

FIRST REGULAR SESSION

HOUSE BILL NO. 380

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BYRD, LUETKEMEYER, HANAWAY, SHOEMAKER (8),
BEARDEN, WILLOUGHBY, CROWELL, DIXON, ENGLER, MERIDETH (Co-sponsors), SEIGFREID,
WAGNER, GOODMAN, ICET, RECTOR, SELF, WOOD, JACKSON, TAYLOR, BEAN, WALLACE,
RICHARD, KING, MOORE, QUINN, ANGST, PURGASON, BEHNEN AND KRATKY.

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

STEPHEN S. DAVIS, Chief Clerk

1406L.01I

AN ACT

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

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

Section A. Sections 409.101, 409.102, 409.107, 409.201, 409.202, 409.203, 409.204,
2 409.301, 409.302, 409.303, 409.304, 409.305, 409.306, 409.307, 409.401, 409.402, 409.403,
3 409.404, 409.405, 409.406, 409.407, 409.408, 409.409, 409.410, 409.411, 409.412, 409.413,
4 409.414, 409.415, 409.416, 409.418, 409.420, 409.421, 409.500, 409.506, 409.511, 409.516,
5 409.521, 409.526, 409.531, 409.536, 409.541, 409.546, 409.551, 409.556, 409.561, and 409.566,
6 RSMo, are repealed and sixty-eight new sections enacted in lieu thereof, to be known as sections
7 409.1-101, 409.1-102, 409.1-103, 409.1-104, 409.1-105, 409.2-201, 409.2-202, 409.2-203,
8 409.2-204, 409.3-301, 409.3-302, 409.3-303, 409.3-304, 409.3-305, 409.3-306, 409.3-307,
9 409.4-401, 409.4-402, 409.4-403, 409.4-404, 409.4-405, 409.4-406, 409.4-407, 409.4-408,
10 409.4-409, 409.4-410, 409.4-411, 409.4-412, 409.4-413, 409.5-501, 409.5-502, 409.5-503,
11 409.5-504, 409.5-505, 409.5-506, 409.5-507, 409.5-508, 409.5-509, 409.5-510, 409.6-601,

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is new proposed language.

12 409.6-602, 409.6-603, 409.6-604, 409.6-605, 409.6-606, 409.6-607, 409.6-608, 409.6-609,
13 409.6-610, 409.6-611, 409.6-612, 409.7-701, 409.7-702, 409.7-703, 409.9-900, 409.9-901,
14 409.9-902, 409.9-903, 409.9-910, 409.9-911, 409.9-912, 409.9-913, 409.9-914, 409.9-920,
15 409.9-921, 409.9-927, 409.9-928, and 409.9-929 to read as follows:

2 **409.1-101. Sections 409.101 through 409.7-799 may be cited as the Uniform Securities Act (2002) and in this chapter as this Act.**

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

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

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

11 **(3) "Bank" means:**

12 **(A) a banking institution organized under the laws of the United States;**

13 **(B) a member bank of the Federal Reserve System;**

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

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

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

26 **(A) an agent;**

27 **(B) an issuer;**

28 **(C) a bank, a trust company organized or chartered under the laws of this state, or**
29 **a savings institution, if its activities as a broker-dealer are limited to those specified in**
30 **subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited**

31 transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C.
32 Sections 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection
33 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4));

34 (D) an international banking institution; or

35 (E) a person excluded by rule adopted or order issued under this Act.

36 (5) "Depository institution" means:

37 (A) a bank; or

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

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

47 (ii) a Morris Plan bank; or

48 (iii) an industrial loan company.

49 (6) "Federal covered investment adviser" means a person registered under the
50 Investment 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
55 a 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
58 interest.

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

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

63 (B) an insurance company;

64 (C) a separate account of an insurance company;

65 (D) an investment company as defined in the Investment Company Act of 1940;

66 (E) a broker-dealer registered under the Securities Exchange Act of 1934;

67 (F) an employee pension, profit-sharing, or benefit plan if the plan has total assets
68 in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as
69 defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer
70 registered under the Securities Exchange Act of 1934, an investment adviser registered or
71 exempt from registration under the Investment Advisers Act of 1940, an investment adviser
72 registered under this Act, a depository institution, or an insurance company;

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

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

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

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

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

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

96 (M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule
97 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

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

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

102 or

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

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

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

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

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

120 (A) an investment adviser representative;

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

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

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

128 (E) a federal covered investment adviser;

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

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

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

134 (16) "Investment adviser representative" means an individual employed by or
135 associated with an investment adviser or federal covered investment adviser and who
136 makes any recommendations or otherwise gives investment advice regarding securities,
137 manages accounts or portfolios of clients, determines which recommendation or advice
138 regarding securities should be given, provides investment advice or holds herself or himself

out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) performs only clerical or ministerial acts;

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

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

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

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

(D) is excluded by rule adopted or order issued under this Act.

