, revocation, or bar. Upon request from
50 a broker-dealer or issuer and for good cause, an order under this act may modify or waive, in
51 whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

409.4-408. (a) If an agent registered under this act terminates employment by or
2 association with a broker-dealer or issuer, or if an investment adviser representative registered
3 under this act terminates employment by or association with an investment adviser or federal
4 covered investment adviser, or if either registrant terminates activities that require registration
5 as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser,
6 or federal covered investment adviser shall promptly file a notice of termination. If the registrant
7 learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser
8 has not filed the notice, the registrant may do so.

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

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

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

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

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

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

409.4-412. (a) If the commissioner finds that the order is in the public interest and
2 subsection (d) authorizes the action, an order issued under this act may deny an application, or

3 may condition or limit registration[: (1)] of an applicant to be a broker-dealer, agent, investment
4 adviser, or investment adviser representative, and [(2)] , if the applicant is a broker-dealer or
5 investment adviser, of [any] a partner, officer, director, person having a similar status or
6 performing similar functions, or person directly or indirectly [controlling] **in control, of** the
7 broker-dealer or investment adviser.

8 (b) If the commissioner finds that the order is in the public interest and subsection (d)
9 authorizes the action an order issued under this act may revoke, suspend, condition, or limit the
10 registration of a registrant and, if the registrant is a broker-dealer or investment adviser, [any] **of**
11 a partner, officer, [or] director, [any] **or** person having a similar status or performing similar
12 functions, or [any] a person directly or indirectly [controlling] **in control, of** the broker-dealer
13 or investment adviser. However, the commissioner **may not**:

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

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

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

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

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

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

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

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

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

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

53 (B) The securities regulator of a state or [by] the Securities and Exchange Commission
54 against a broker-dealer, agent, investment adviser, investment adviser representative, or federal
55 covered investment adviser;

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

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

59 (E) The insurance regulator of a state denying, suspending, or revoking [the] registration
60 [of] as an insurance agent; or

61 (F) A depository institution regulator suspending or barring [a] the person from the
62 depository institution business;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 129 (1) Appropriate notice to the applicant or registrant;
- 130 (2) Opportunity for hearing; and
- 131 (3) Findings of fact and conclusions of law in a record.

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

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

141 (j) Any applicant denied an agent, broker-dealer, investment adviser or investment
142 adviser representative registration by order of the commissioner pursuant to subsection (a) may
143 file a petition with the administrative hearing commission alleging that the commissioner has
144 denied the registration. The administrative hearing commission shall conduct hearings and make

145 findings of fact and conclusions of law. The commissioner shall have the burden of proving a
146 ground for denial pursuant to this act.

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

154 (l) Hearing procedures before the commissioner or the administrative hearing
155 commission and judicial review of the decisions and orders of the commissioner and of the
156 administrative hearing commission, and all other procedural matters pursuant to this act shall be
157 governed by the provisions of chapter 536, RSMo. Hearings before the administrative hearing
158 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, or purchase of
2 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 a material fact
5 necessary in order to make the [statement] **statements** made, in the light of the circumstances
6 under which [it is] **they were** made, not misleading; or

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

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

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

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

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

13 (b) An order under subsection (a) is effective on the date of issuance. Upon issuance of
14 the order, the commissioner shall promptly serve each person subject to the order with a copy

15 of the order and a notice that the order has been entered. The order must include a statement
16 whether the commissioner will seek a civil penalty or costs of the investigation, a statement of
17 the reasons for the order, and notice that, within fifteen days after receipt of a request in a record
18 from the person, the matter will be scheduled for a hearing. If a person subject to the order does
19 not request a hearing and none is ordered by the commissioner within thirty days after the date
20 of service of the order, the order, **which may include a civil penalty or costs of the**
21 **investigation if a civil penalty or costs were sought in the statement accompanying the**
22 **order**, becomes final as to that person by operation of law. If a hearing is requested or ordered,
23 the commissioner, after notice of and opportunity for hearing to each person subject to the order,
24 may modify or vacate the order or extend it until final determination.

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

30 (d) In a final order under subsection (c), the commissioner may:

31 (1) Impose a civil penalty up to one thousand dollars for a single violation or up to ten
32 thousand dollars for more than one violation;

33 (2) Order a person subject to the order to pay restitution for any loss, including the
34 amount of any actual damages that may have been caused by the conduct and interest at the rate
35 of eight percent per year from the date of the violation causing the loss or disgorge any profits
36 arising from the violation;

37 (3) In addition to any civil penalty otherwise provided by law, impose an additional civil
38 penalty not to exceed five thousand dollars for each such violation if the commissioner finds that
39 a person subject to the order has violated any provision of this act and that such violation was
40 committed against an elderly or disabled person. For purposes of this section, the following
41 terms mean:

42 (A) "Disabled person", a person with a physical or mental impairment that substantially
43 limits one or more of the major life activities of such individual, a record of such impairment,
44 or being regarded as having such an impairment;

45 (B) "Elderly person", a person sixty years of age or older.

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

49 (f) If a petition for judicial review of a final order is not filed in accordance with section
50 409.6-609, the commissioner may file a certified copy of the final order with the clerk of a court

51 of competent jurisdiction. The order so filed has the same effect as a judgment of the court and
52 may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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