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# Rules of Elected Officials

## Division 30—Secretary of State

### Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

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**Title 15—ELECTED OFFICIALS**  
**Division 30—Secretary of State**  
**Chapter 51—Broker-Dealers, Agents,**  
**Investment Advisers, and Investment**  
**Adviser Representatives**

**15 CSR 30-51.010 General Instructions**

*PURPOSE: This rule covers general instructions applicable to persons applying for registration as broker-dealer, agent, investment adviser, or investment adviser representative.*

(1) Qualifications for Registration. A broker-dealer, agent, investment adviser, investment adviser representative, or issuer agent may be registered or renewed under the Act if the commissioner finds that the applicant:

- (A) Is qualified;
- (B) Has sufficient training, knowledge and experience in the securities business;
- (C) Is of good repute and has otherwise satisfied the requirements of the Act and these rules; and
- (D) Has attained the age of eighteen (18) years, if the applicant is an individual.

(2) Registered Person Requirement. A broker-dealer shall have at least one (1) agent registered in this state. An investment adviser shall have at least one (1) investment adviser representative registered in this state.

(3) Dual Registration of Agents and/or Investment Adviser Representatives. Any applicant for registration as agent or investment adviser representative shall not be registered as representing more than one (1) broker-dealer, issuer or investment adviser at any one (1) time, except as follows:

(A) Where control and management of the broker-dealers, issuers or investment advisers are essentially identical; or

(B) Where both broker-dealer(s), issuer(s) and/or investment adviser(s) have filed a statement signed by a principal of each firm:

1. Acknowledging the proposed dual agency;
2. Affirming that there will be no conflict of interest; and
3. Assuring the commissioner that the dual agency will be disclosed to all prospective customers.

(4) Broker-Dealer with Investment Adviser or Federal Covered Adviser Capacity. A broker-dealer, that is not also registered as an investment adviser or filed as a federal covered adviser, is not qualified to employ or supervise investment adviser representatives

unless the broker-dealer has filed a Form ADV with its initial or renewal registration as required in 15 CSR 30-51.020(1)(C).

*AUTHORITY: sections 409.202 and 409.413(a), RSMo 2000.\* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Emergency amendment filed Aug. 15, 1983, effective Aug. 29, 1983, expired Dec. 26, 1983. Amended: Filed Aug. 15, 1983, effective Nov. 11, 1983. Emergency amendment filed Aug. 4, 1995, effective Aug. 14, 1995, expired Dec. 11, 1995. Amended: Filed Aug. 4, 1995, effective Jan. 30, 1996. Amended: Filed Dec. 17, 2001, effective July 30, 2002.*

*\*Original authority: 409.202, RSMo 1967, amended 1977, 1978, 1986, 1995, 1997 and 409.413, RSMo 1967.*

**15 CSR 30-51.020 Applications for Registration or Notice Filings**

*PURPOSE: This rule prescribes the information to be contained in, and the documents to accompany applications for registration as broker-dealer, broker-dealer agent, issuer agent, investment adviser, and investment adviser representative, and the notice filing requirement for federal covered investment advisers.*

(1) Broker-Dealer Application. The application for registration as broker-dealer shall contain the information outlined in section 409.202(a) of the Act and in this rule. National Association of Securities Dealers (NASD) members must file applications in accordance with the guidelines of the Central Registration Depository (CRD) System.

(A) Initial Registration. The following shall be included in an initial application for registration:

1. Form BD;
2. Form SBD-1, the Broker-Dealer Affidavit;
3. If an NASD member, the most recent audited financial statements or Form X-17A-5 FOCUS Report;
4. If not an NASD member, the most recent certified financial statements;
5. Designation of at least one (1) broker-dealer agent to be registered in Missouri; and
6. Payment of the filing fee.

(B) Renewal Registration. The following shall be submitted in a renewal application:

1. If an NASD member, broker-dealer must submit payment of the filing fee.

2. If not an NASD member, broker-dealer must submit:

- A. The execution page of the Form BD;
- B. Any amendments to the Form BD not previously filed;
- C. A balance sheet prepared within ninety (90) days of filing;
- D. A listing of agents representing the broker-dealer; and
- E. Payment of the filing fee.

(C) Broker-Dealers with Investment Adviser or Federal Covered Adviser Capacity. A broker-dealer, that intends to employ or supervise investment adviser representatives, but which is not also registered as an investment adviser or filed as a federal covered adviser, shall file a Form ADV with its initial or renewal application for registration as required above. Broker-dealers have a continuing duty to amend this information under 15 CSR 30-51.160.

(2) Broker-Dealer Agent and Issuer Agent Application. The application for registration as a broker-dealer agent or issuer agent shall contain the information outlined in section 409.202(a) of the Act and in this rule. NASD members must file applications in accordance with the guidelines of the CRD System.

(A) Initial Registration. The following shall be included in an initial application for registration:

1. Form U-4;
2. Payment of the filing fee; and
3. Documentation of qualification under examination requirements.

(B) Renewal registration of broker-dealer agents and issuer agents. The following shall be submitted in a renewal registration:

1. Payment of the filing fee; and
2. If not an agent of an NASD member, Form SA-1, the Missouri Application for Renewal Registration as Agent.

(3) Investment Adviser Application. The application for registration as an investment adviser shall contain the information outlined in section 409.202(a) of the Act and in this rule. All applicants must file applications in accordance with the guidelines of the Investment Adviser Registration Depository (IARD) System, unless the commissioner has granted a hardship exemption under section (6).

(A) Initial Registration. The following shall be included in an initial application for registration:



- 1. Form ADV;
- 2. Form SADV-1, the State Covered Investment Adviser Affidavit and requested information;
- 3. Applicant's current balance sheet prepared within thirty (30) days of filing;
- 4. A listing of all investment adviser representatives who will be rendering investment advice for the firm in this state; and
- 5. Payment of the filing fee.

(B) Renewal Registration. The following shall be submitted in a renewal registration:

- 1. Payment of the filing fee.

(4) Federal Covered Adviser Notice Filing. The notice filing of a federal covered adviser transacting business in this state shall be filed in accordance with the guidelines of the IARD System and include the following:

(A) Initial Notice Filing. The following shall be submitted in an initial notice filing:

- 1. Form ADV; and
- 2. Payment of filing fee.

(B) Renewal Notice Filing. The following shall be submitted in a renewal notice filing:

- 1. Payment of filing fee.

(5) Investment Adviser Representative Application. The application for registration as an investment adviser representative shall contain the information outlined in section 409.202(a), RSMo and in this rule. All applicants must file applications with the commissioner or in accordance with the guidelines of the CRD System, unless the commissioner has granted a hardship exemption under section (6).

(A) Initial Registration. The following shall be included in an initial application for registration:

- 1. Form U-4;
- 2. Documentation of qualification under examination requirements; and
- 3. Payment of filing fee.

(B) Renewal Registration. The following shall be submitted in a renewal registration:

- 1. Payment of filing fee.

(6) Hardship Exemption for Investment Advisers and Investment Adviser Representatives from IARD System and CRD System.

(A) An investment adviser or investment adviser representative may request a hardship exemption from applying for registration in electronic format through the IARD System or CRD System by filing with the commissioner:

- 1. Form SADV-SH;
- 2. Payment of one hundred dollars (\$100) filing fee.

(B) The commissioner may grant a hardship exemption if filing an application in electronic format would subject the applicant to unreasonable burden or expense.