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

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

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

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

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

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

175 U.S.C. 78n(d)).

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

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

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

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

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

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

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

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

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

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

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

210 (C) a sale or offer of a warrant or right to purchase or subscribe to another security

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 409.1-105. This Act modifies, limits, and supersedes the federal Electronic
2 Signatures in Global and National Commerce Act, but does not modify, limit, or supersede
3 Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any
4 of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This Act
5 authorizes the filing of records and signatures, when specified by provisions of this Act or
6 by a rule adopted or order issued under this Act, in a manner consistent with Section
7 104(a) of that act (15 U.S.C. Section 7004(a)).

 409.2-201. The following securities are exempt from the requirements of Sections
2 409.3-301 through 409.3-306 and 409.5-504:

3 (1) a security, including a revenue obligation or a separate security as defined in
4 Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or
5 guaranteed by the United States; by a State; by a political subdivision of a State; by a
6 public authority, agency, or instrumentality of one or more States; by a political
7 subdivision of one or more States; or by a person controlled or supervised by and acting
8 as an instrumentality of the United States under authority granted by the Congress; or a

9 certificate of deposit for any of the foregoing;

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

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

15 (A) an international banking institution;

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

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

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

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

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

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

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

37 (6) a federal covered security specified in Section 18(b)(1) of the Securities Act of
38 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security
39 listed or approved for listing on another securities market specified by rule under this Act;
40 a put or a call option contract; a warrant; a subscription right on or with respect to such
41 securities; or an option or similar derivative security on a security or an index of securities
42 or foreign currencies issued by a clearing agency registered under the Securities Exchange
43 Act of 1934 and listed or designated for trading on a national securities exchange, a facility
44 of a national securities exchange, or a facility of a national securities association registered

45 under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security
46 in connection with the offer, sale, or exercise of an option or other security that was exempt
47 when the option or other security was written or issued; or an option or a derivative
48 security designated by the Securities and Exchange Commission under Section 9(b) of the
49 Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

50 (7) a security issued by a person organized and operated exclusively for religious,
51 educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or
52 as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of
53 which inures to the benefit of a private stockholder or other person, or a security of a
54 company that is excluded from the definition of an investment company under Section
55 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. Section 80b-3(c)(10)(B));
56 except that with respect to the offer or sale of a note, bond, debenture, or other evidence
57 of indebtedness issued by such a person, a rule may be adopted under this Act limiting the
58 availability of this exemption by classifying securities, persons, and transactions, imposing
59 different requirements for different classes, specifying with respect to paragraph (B) the
60 scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

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

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

69 (C) to register under Section 409.3-304;

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

75 (9) an equipment trust certificate with respect to equipment leased or conditionally
76 sold to a person, if any security issued by the person would be exempt under this section
77 or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933
78 (15 U.S.C. Section 77r(b)(1)).

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

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

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

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

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

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

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

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

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

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

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

33 (E) the issuer of the security has a class of equity securities listed on a national
34 securities exchange registered under the Securities Exchange Act of 1934 or designated for
35 trading on the National Association of Securities Dealers Automated Quotation System,
36 unless the issuer of the security is a unit investment trust registered under the Investment
37 Company Act of 1940; or the issuer of the security, including its predecessors, has been
38 engaged in continuous business for at least three years; or the issuer of the security has

39 total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18
40 months before the date of the transaction or, in the case of a reorganization or merger
41 when the parties to the reorganization or merger each had the audited balance sheet, a pro
42 forma balance sheet for the combined organization;

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

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

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

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

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

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

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

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

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

69 (8) a nonissuer transaction by a federal covered investment adviser with
70 investments under management in excess of \$100,000,000 acting in the exercise of
71 discretionary authority in a signed record for the account of others;

72 (9) a transaction in a security, whether or not the security or transaction is
73 otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or
74 property interests, or partly in such exchange and partly for cash, if the terms and

conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the commissioner after a hearing;

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

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

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

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

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

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

(13) a sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

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

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

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

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

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

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

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

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

(A) a registration or offering statement or similar record as required under the

Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) a transaction involving:

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

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

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

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

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

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

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

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

(1) the security is a federal covered security;

(2) the security, transaction, or offer is exempted from registration under Sections 409.2-201 through 409.2-203; or

(3) the security is registered under this Act.