(7) Amendments to Application. Any amendment of an application pursuant to section 409.203(d), RSMo and 15 CSR 30-51.160(3) shall be filed with the appropriate form marked AMENDED.

*AUTHORITY: sections 409.202 and 409.413(a), RSMo 2000.\* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed Dec. 19, 1975, effective Dec. 31, 1975. Amended: Filed Aug. 11, 1978, effective Feb. 11, 1979. Emergency amendment filed Aug. 15, 1983, effective Aug. 29, 1983, expired Dec. 26, 1983. Amended: Filed Aug. 15, 1983, effective Nov. 11, 1983. Amended: Filed Oct. 16, 1986, effective Feb. 12, 1987. Amended: Filed March 27, 1989, effective June 12, 1989. Amended: Filed July 3, 1989, effective Sept. 28, 1989. Emergency amendment filed Aug. 4, 1995, effective Aug. 14, 1995, expired Dec. 11, 1995. Amended: Filed Aug. 4, 1995, effective Jan. 30, 1996. Amended: Filed Feb. 27, 1996, effective Aug. 30, 1996. Rescinded and readopted: Filed Dec. 17, 2001, effective July 30, 2002.*

*\*Original authority: 409.202, RSMo 1967, amended 1977, 1978, 1986, 1995, 1997 and 409.413, RSMo 1967.*

**15 CSR 30-51.030 Examination Requirement**

*PURPOSE: This rule prescribes the examination requirements of applicants for registration as broker-dealer, agent and investment adviser, and investment adviser representatives.*

(1) Every applicant for registration as a broker-dealer, agent, investment adviser or investment adviser representative shall pass the written examinations required by the National Association of Securities Dealers (NASD), and this rule.

(2) The following examinations are required for the following applicants:

(A) Broker-Dealer Agent Application. Agents of general securities broker-dealers are required to take and pass:

- 1. The Series 7 examination; and

2. Either Series 63 or the Series 66 examination.

(B) Specialized Broker-Dealer Agent or Issuer Agent Application. Agents of specialized broker-dealers or issuers are required to take and pass:

- 1. The applicable NASD examination; and
- 2. Either the Series 63 or the Series 66 examination.

(C) Investment Adviser Representatives Application. Investment adviser representatives are required to take and pass:

- 1. The Series 65 examination; or
- 2. Both the Series 66 and the Series 7 examinations.

(D) Investment Adviser Qualifying Officers Application. Qualifying officers of investment advisers are required to take and pass:

- 1. The Series 7 examination; and
- 2. Either the Series 65 or Series 66 examination with a score of at least eighty percent (80%).

(3) Waiver of Examination Requirement for Broker-Dealer Agents. The commissioner may by order grant an agent registration to an applicant that has not complied with the examination requirements set forth in 15 CSR 30-51.030(2) if granting the registration is in the public interest and the applicant is able to demonstrate exceptional experience in and knowledge of the securities markets and applicable regulations, or the broker-dealer agent has taken and passed the previous equivalent of the required examination and has been previously registered as a broker-dealer agent with the NASD. For agents of NASD members, unless a proceeding under section 409.204(c), RSMo has been instituted, a waiver of the examination requirement by the NASD shall be deemed a waiver by the commissioner.

(4) Waiver of Examination Requirement for Investment Adviser Representatives. The examination requirement for applicants may be waived if the examination is not necessary for the protection of advisory clients. Persons with the following qualifications may qualify for a waiver of the examination requirement:

(A) Investment Adviser Representatives. Applicants for Investment Adviser Representative may qualify for a waiver of the examination requirement in 15 CSR 30-51.030(2)(C)2., if the applicant currently holds one (1) of the following designations:



1. Certified Financial Planner (CFP) awarded by Certified Financial Planner Board of Standards, Inc.;

2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

4. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

5. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.;

6. Certified Investment Management Consultant (CIMC) awarded by the Institute for Certified Investment Management Consultants;

7. Certified Investment Management Analyst (CIMA) awarded by the Investment Management Consultants Association; or

8. Such other professional designation as the commissioner may by order recognize.

(B) Investment Adviser Qualifying Officers. Applicants for investment adviser qualifying officer may qualify for a waiver of the examination requirement in 15 CSR 30-51.030(2)(D)2. if the applicant:

1. Had a passing score of at least seventy percent (70%) on either the Series 65 or Series 66 examination, and provided written assurance to the commissioner that the investment adviser firm will be operating as a sole proprietorship and the applicant will not be supervising any other representatives for at least three (3) years;

2. Had a passing score of at least seventy percent (70%) on the previous versions of either the Series 65 or Series 66 examination, and has maintained an investment adviser representative or broker-dealer agent registration in Missouri or any other jurisdiction for at least ten (10) years;

3. Had a passing score of at least eighty percent (80%) on the Series 24, Series 9/10 or its previous equivalent, Series 27, or Series 63 examination, and has maintained an investment adviser representative or broker-dealer agent registration in Missouri or any other jurisdiction for at least fifteen (15) years; or

4. Has:

A. Held and maintained one of the following designations for at least the last ten (10) years:

(I) Certified Financial Planner (CFP) awarded by the International Board of Standards and Practices for Certified Financial Planners, Inc.;

(II) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(III) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(IV) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(V) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.;

(VI) Certified Investment Management Consultant (CIMC) awarded by the Institute for Certified Investment Management Consultants; or

(VII) Certified Investment Management Analyst (CIMA) awarded by the Investment Management Consultants Association; and

B. Either:

(I) Had a passing score of at least eighty percent (80%) on the Series 24, Series 9/10 or its previous equivalent, Series 27, Series 53, or Series 63 examination; or

(II) Has provided written assurance to the commissioner that the investment adviser firm will be operating as a sole proprietorship and the applicant will not be supervising any other representatives for at least three (3) years.

*AUTHORITY: sections 409.202, 409.204(b)(6) and 409.413(a), RSMo 2000.\* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed Dec. 19, 1975, effective Dec. 31, 1975. Emergency amendment filed Aug. 15, 1983, effective Aug. 29, 1983, expired Dec. 26, 1983. Amended: Filed Aug. 15, 1983, effective Nov. 11, 1983. Emergency amendment filed Aug. 1, 1984, effective Aug. 11, 1984, expired Nov. 11, 1984. Amended: Filed Aug. 1, 1984, effective Nov. 11, 1984. Amended: Filed July 3, 1989, effective Sept. 28, 1989. Emergency amendment filed Aug. 4, 1995, effective Aug. 14, 1995, expired Dec. 11, 1995. Amended: Filed Aug. 4, 1995, effective Jan. 30, 1996. Rescinded and readopted: Filed Dec. 17, 2001, effective July 30, 2002.*

*\*Original authority: 409.202, RSMo 1967, amended 1977, 1978, 1986, 1995, 1997; 409.204, RSMo 1967, amended 1983, 1995; and 409.413, RSMo 1967.*

#### 15 CSR 30-51.40 Financial Statements

*PURPOSE: This rule prescribes the content of financial statements filed by persons applying for registration and by persons registered as a broker-dealer or as an investment adviser.*

*PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.*

(1) A financial statement shall consist of a balance sheet, a profit and loss statement, statement of change in financial condition, certified unless otherwise prescribed hereinafter or permitted by the commissioner (sections 409.202(a)(5) and 409.413(c), RSMo).

(2) Every applicant for initial registration as broker-dealer or investment adviser shall file a financial statement as follows:

(A) As to initial registration as a broker-dealer, the applicant shall file a certified financial statement as of a date within thirty (30) days prior to the filing; provided if the applicant has been engaged in business one (1) year or more, s/he may file a certified financial statement as of the end of his/her last fiscal period together with a balance sheet, which need not be certified, as of a date within thirty (30) days prior to the filing. If the annual financial statement is more than six (6) months old, s/he also shall file a semi-annual financial statement, which need not be certified. The semi-annual financial statement may consist wholly of a completed FOCUS report for that period and a net capital computation (FOCUS Report, Form X-17A-5 (see 15 CSR 30-51.020)), as of the date of the balance sheet shall accompany the financial statement; and

(B) As to initial registration as an investment adviser, the applicant shall file a verified financial report consisting of a balance sheet and capital computation as of a date

within thirty (30) days prior to filing, together with the latest annual financial statement, if applicable.

*AUTHORITY:* sections 409.202 and 409.413(a), RSMo 1986. \* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed Dec. 19, 1975, effective Dec. 31, 1975. Amended: Filed Aug. 11, 1978, effective Feb. 11, 1979. Emergency amendment filed Aug. 15, 1983, effective Aug. 29, 1983, expired Dec. 26, 1983. Amended: Filed Aug. 15, 1983, effective Nov. 11, 1983. Amended: Filed July 3, 1989, effective Sept. 28, 1989.

\*Original authority: 409.202, RSMo 1967, amended 1977, 1978, 1986 and 409.413, RSMo 1967.

**15 CSR 30-51.050 Net Capital Requirements for Broker-Dealers**

*PURPOSE:* This rule prescribes the minimum net capital and ratio between net capital and aggregate indebtedness required of registered broker-dealers.

(1) A broker-dealer registered with the Securities and Exchange Commission shall maintain net capital requirements in accordance with rule 15c3-1 under the Securities Exchange Act of 1934.

(2) A broker-dealer not registered with the SEC shall have the net capital necessary to comply with all of the following conditions:

(A) The aggregate indebtedness to all other persons of a broker-dealer who has been registered under the Act for at least one (1) year shall not exceed two thousand percent (2,000%) of his/her net capital. The aggregate indebtedness to all other persons of a broker-dealer who has been registered under the Act for less than one (1) year shall not exceed one thousand percent (1,000%) of his/her net capital; and

(B) S/he shall have and maintain net capital of not less than ten thousand dollars (\$10,000).

(3) The commissioner, by order, which may apply individually or to a class, may establish a lower net capital requirement, a lower cash reserve requirement, or a higher maximum ratio of aggregate indebtedness to net capital either unconditionally or upon special terms or conditions, for a broker-dealer who satis-

fies the commissioner that because of the special nature of his/her business and his/her financial condition and the safeguards that have been established for the protection of customers' funds, investors would not be adversely affected.

(4) A broker-dealer not in compliance with the aggregate indebtedness, net capital or cash reserve requirements shall cease soliciting new business and shall immediately notify the commissioner in writing.

(5) For the purposes of this rule and to insure uniform interpretation, the terms aggregate indebtedness and net capital shall have the respective meanings as defined in rule 15c3-1 under the Securities Exchange Act of 1934. A copy of any pertinent subordination agreement shall be filed with the commissioner within ten (10) days after the agreement has been entered into and shall meet the requirements of a satisfactory subordination agreement as that term is defined in rule 15c3-1.

*AUTHORITY:* sections 409.202 and 409.413(a), RSMo 1986. \* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed Dec. 19, 1975, effective Dec. 31, 1975. Amended: Filed Aug. 11, 1978, effective Feb. 11, 1979.

\*Original authority: 409.202, RSMo 1967, amended 1977, 1978, 1986 and 409.413, RSMo 1967.

**15 CSR 30-51.060 Broker-Dealer Notice of Net Capital Deficiency**

*PURPOSE:* This rule requires broker-dealers to furnish the commissioner notice of impending net capital deficiency, and announces the commissioner, once a year and without prior notice, may require all registered broker-dealers to furnish a net capital report.

(1) Broker-dealers registered with the Securities and Exchange Commission and subject to rule 15c3-1 of the Securities Exchange Act of 1934 whose net capital at any time is less than the minimum required by any net capital rule to which a person is subject shall give notice and file such reports with the commissioner as are required to be given and filed with the Securities and Exchange Commission (SEC) under Regulation 17a-11 of the Securities Exchange Act of 1934.

(2) Every registered broker-dealer, other than those which effect only transactions in redeemable securities of investment companies registered under the Investment Company Act of 1940 and who do not hold or owe funds or securities for or to any customers except prior to prompt completion of customers' transactions, who is not registered with the SEC shall make a computation of its net capital and ratio of its aggregate indebtedness to its net capital not less than monthly and shall comply with the following requirements:

(A) No withdrawal of any part of their net worth, including subordinated indebtedness, whether by redemption, retirement, repurchase, repayment or otherwise, shall be permitted or effected that will cause its net capital to be less than one hundred twenty percent (120%) of the amount prescribed in 15 CSR 30-51.050 or its aggregate indebtedness to exceed one thousand five hundred percent (1,500%) of its net capital, without notice to the commissioner as follows (section 409.203(b)):

1. Every broker-dealer to which this rule is applicable, whose net capital is less than one hundred twenty percent (120%) the amount prescribed in 15 CSR 30-51.050 or whose aggregate indebtedness exceeds one thousand five hundred percent (1,500%) of its net capital, shall promptly notify the commissioner by telegraph or in writing of the deficiency and its extent; and

2. Every broker-dealer to which this rule is applicable shall file with the commissioner a report in writing on its net capital and ratio of its aggregate indebtedness to its net capital as of the end of each month in which its net capital is less than one hundred twenty percent (120%) of the amount prescribed in 15 CSR 30-51.050 or its aggregate indebtedness exceeds one thousand two hundred percent (1,200%) of its net capital, promptly after it has knowledge of that fact and in no event later than fifteen (15) days after the end of each such month.

(3) The commissioner, in coordination with the securities administrators of other states and in addition to any other reports s/he may require, may require all registered broker-dealers to which section (1) is applicable to file reports on their net capital and aggregate indebtedness as of the end of any month, without prior notice, once during each year (section 409.203(b), RSMo).

*AUTHORITY:* sections 409.202 and 409.413(a), RSMo 1986. \* Original rule filed

June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed Aug. 11, 1978, effective Feb. 11, 1979.

\*Original authority: 409.202, RSMo 1967, amended 1977, 1978, 1986 and 409.413, RSMo 1967.

### 15 CSR 30-51.070 Minimum Capital Requirements for Investment Advisers

*PURPOSE:* This rule prescribes the minimum capital required of investment advisers.

(1) Every investment adviser shall have and maintain capital, to include all cash, securities and tangible assets of not less than five thousand dollars (\$5,000). The commissioner may establish a lower minimum capital if the investment adviser satisfactorily demonstrates that the activities to be engaged in do not necessitate such a large capital base (section 409.202(d), RSMo).

*AUTHORITY:* sections 409.202 and 409.413(a), RSMo 1986. \* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed July 3, 1989, effective Sept. 28, 1989.

\*Original authority: 409.202, RSMo 1967, amended 1977, 1978, 1986 and 409.413, RSMo 1967.