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

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

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

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

(b) A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and

21 **Exchange Commission. On or before expiration, the issuer may renew a notice filing by**
22 **filing a copy of those records filed by the issuer with the Securities and Exchange**
23 **Commission that are required by rule or order under this Act to be filed and by paying a**
24 **renewal fee of one hundred dollars. A previously filed consent to service of process**
25 **complying with Section 409.6-611 may be incorporated by reference in a renewal. A**
26 **renewed notice filing becomes effective upon the expiration of the filing being renewed.**

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

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

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

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

7 **(1) a copy of the latest form of prospectus filed under the Securities Act of 1933;**

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

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

15 **(4) an undertaking to forward each amendment to the federal prospectus, other**
16 **than an amendment that delays the effective date of the registration statement, promptly**

17 after it is filed with the Securities and Exchange Commission.

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

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

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

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

35 (e) Effectiveness of registration statement. If the federal registration statement
36 becomes effective before each of the conditions in this section is satisfied or is waived by
37 the commissioner, the registration statement is automatically effective under this Act when
38 all the conditions are satisfied or waived. If the registrant notifies the commissioner of the
39 date when the federal registration statement is expected to become effective, the
40 commissioner shall promptly notify the registrant by telegram, telephone, or electronic
41 means and promptly confirm this notice by a record, indicating whether all the conditions
42 are satisfied or waived and whether the commissioner intends the institution of a
43 proceeding under Section 409.3-306. The notice by the commissioner does not preclude the
44 institution of such a proceeding.

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
3 records specified in Section 409.3-305, a consent to service of process complying with
4 Section 409.6-611, and, if required by rule adopted under this Act, the following
5 information or records:

6 (1) with respect to the issuer and any significant subsidiary, its name, address, and
7 form of organization; the State or foreign jurisdiction and date of its organization; the
8 general character and location of its business; a description of its physical properties and

9 equipment; and a statement of the general competitive conditions in the industry or
10 business in which it is or will be engaged;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

107 (1) a stop order is not in effect and a proceeding is not pending under Section 409.3-
108 306;

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

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

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

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

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

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

(3) payment pursuant to such a sale; or

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

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

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

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

(1) the amount of securities to be offered in this State;

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

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

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

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

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

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

39 (h) Except while a stop order is in effect under Section 409.3-306, a registration
40 statement is effective for one year after its effective date, or for any longer period
41 designated in an order under this Act during which the security is being offered or
42 distributed in a nonexempted transaction by or for the account of the issuer or other
43 person on whose behalf the offering is being made or by an underwriter or broker-dealer
44 that is still offering part of an unsold allotment or subscription taken as a participant in
45 the distribution. A registration statement remains effective for each additional year by
46 filing a renewal as described by rule adopted or order issued under this Act. For the
47 purposes of a nonissuer transaction, all outstanding securities of the same class identified
48 in the registration statement as a security registered under this Act are considered to be
49 registered while the registration statement is effective. If any securities of the same class
50 are outstanding, a registration statement may not be withdrawn until one year after its
51 effective date. A registration statement may be withdrawn only with the approval of the
52 commissioner.

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

57 (j) A registration statement may be amended after its effective date. The post-
58 effective amendment becomes effective when the commissioner so orders. If a post-
59 effective amendment is made to increase the number of securities specified to be offered
60 or sold, the person filing the amendment shall pay a registration fee as described in

61 subsection (b). A post-effective amendment relates back to the date of the offering of the
62 additional securities being registered if, within one year after the date of the sale, the
63 amendment is filed and the additional registration fee is paid.

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

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

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

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

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

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

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

31 (7) the offering:

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

33 (B) has been or would be made with unreasonable amounts of underwriters' and

34 sellers' discounts, commissions, or other compensation, or promoters' profits or
35 participations, or unreasonable amounts or kinds of options; or

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

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

40 (c) The commissioner may not institute a stop order proceeding against an effective
41 registration statement on the basis of conduct or a transaction known to the commissioner
42 when the registration statement became effective unless the proceeding is instituted within
43 30 days after the registration statement became effective.

44 (d) The commissioner may summarily revoke, deny, postpone, or suspend the
45 effectiveness of a registration statement pending final determination of an administrative
46 proceeding. Upon the issuance of the order, the commissioner shall promptly notify each
47 person specified in subsection (e) that the order has been issued, the reasons for the
48 revocation, denial, postponement, or suspension, and that within 15 days after the receipt
49 of a request in a record from the person the matter will be scheduled for a hearing. If a
50 hearing is not requested and none is ordered by the commissioner, within 30 days after the
51 date of service of the order, the order becomes final. If a hearing is requested or ordered,
52 the commissioner, after notice of and opportunity for hearing for each person subject to
53 the order, may modify or vacate the order or extend the order until final determination.