### 15 CSR 30-51.080 Bonds

(Rescinded February 12, 1987)

*AUTHORITY:* sections 409.202 and 409.413(a), RSMo 1978. Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed Dec. 19, 1975, effective Dec. 31, 1975. Amended: Filed Aug. 11, 1978, effective Feb. 11, 1979. Emergency amendment filed Aug. 15, 1983, effective Aug. 29, 1983, expired Dec. 26, 1983. Amended: Filed Aug. 15, 1983, effective Nov. 11, 1983. Rescinded: Filed Oct. 16, 1986, effective Feb. 12, 1987.

### 15 CSR 30-51.090 Segregation of Accounts by Broker-Dealers

*PURPOSE:* This rule prescribes the commingling by broker-dealers of their personal funds and securities with those of their customers and provides for the maintenance of separate records.

(1) Every broker-dealer shall at all times keep its customers' funds and securities in trust and segregated from its own funds and securities; provided, however, that compliance with Securities and Exchange Commission rules governing the use, commingling and hypothecation of customers' securities and free credit balances shall be deemed compliance with this rule.

(2) Every broker-dealer which engages in more than one (1) enterprise or activity shall maintain separate books of accounts and records relating to its securities business and its other businesses and the assets relating to its securities business shall not be commingled with those of such other businesses. Every broker-dealer shall maintain a clearly defined division among those businesses with respect to income and expenses.

*AUTHORITY:* sections 409.203, 409.204 and 409.413(a), RSMo 1986. \* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974.

\*Original authority: 409.203, RSMo 1967; 409.204, RSMo 1967; and 409.413, RSMo 1967.

### 15 CSR 30-51.100 Custody of Securities or Funds by Investment Advisers

*PURPOSE:* This rule prohibits the custody of clients' securities or funds by registered investment advisers.

(1) Investment advisers required to be registered as such under the Act shall not take or have custody of any securities or funds or any client (section 409.102(c)(1), RSMo).

*AUTHORITY:* sections 409.102(c)(1) and 409.413(a), RSMo 1986. \* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974.

\*Original authority: 409.202, RSMo 1967, amended 1977, 1978, 1986 and 409.413, RSMo 1967.

### 15 CSR 30-51.110 Confirmations

*PURPOSE:* This rule requires broker-dealers to confirm transactions in customers' securities.

(1) Confirmations by broker-dealers of all purchases and sales of securities and notices of all other debits and credits for securities, cash and other items for the account of customers, officers, agents, partners and employees shall be given or sent to those persons at or before completion of each transaction, disclosing at least the following:

- (A) The account for which entered;
- (B) Instructions, terms and conditions, whether executed or unexecuted;
- (C) Date of execution of transaction. (Time of trade shall be furnished upon request.);
- (D) Whether the broker-dealer is acting for its own account, as agent for some other person, or as an agent for both customer and some other person;
- (E) If a broker-dealer is acting as agent for the customer, the following additional information or a statement that same will be furnished upon request:

1. The name of the person from whom the security was purchased, or to whom it was sold, and date and time the transaction occurred;

2. Source and amount of commission or remuneration received or to be received in connection with that transaction; and

(F) Name or identification number of agent handling transaction.

*AUTHORITY:* sections 409.203, 409.204 and 409.413(a), RSMo 1986. \* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974.

\*Original authority: 409.203, RSMo 1967; 409.204, RSMo 1967; and 409.413, RSMo 1967.

### 15 CSR 30-51.120 Records Required of Broker-Dealers

*PURPOSE:* This rule prescribes the books and records to be kept by broker-dealers.

(1) Every broker-dealer shall make and keep current the following books and records relating to his/her business (provided, however,



that compliance with the requirements of the Securities and Exchange Commission with respect to maintenance of books and records shall be deemed to be compliance with this rule):

(A) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. The record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the person from whom purchased or received or to whom sold or delivered;

(B) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts;

(C) Ledger accounts itemized separately as to cash and margin account of every customer and of those broker-dealer, partners, agents and their employees, all purchases, sales receipts and deliveries of securities and commodities for those account and all other debits and credits to that account;

(D) Ledgers (or other records) reflecting the following:

1. Securities in transfer;
2. Dividends and interest received;
3. Securities borrowed and securities loaned;
4. Moneys borrowed and moneys loaned (together with a record of the collateral therefor and substitutions in collateral); and
5. Securities failed to receive and failed to deliver;

(E) A securities record or ledger reflecting separately for each security as of the clearance dates all long or short positions (including securities in safekeeping) carried by that broker-dealer for his/her account or for the account of his/her customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried;

(F) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order, and of any other instruction, given or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders

entered pursuant to the exercise of discretionary power by that broker-dealer, or his/her employee, shall be so designated. The term instruction shall be deemed to include instructions between partners and employees of a broker-dealer. The term time of entry shall be deemed to mean the time when that broker-dealer transmits the order or instructions for execution or, if it is not so transmitted, the time when it is received;

(G) A memorandum of each purchase and sale of securities for the account of that broker-dealer showing the price and, to the extent feasible, the time of execution;

(H) Copies of confirmations of all purchases and sales of securities, copies of all memoranda forwarded to purchasers executing unsolicited orders and copies of all other debits and credits for securities, cash and other items for the account of customers and partners of that broker-dealer;

(I) A record in respect of each cash and margin account with that broker-dealer containing the name and address of the beneficial owner of that account and, in the case of a margin account, the signature of the owner; provided that, in the case of a joint account or an account of a corporation, the records are required only in respect of the person(s) authorized to transact business for that account; and

(J) A record of all puts, calls, spreads, straddles and other options in which that broker-dealer has any direct or indirect interest or which that broker-dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved. Those records shall not be required with respect to any cash transaction of one hundred dollars (\$100) or less involving only subscription rights or warrants which by their terms expire within ninety (90) days after the issuance thereof.

(2) This rule shall not be deemed to require a member of a national securities exchange to make or keep such records of transactions cleared for the member by another member as are customarily made and kept by the clearing member.

(3) Every agent, on behalf of the broker-dealer with whom s/he is registered, shall make and keep current the following books and records relating to his/her business, which shall be the property of that broker-dealer:

(A) Holding pages (or other records) that show, by client, each security purchase or sale, the date on which the purchase or sale was effected, the quantity bought or sold, the

price at which the security was bought or sold, whether the transaction was a purchase or sale and, if not a long transaction, the type of transaction;

(B) Cross-reference sheets (or other records) that show, by security, the names of the agent's clients who hold the security and the quantity held by those clients (provided, however, that no such record will be required if five (5) or fewer of the agent's clients hold a particular security); and

(C) New account pages (or other records) that show the client's income, net worth (exclusive of home, farm, automobiles and furnishings) and the client's investment objective.

*AUTHORITY: sections 409.203 and 409.413(a), RSMo 1986. \* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed Oct. 16, 1986, effective Feb. 12, 1987.*

*\*Original authority: 409.203, RSMo 1967 and 409.413, RSMo 1967.*

**15 CSR 30-51.130 Records to be Preserved by Broker-Dealers**

*PURPOSE: This rule prescribes the periods of time for which books and records of broker-dealers must be preserved.*

(1) Every broker-dealer shall preserve for a period of not less than six (6) years, the first two (2) years in an easily accessible place, all records required to be made pursuant to these rules.

(2) Every broker-dealer shall preserve for a period of not less than three (3) years and, for the first two (2) years, in an easily accessible place, the following:

(A) All checkbooks, bank statements, canceled checks and cash reconciliations;

(B) All bills, receivable or payable (or copies of them) paid or unpaid relating to the business of the broker-dealer;

(C) Originals of all communications received and copies of all communications sent by the broker-dealer (including inter-office memoranda and communications) relating to his/her business;

(D) All net capital computations, trial balances, financial statements, branch office reconciliations and internal audit working

papers, relating to the business of the broker-dealer;

(E) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation; and

(F) All written agreements (or copies thereof) entered into by the broker-dealer relating to his/her business, including agreements with respect to any account.

(3) Every broker-dealer shall preserve for a period of not less than six (6) years after the closing of any customer's account, any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account.

(4) Every broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books.

(5) After a record or other document has been preserved for two (2) years, a photograph of the record or document on film may be substituted for the balance of the required time.

(6) Compliance with the requirements of the Securities and Exchange Commission with respect to preservation of records shall be deemed to be compliance with this rule.

*AUTHORITY: sections 409.203 and 409.413(a), RSMo 1986.\* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974.*

*\*Original authority: 409.203, RSMo 1967 and 409.413, RSMo 1967.*

### 15 CSR 30-51.140 Records Required of Investment Advisers

*PURPOSE: This rule prescribes the books and records to be kept by investment advisers.*

(1) Every registered investment adviser shall maintain and keep current the following books and records, provided, however, that compliance with the requirements of the Securities and Exchange Commission with respect to maintenance and preservation of

records by an investment adviser registered under the Investment Advisers Act of 1940 shall be deemed to be compliance by the investment adviser with this rule and 15 CSR 30-51.150:

(A) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts;

(B) A record showing all payments received, including date of receipt, purpose and from whom received; and all disbursements, including date paid, purpose and to whom made;

(C) A record showing all receivables and payables;

(D) Records showing separately for each client the securities purchased or sold and, to the extent it has been made available to the investment adviser, the date and amount of and price at which such purchases or sales were executed. If available to the investment adviser, this record should also show the name of the security broker-dealer who handled the transaction;

(E) Records showing separately all securities (other than general or revenue obligations issued by a governmental issuer enumerated in section 409.402(a)(1) of the Act), bought or sold by the clients of the investment adviser and indicating thereon with proper identification of the individual account, the date, amount and price at which the securities were purchased or sold by or for each client; or, in the alternative, a record showing all of the securities bought or sold by or for the accounts of all clients of the investment adviser in each month, the total number of shares or principal amount of each security bought or sold and the lowest and highest price at which those purchases or sales were made during the month;

(F) Copies of broker-dealers' confirmations of all transactions placed by the investment adviser for any account, and other broker-dealers' confirmations as may be supplied to the investment adviser by a client or broker-dealer; and

(G) A list showing all accounts in which the investment adviser is vested with discretionary power, unless the records required by subsections (D) and (E) are maintained in a manner as to disclose which are discretionary accounts, provided that the provisions of subsections (D) and (E) shall not apply to any securities with respect to which the investment adviser does not render services of a supervisory nature or to any securities or transactions which a client declines to disclose to the investment adviser; and provided further that provisions of subsections (D)-(G)

shall not apply to the accounts of any investment adviser where the services consist solely of the distribution of written or printed publications on a subscription basis.

*AUTHORITY: sections 409.203 and 409.413(a), RSMo 1986.\* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974.*

*\*Original authority: 409.203, RSMo 1967 and 409.413, RSMo 1967.*

### 15 CSR 30-51.145 Compensation Arrangements Involving Investment Advisers

*PURPOSE: This rule permits compensation arrangements presently allowed by the United States Securities and Exchange Commission.*

(1) Registered investment advisers may pay a cash fee to a solicitor who refers business to the investment adviser (but does not render any investment advice) as long as the solicitor is not subject to a disqualification as set out in section 409.204(a), RSMo and the cash fee is paid pursuant to a written agreement retained by both the investment adviser and the solicitor and provided to the client prior to or at the time of entering into any investment advisory contract. This written agreement shall conform to the requirements set out in 17 CFR Section 275.206(4)-3.

(2) Section 409.102(b)(1), RSMo prohibits performance-based compensation of investment advisers. The language in that section is virtually identical to section 205(1) of the Investment Advisers Act (17 CFR 205(1)). In 1985, in Release No. IA-996, the Securities and Exchange Commission provided a Conditional Exemption from the Compensation Prohibition of Section 205(1) for Registered Investment Advisers (Reg. Section 275.205-3), which set forth certain conditions under which investment advisers may receive performance-based compensation. The division will not pursue enforcement action against an investment adviser that receives performance-based compensation if all of the conditions set forth in the previously mentioned federal rule and the following conditions are met:

(A) The investment adviser may have in no way solicited or advertised the performance-based compensation;



(B) The client must have requested the performance-based fee arrangement; and

(C) The advisory contract must set out the language contained in section 409.102(b)(1), RSMo (1986), must include a statement that both the client and the adviser are aware of that section and its prohibitions and must contain an agreement that, pursuant to section 409.411(f), RSMo, neither party retains any civil liability for having engaged in the payment or receipt of performance-based compensation.

*AUTHORITY: sections 409.203 and 409.413(a), RSMo 1986.\* Original rule filed March 27, 1989, effective June 12, 1989.*

*\*Original authority: 409.203, RSMo 1967 and 409.413, RSMo 1967.*

### 15 CSR 30-51.150 Records to be Preserved by Investment Advisers

*PURPOSE: This rule prescribes the periods of time books and records of investment advisers must be preserved.*

(1) Every registered investment adviser shall preserve for a period of not less than three (3) years, the first two (2) years in an easily accessible place, all records required by 15 CSR 30-51.140 and the following additional records which also shall be made available to the commissioner for examination:

(A) All checkbooks, bank statements, canceled checks and cash reconciliations;

(B) All bills or statements (or copies thereof) paid or unpaid, relating to the business of the investment adviser;

(C) Originals of all communications received and copies of all communications sent, pertaining to services rendered or to be rendered to its clients or customers by the investment adviser, other than interoffice or interdepartmental communications;

(D) All powers of attorney and other evidence of the granting of any discretionary authority in any account, and copies of resolutions empowering an agent to act on behalf of any client; and

(E) All written agreements (or copies thereof) entered into by an investment adviser relating to the business of the investment adviser, including agreements with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment.

(2) Every registered investment adviser shall preserve for a period of not less than three (3)

years after the closing of any client's account, all required records relating to the account.

(3) Every registered investment adviser shall preserve, during the life of the enterprise and of any successor enterprises, all partnership articles, or all articles of incorporation or charter, minute books and stock certificate books.

(4) After a record or other document has been preserved for two (2) years, a photograph of the record or document on film may be substituted for the balance of the required time.

*AUTHORITY: sections 409.203 and 409.413(a), RSMo 1986.\* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974.*

*\*Original authority: 409.203, RSMo 1967 and 409.413, RSMo 1967.*

### 15 CSR 30-51.160 Effectiveness and Post-Effective Requirements

*PURPOSE: This rule specifies when the registration of broker-dealers, agents and investment advisers becomes effective, reports required during effectiveness, and procedures for terminating the effectiveness and effecting withdrawal of registrations.*

(1) Pending Applications for Registration.