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

55 (1) appropriate notice to the applicant or registrant, the issuer, and the person on
56 whose behalf the securities are to be or have been offered;

57 (2) an opportunity for hearing before the commissioner; and

58 (3) findings of fact and conclusions of law in a record in accordance with the
59 provisions of chapter 536, RSMo and procedural rules promulgated by the commissioner.

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

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

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

4 (b) The following persons are exempt from the registration requirement of
5 subsection (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 under this Act or not required to be registered as a
10 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 \$100,000,000 acting for the account of others pursuant to
14 discretionary authority in a signed record;

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

20 (F) a bona fide preexisting customer whose principal place of residence is in this
21 State 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
24 under the securities laws of the State in which the customer relationship was established
25 and where the customer had maintained a principal place of residence; and

26 (ii) within 45 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
28 transaction is not effected more than 75 days after the date on which the application is
29 filed, or, if earlier, the date on which the commissioner notifies the person that the
30 commissioner has denied the application for registration or has stayed the pendency of the
31 application for good cause;

32 (G) not more than three customers in this State during the previous 12 months, in
33 addition to those customers specified in subparagraphs (A) through (F) and under
34 subparagraph (H), if the broker-dealer is registered under the Securities Exchange Act of
35 1934 or not required to be registered under the Securities Exchange Act of 1934 and is
36 registered under the securities act of the State in which the broker-dealer has its principal
37 place of business; and

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

39 (2) a person that deals solely in United States government securities and is

40 supervised as a dealer in government securities by the Board of Governors of the Federal
41 Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance
42 Corporation, or the Office of Thrift Supervision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (B) institutional investors;

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

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

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

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

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

30 (d) It is unlawful for an investment adviser to employ or associate with an
31 individual required to be registered under this Act as an investment adviser representative
32 who transacts business in this State on behalf of the investment adviser unless the

33 individual is registered under Section 409.4-404(a) or is exempt from registration under
34 Section 409.4-404(b).

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

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

8 (1) an individual who is exclusively employed by or associated with an investment
9 adviser that is exempt from registration under Section 409.4-403(b) or a federal covered
10 investment adviser that is excluded from the notice filing requirements of Section 409.4-
11 405; and

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

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

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

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

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

35 advisory clients is paid to an investment adviser registered under this Act, a federal
36 covered investment adviser who has filed a notice under Section 409.4-405, or a broker-
37 dealer registered under this Act with which the individual is employed or associated as an
38 investment adviser representative.

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

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

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

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

11 (B) institutional investors;

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

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

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

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

19 (c) A person acting as a federal covered investment adviser, not excluded under
20 subsection (b), shall file a notice, a consent to service of process complying with Section
21 409.6-611, and such records as have been filed with the Securities and Exchange
22 Commission under the Investment Advisers Act of 1940 required by rule adopted or order
23 issued under this Act and pay the fees specified in Section 409.4-410(e).

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

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

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

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

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

12 (c) If an order is not in effect and a proceeding is not pending under Section 409.4-
13 412, registration becomes effective at noon on the 45th day after a completed application
14 is filed, unless the registration is denied. A rule adopted or order issued under this Act
15 may set an earlier effective date or may defer the effective date until noon on the 45th day
16 after the filing of any amendment completing the application.

17 (d) A registration is effective until midnight on December 31 of the year for which
18 the application for registration is filed. Unless an order is in effect under Section 409.4-
19 412, a registration may be automatically renewed each year by filing such records as are
20 required by rule adopted or order issued under this Act, by paying the fee specified in
21 Section 409.4-410, and by paying costs charged by the designee of the commissioner for
22 processing the filings.

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

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

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

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

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

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

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

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

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

31 (c) The commissioner may by order withdraw a temporary registration if there are

32 or were grounds for discipline as specified in Section 409.4-412 and the commissioner does
33 so within 30 days after the filing of the application. If the commissioner does not withdraw
34 the temporary registration within the 30 day period, registration becomes automatically
35 effective on the 31st day after filing.

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

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

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

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

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

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

12 withdrawal, the commissioner shall retain the entire fee.

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

18 (e) A federal covered investment adviser required to file a notice under Section
19 409.4-405 shall pay an initial fee of two hundred dollars and an annual notice fee of one
20 hundred dollars.