(A) Effective Date of Registration. If no denial order is in effect, and no proceeding under section 409.204, RSMo is pending, registration shall become effective no later than noon of the thirtieth day after the application is filed. The running of this thirty (30)-day period is suspended during the time a denial order is in effect or a proceeding under section 409.204, RSMo is pending. The running of the thirty (30)-day period shall resume when the denial order is vacated or the proceeding under section 409.204, RSMo is no longer pending.

(B) Completeness of the Application. An application shall be considered complete when an application containing comprehensive responses to all applicable questions and all attachments and exhibits, as required by the Act or these rules, has been filed with the division. The commissioner may summarily postpone or suspend an application for the purpose of determining the completeness of

an application or on other grounds as provided for in section 409.204(c).

(C) Orders of Cancellation for Incomplete Applications. Any application, the filing of which is not complete within a period of one (1) year following the application's original filing, shall be presumed subject to the entry of an order of cancellation pursuant to section 409.204(d), RSMo of the Act.

(2) Duration of Registration.

(A) Expiration of Registration. Every registration of a broker-dealer, agent, investment adviser, or investment adviser representative expires on December 31 of each year, unless renewed or unless sooner revoked, canceled, or withdrawn (sections 409.201(d) and 409.204, RSMo).

(B) Late Renewal Filings. Upon expiration of a registration any subsequent application for registration shall be considered and treated as an application for initial registration.

(C) Applications for renewal of registration filed directly with the commissioner shall be filed on the appropriate form marked renewal (see 15 CSR 30-51.020) with required information and exhibits, no earlier than sixty (60) days and no later than thirty (30) days before the expiration date of the registration concerned. Applications filed with the Central Registration Depository (CRD) System or Investment Adviser Registration Depository (IARD) System shall be timely filed in accordance with the requirements of the CRD or IARD.

(D) An applicant for renewal registration may incorporate by reference in the application documents previously filed to the extent the documents are currently accurate.

(3) Continuing Duty of Applicants and Registrants to Disclose Material Information.

(A) Amendments to Applications for Material Change. During the pendency of any application, or effectiveness of any registration, every broker-dealer, agent, investment adviser, or investment adviser representative shall immediately report to the commissioner in writing any material change in any information, answers, responses, exhibits, or schedules submitted or circumstances disclosed in its last prior application. A correcting amendment shall be filed with the division at the time of occurrence or discovery of these changes, and not later than thirty (30) days following the specified event or occurrence. If the application was submitted through the CRD System or IARD System, any amendment shall be submitted in

accordance with the guidelines of the CRD or IARD System.

(B) Termination of an Agent or Investment Adviser Representative.

1. Duty of broker-dealer, issuer or investment adviser. When an agent's or representative's association with the broker-dealer, issuer or investment adviser is discontinued or terminated by either party, the broker-dealer, issuer or investment adviser must file within thirty (30) days of the discontinuance or termination, a notice of that fact, stating the date of and reasons for the discontinuance or termination (Form U-5 or by letter).

2. Duty of agent or investment adviser representative. When an agent's or representative's association with a broker-dealer or investment adviser registered in Missouri is discontinued or terminated by either party, the agent or investment adviser representative must file, within thirty (30) days of the discontinuance or termination, amended documents reflecting association with another broker-dealer or investment adviser.

3. Temporary registration for transferring agents. An agent registered in Missouri transferring from one Missouri registered broker-dealer to another Missouri registered broker-dealer shall automatically have a temporary registration to transact securities business for thirty (30) 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 section 409.204, RSMo. The temporary registration must be requested on the Form U-4 prior to any securities transactions by the agent through the new broker-dealer and within thirty (30) days following the termination from the previous firm. No such temporary registration will be granted upon termination from an issuer.

(C) Acquisition of Broker-Dealer or Investment Adviser.

1. When a person or a group of persons, directly or indirectly or acting by or through one (1) or more persons, proposes to acquire a controlling interest in a broker-dealer or investment adviser registrant and when the acquirer, within the preceding ten (10) years, has committed any act that would result in a yes answer to any disciplinary question on the Form BD or ADV or would require disclosure under 15 CSR 30-51.160(3), the resulting entity, prior to the acquisition, shall file with the division:

A. A new application for registration on the forms prescribed by rule, together with all required exhibits and fees; and

B. At the time the new application is filed, a notice of withdrawal, termination or cancellation of registration of the acquired entity on the forms prescribed by rule, effective upon disposition of the new application by the division.

2. For purposes of this section, controlling interest means possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract or otherwise. Any individual or firm that directly or indirectly has the right to vote twenty-five percent (25%) or more of the voting securities of a company or is entitled to twenty-five percent (25%) or more of its profits is presumed to control that company.

(4) Withdrawal of Registration. Every broker-dealer and investment adviser who desires to withdraw their registration shall file the appropriate Form BDW or ADV-W. Every federal covered adviser who desires to withdraw their notice filing shall file the appropriate ADV-W.

(5) Merger, Consolidation or Reorganization of Broker-Dealers. In the event of a merger, consolidation, or reorganization of an existing registered broker-dealer, and the change can be effected through the CRD System, then such documentation and information shall be filed in accordance with the guidelines of the CRD System. If the change cannot be processed through the CRD System, the following documents must be filed with the commissioner by the participating broker-dealers within ten (10) days following a merger, consolidation or reorganization:

(A) The broker-dealer dissolving at the consummation of the merger or who will become a part of an existing broker-dealer upon reorganization or consolidation must file:

1. A termination of its broker-dealer registration on Form BDW;

2. A termination of all agent registrations; and

3. A complete explanation of the proposed merger, consolidation or reorganization accompanied by the agreement effecting the merger, consolidation or reorganization.

(B) The broker-dealer who will be the surviving corporation upon consummation of the merger or who will be the named broker-dealer after the reorganization or consolidation must file:

1. A complete explanation of the proposed merger;

2. Form U-4 applications plus supporting documents of all registered agents of the dissolving broker-dealer to be transferred to the surviving, consolidated or reorganized broker-dealer in accordance with 15 CSR 30-51.160(3) and 15 CSR 30-51.020; and

3. If the name of the surviving, consolidated or reorganized broker-dealer will change, an amended Form BD, as appropriate and all other properly amended documents required by 15 CSR 30-51.020 and 15 CSR 30-51.160.

*AUTHORITY: sections 409.201(b) and (d), 409.202 and 409.413(a), RSMo 2000 and 409.204, RSMo Supp. 2002.\* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed Dec. 19, 1975, effective Dec. 31, 1975. Amended: Filed Aug. 11, 1978, effective Feb. 11, 1979. Emergency amendment filed Aug. 15, 1983, effective Aug. 29, 1983, expired Dec. 26, 1983. Amended: Filed Aug. 15, 1983, effective Nov. 11, 1983. Amended: Filed March 27, 1989, effective June 12, 1989. Emergency amendment filed Aug. 4, 1995, effective Aug. 14, 1995, expired Dec. 11, 1995. Amended: Filed Aug. 4, 1995, effective Jan. 30, 1996. Rescinded and readopted: Filed Dec. 17, 2001, effective July 30, 2002. Amended: Filed Aug. 30, 2002, effective Feb. 28, 2003.*

*\*Original authority: 409.201, RSMo 1967, amended 1977, 1995, 1997; 409.202, RSMo 1967, amended 1977, 1978, 1986, 1995, 1997; 409.204, RSMo 1967, amended 1983, 1995, 2002; and 409.413, RSMo 1967.*

### 15 CSR 30-51.169 Fraudulent Practices of Broker-Dealers and Agents

*PURPOSE: This rule identifies practices in the securities business which are generally associated with schemes to manipulate.*

(1) A broker-dealer or agent who engaged in one (1) or more of the following practices shall be deemed to have engaged in an "act, practice or course of business which operates or would operate as a fraud" as used in Section 101 of the Act. This rule is not intended to be all inclusive and acts or practices not enumerated in this rule may also be deemed fraudulent:

(A) Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(B) Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner;

(C) In connection with the offer, sale or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would have an impact on the value of the security;

(D) In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor;

(E) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things—1) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees, or 2) parking or withholding securities;

(F) Although nothing in this rule precludes application of the general anti-fraud provisions against anyone for practices similar in nature to the practices discussed as follows, the following paragraphs specifically apply only in connection with solicited offers or sales of designated securities in transactions not exempted in the following:

1. Failing to disclose at the time of solicitation, in either a principal or agency transaction, the price at which the broker-dealer is currently selling or offering to sell the designated security and the price at which the broker-dealer is currently buying or offering to buy the designated security, and failing to disclose those prices, which were in effect at the time of execution, on the trade confirmation of the transaction;

2. Failing to disclose, at the time of solicitation and on the trade confirmation, all compensation to be paid to the agent as a result of the transaction;

3. In connection with a principal transaction by a market maker, failing to disclose, both at the time of solicitation and on the

confirmation, a short inventory position in the firm's account of more than five percent (5%) of the issued and outstanding shares of that class of securities of the issuer;

4. Conducting sales contests solely with respect to a particular security;

5. Failing or refusing to promptly execute sell orders on behalf of a customer;

6. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market;

7. Engaging in a pattern of enhancing the compensation of an agent with respect to sales and purchases in the same security;

8. In connection with the solicitation of a sale of an equity security, or a security containing an equity component, in which the difference between the bid and ask price is twenty-five percent (25%) or more of the ask price, to fail to—

A. Disclose to the customer the bid and ask price of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation; and

B. Include with the confirmation, in a form satisfactory to the commissioner, written explanation of the bid and ask price;

9. For the purposes of subsection (1)(F), the following shall be exempt transactions:

A. Transactions in which the price of the designated security is five dollars (\$5) or more, provided, however, that if the designated security is a unit composed of one (1) or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights or similar securities must be five dollars (\$5) or more, and any component of the unit that is a warrant, option, right or similar security or a convertible security must have an exercise price or conversion price of five dollars (\$5) or more;

B. Transactions that are not recommended by the broker-dealer;

C. Transactions by a broker-dealer—

(I) Whose commissions, commission equivalents and mark-ups from transactions in designated securities during each of the immediately preceding three (3) months, and during eleven (11) or more of the preceding twelve (12) months, did not exceed five percent (5%) of its total commissions, commission-equivalents and mark-ups from transactions in securities during those months; and

(II) Who has not been a market maker in the designated security that is the subject of the transaction in the immediately preceding twelve (12) months; and

D. Any transaction(s) that, upon prior written request or upon its own motion, the commissioner conditionally or unconditionally exempts as not encompassed within the purposes of subsection (1)(F); and

10. For the purposes of subsection (1)(F)—

A. The term designated security shall mean any equity security other than a security—

(I) Registered, or approved for registration upon notice of issuance, on a national securities exchange recognized under 409.402(a)(8) RSMo;

(II) Exempted as a foreign issuer pursuant to 15 CSR 30-54.260;

(III) Authorized, or approved for authorization upon notice of issuance, for quotation in the National Market System of the National Association of Securities Dealers Automated Quotation System;

(IV) Issued by an investment company registered under the Investment Company Act of 1940;

(V) That is a put option or call option issued by The Options Clearing Corporation; or

(VI) Whose issuer has net tangible assets in excess of four (4) million dollars, as demonstrated by financial statements dated less than fifteen (15) months previously that the broker-dealer has reviewed and has a reasonable basis to believe on the date of the transaction with the person, there have been no adverse changes to the issuer's most current financial statement and—

(a) In the event the issuer is other than a foreign private issuer, the most recent financial statements for the issuer have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2.02; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the commissioner, furnished to the commissioner pursuant to 17 CFR 240.12g3-2(b) or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction;

(G) Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or



other fraudulent device or contrivance including, but not limited to, the use of boiler-room tactics or use of fictitious or nominee accounts; and

(H) Failure to comply with any prospectus delivery requirement promulgated under federal law.

*AUTHORITY: sections 409.203 and 409.413(a), RSMo 1986.\* Original rule filed March 27, 1989, effective June 12, 1989. Amended: Filed June 29, 1990, effective Dec. 31, 1990.*

*\*Original authority: 409.203, RSMo 1967 and 409.413, RSMo 1967.*

### 15 CSR 30-51.170 Denial, Revocation and Suspension of Registration

*PURPOSE: This rule prescribes grounds for the denial, revocation or suspension of the registration of broker-dealers, agents and investment advisers.*

(1) Grounds for the denial, revocation and suspension of registration shall include, in addition to other grounds specified in section 409.204(a) of the Act, the following “dishonest or unethical practices in the securities business”:

(A) Unreasonable and unjustifiable delaying or failing to execute orders, liquidating customers’ accounts or in making delivery of securities purchased or in paying upon request of free credit balances reflecting completed transactions of any of its customers;

(B) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(C) Effecting transactions in the account of a customer without authority to do so; or exercising any discretionary power in effecting a transaction for a customer’s account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price, or both, for the execution of orders;

(D) Willful switching, churning, overtrading or reloading of securities in a customer’s account for the purpose of accumulating or compounding commission or inducing trading in a customer’s account which is excessive in size or frequency in view of the financial resources and character of the account;

(E) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that this

transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s investment objectives, financial situation and needs, and any other relevant information known by the applicant or registrant;

(F) Engaging in or aiding in boiler-room operations or high pressure tactics in connection with the promotion of speculative offerings or hot issues by means of an intensive telephone campaign or unsolicited calls to persons not known by, nor having an account with, the agent or broker-dealer represented by the agent, where the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of his/her investment needs and objectives;

(G) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus, or making oral or written statements contrary to or inconsistent with the disclosures contained in the prospectus;

(H) Making false, misleading, deceptive, exaggerated or flamboyant representations or predictions in the solicitation or sale of a security, as, for example:

1. That the security will be resold or repurchased;

2. That it will be listed or traded on an exchange or established market;

3. That it will result in an assured, immediate or extensive increase in value, future market price or return on investment;

4. With respect to the issuer’s financial condition, anticipated earnings, potential growth or success;

5. That there is a guarantee against risk or loss; or

6. Representation that a security is being offered to a customer at the market or a price related to the market price unless the applicant or registrant knows or has reasonable grounds to believe that—

A. A market for the security exists other than that made, created or controlled by the applicant or registrant, or by any person for whom s/he is acting or with whom s/he is associated in the distribution, or any person controlled by, controlling or under common control with the applicant or registrant; and

B. The security is traded in an established securities market, and the fact that the applicant or registrant is in a control position with respect to the market for that security is fully disclosed to the investor;

(I) Failing to disclose a dual agency capacity or effecting transactions upon terms and conditions other than those stated per confirmations; or failing to disclose that the applicant or registrant is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, or if this disclosure is not made in writing, failing give or send a written disclosure at or before the completion of the transaction;

(J) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member; or entering into an underwriting or selling group agreement which establishes unfair or unreasonable terms and conditions or compensation;

(K) Establishing fictitious accounts in order to execute transactions which would otherwise be prohibited;

(L) Entering into agreements for selling concessions, discounts, commissions or allowances as consideration for services in connection with the distribution or sale of a security in Missouri to any unregistered broker-dealer or agent, or dividing or otherwise splitting the agent’s commissions, profits or other compensation from the purchase or sale of securities with any person not also registered an agent for the same broker-dealer, or for a broker-dealer under direct or common control unless that person is not required to be registered in order to engage in the securities business in Missouri;

(M) Operating a securities business while being unable to meet current liabilities, or violating any rule or order relating to minimum capital, bond, recordkeeping and reporting requirements, or provisions concerning use, commingling or hypothecation of securities;

(N) Failing or refusing to furnish a customer, upon reasonable request, information to which s/he is entitled, or to respond to a formal written demand or complaint;

(O) Extending, arranging for, or participating in arranging for credit to a customer in violation of the regulations of the Securities and Exchange Commission or the regulations of the Federal Reserve Board;

(P) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement, including, but not limited to, written authorization for the existence of the account,

within ten (10) days after the initial transaction in the account;

(Q) Hypothecating a customer's securities without having a lien on the security unless the broker-dealer secures from the customer a properly executed written consent except as permitted by rules of the Securities and Exchange Commission;

(R) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities and other services related to its securities business;

(S) Offering to buy from or sell to any person any security at a stated price unless the applicant or registrant is prepared to purchase or sell, as the case may be, at a price and under the conditions as are stated at the time of the offer to buy or sell;

(T) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, including, but not limited to:

1. Effecting any transaction in a security which involves no change in the beneficial ownership of the security; and

2. Effecting, alone or with one (1) or more other persons, a transaction or series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

(U) Publishing or circulating or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the applicant or registrant believes that the transaction was a bona fide purchase or sale of this security; or which purports to quote the bid or asked price for any security, unless the applicant or registrant believes that the quotation represents a bona fide bid for, or offer of, the security; or using any advertising or sales material in such a fashion as to be deceptive or misleading, such as the distribution of any nonfactual datum, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise, designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(V) Borrowing of money or securities from a customer by an agent, or for an agent to act as a custodian for money, securities or an executed stock power of a customer;

(W) Sharing, by an agent, directly or indirectly, in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer an agent represents;

(X) Effecting securities transactions not recorded on the regular books or records of the broker-dealer the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to the execution of the transaction;

(Y) Stating, implying or otherwise indicating, in connection with the solicitation of the securities transaction, that the market price of a security is readily or generally available unless the market price of that security is reported at least daily in a bona fide newspaper that does not receive any special compensation for reporting the market price of securities or any particular issuer(s);

(Z) Failing to disclose any investor, in connection with the solicitation of a securities purchase when the market value of the security is not reported in a bona fide newspaper as described in subsection (1)(Y), the value the purchaser would receive if the purchaser would resell the securities at the same instant the purchase is effected, unless the purchaser would receive at least one hundred percent (100%) of the amount paid for the initial purchase;

(AA) In connection with the solicitation of a sale or purchase of an Over the Counter (OTC) non-National Association of Securities Dealers Automated Quotation (NASDAQ) security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act when requested to do so by a customer;

(BB) Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited;

(CC) Failing to disclose, on each statement of account sent to account holders having a designated security shown as a long position in the person's account as of the statement date, the price at which the broker-dealer is offering to buy the security or, if no price is available, the average of the bid prices by other dealers and the date of the most recent bid available from the broker-dealer and the amount of money represented by the long position, if it were to be sold at the bid price shown on the statement, provided, however, this requirement applies only to accounts

holding a designated security acquired in nonexempt transactions effected on or after October 1, 1990 in designated securities as set forth in 15 CSR 30-51.169(1)(F), which were acquired through the broker-dealer presently holding the account or a predecessor broker-dealer;

(DD) Failing to comply with any applicable provision of the Rules of Fair Practice of the National Association of Securities Dealers any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; and

(EE) Engaging in any acts or practices enumerated in 15 CSR 30-51.169.

*AUTHORITY: sections 409.204 and 409.413(a), RSMo 1986.\* Original rule filed June 25, 1968, effective Aug. 1, 1968. Amended: Filed May 21, 1969, effective Aug. 1, 1969. Amended: Filed July 21, 1972, effective Aug. 1, 1972. Amended: Filed Nov. 15, 1974, effective Nov. 25, 1974. Amended: Filed Oct. 13, 1983, effective Jan. 13, 1984. Amended: Filed Oct. 16, 1987, effective Feb. 12, 1987. Amended: Filed March 27, 1989, effective June 12, 1989. Amended: Filed July 3, 1989, effective Sept. 28, 1989. Amended: Filed Aug. 28, 1989, effective Feb. 11, 1990. Amended: Filed June 29, 1990, effective Dec. 31, 1990.*

*\*Original authority: 409.204, RSMo 1967, amended 1983 and 409.413, RSMo 1967.*

*Fehrman v. Blunt, 825 SW2d 658 (Mo. App. 1992) (15 CSR 30-51.160(1) is invalid to the extent that it enlarges the statutory 30-day time period prescribed by section 409.202(a)(5), RSMo (1986).*

**15 CSR 30-51.180 Exclusions from Definition of Broker-Dealer, Agents, Investment Advisers, and Investment Adviser Representatives**

*PURPOSE: This rule prescribes the persons that are excluded from the definition of broker-dealer, agent, investment adviser, and investment adviser representative.*

(1) Broker-Dealer.

(A) Canadian—United States Cross-Border Trading Exclusion. A person who is a resident of Canada and who has no office or

other physical presence in this state is excluded from the definition of broker-dealer contained in section 409.401(c), RSMo, provided it complies with the following conditions:

1. Registered with or is a member of a self-regulatory organization in Canada, stock exchange in Canada or the *Bureau des services financiers*;

2. Maintains in good standing its provincial or territorial registration and its registration with or membership in a self-regulatory organization in Canada, stock exchange in Canada or the *Bureau des services financiers*; and

3. Effects or attempts to effect transactions in securities:

A. With or for a person from Canada who is temporarily a resident in or visiting this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered this state;

B. With or for a person present in this state, whose transactions are in Canadian self-directed tax advantaged retirement account of which the person is the holder or contributor; or

C. As otherwise permitted by the securities laws of this state.

(2) Agent.

(A) Sellers of Agricultural Cooperatives. An individual who represents an issuer for the purpose of effecting transactions in a security exempted by clause (5) of section 409.402(a), RSMo, and seeks an exception from the definition of agent shall submit the following:

1. Form SE-2, Application for Exception from Definition as Agent for Sellers of Agricultural Cooperatives Securities;

2. Filing of copies of all sales and solicitation material to be used by the applicant; and

3. Filing of copies of any agreements between the issuer and the applicant regarding commissions or other remuneration to be received for effecting transactions in the previously mentioned securities.

*AUTHORITY: sections 409.401(b) and (c)(5), RSMo Supp. 2001 and 409.413(a), RSMo 2000.\* Original rule filed Dec. 28, 2001, effective July 30, 2002.*

*\*Original authority: 409.401, RSMo 1967, amended 1977, 1978, 1995, 1997, 2001 and 409.413, RSMo 1967.*