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

23 (g) An investment adviser representative who is registered as an agent under
24 Section 409.4-402 and who represents a person that is both registered as a broker-dealer
25 under Section 409.4-401 and registered as an investment adviser under Section 409.4-403
26 or required as a federal covered investment adviser to make a notice filing under Section
27 409.4-405 is not required to pay an initial or annual registration fee for registration as an
28 investment adviser representative.

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

7 (b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C.
8 Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. Section
9 80b-22), a broker-dealer registered or required to be registered under this Act and an
10 investment adviser registered or required to be registered under this Act shall file such
11 financial reports as are required by a rule adopted or order issued under this Act. If the
12 information contained in a record filed under this subsection is or becomes inaccurate or
13 incomplete in a material respect, the registrant shall promptly file a correcting amendment.

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

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

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

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

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

37 (e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C.
38 Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section
39 80b-22), a rule adopted or order issued under this Act may require a broker-dealer or
40 investment adviser that has custody of or discretionary authority over funds or securities
41 of a customer or client to obtain insurance or post a bond or other satisfactory form of
42 security in an amount not to exceed twenty-five thousand dollars. The commissioner may
43 determine the requirements of the insurance, bond, or other satisfactory form of security.
44 Insurance or a bond or other satisfactory form of security may not be required of a broker-
45 dealer registered under this Act whose net capital exceeds, or of an investment adviser
46 registered under this Act whose minimum financial requirements exceed, the amounts
47 required by rule or order under this Act. The insurance, bond, or other satisfactory form
48 of security must permit an action by a person to enforce any liability on the insurance,
49 bond, or other satisfactory form of security if instituted within the time limitations in
50 Section 409.5-509(j)(2).

51 (f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C.
52 Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section
53 80b-22), an agent may not have custody of funds or securities of a customer except under
54 the supervision of a broker-dealer and an investment adviser representative may not have
55 custody of funds or securities of a client except under the supervision of an investment

56 **adviser or a federal covered investment adviser. A rule adopted or order issued under this**
57 **Act may prohibit, limit, or impose conditions on a broker-dealer regarding custody of**
58 **funds or securities of a customer and on an investment adviser regarding custody of**
59 **securities or funds of a client.**

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

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

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

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

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

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

21 **(c) If the commissioner finds that the order is in the public interest and subsection**

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

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

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

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

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

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

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

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

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

55 (C) the Securities and Exchange Commission or by a self-regulatory organization
56 suspending or expelling the registrant from membership in the self-regulatory
57 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**
60 **registration of an insurance agent; or**
61 **(F) a depository institution regulator suspending or barring a person from the**
62 **depository institution business;**
63 **(6) is the subject of an adjudication or determination, after notice and opportunity**
64 **for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading**
65 **Commission; the Federal Trade Commission; a federal depository institution regulator,**
66 **or a depository institution, insurance, or other financial services regulator of a State that**
67 **the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934,**
68 **the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the**
69 **Commodity Exchange Act, the securities or commodities law of a State, or a federal or state**
70 **law under which a business involving investments, franchises, insurance, banking, or**
71 **finance is regulated;**
72 **(7) is insolvent, either because the person's liabilities exceed the person's assets or**
73 **because the person cannot meet the person's obligations as they mature, but the**
74 **commissioner may not enter an order against an applicant or registrant under this**
75 **paragraph without a finding of insolvency as to the applicant or registrant;**
76 **(8) refuses to allow or otherwise impedes the commissioner from conducting an**
77 **audit or inspection under Section 409.4-411(d) or refuses access to a registrant's office to**
78 **conduct an audit or inspection under Section 409.4-411(d);**
79 **(9) has failed to reasonably supervise an agent, investment adviser representative,**
80 **or other individual, if the agent, investment adviser representative, or other individual was**
81 **subject to the person's supervision and committed a violation of this Act or the predecessor**
82 **act or a rule adopted or order issued under this Act or the predecessor act within the**
83 **previous 10 years;**
84 **(10) has not paid the proper filing fee within 30 days after having been notified by**
85 **the commissioner of a deficiency, but the commissioner shall vacate an order under this**
86 **paragraph when the deficiency is corrected;**
87 **(11) after notice and opportunity for a hearing, has been found within the previous**
88 **10 years:**
89 **(A) by a court of competent jurisdiction to have willfully violated the laws of a**
90 **foreign jurisdiction under which the business of securities, commodities, investment,**
91 **franchises, insurance, banking, or finance is regulated;**
92 **(B) to have been the subject of an order of a securities regulator of a foreign**
93 **jurisdiction denying, revoking, or suspending the right to engage in the business of**

94 securities as a broker-dealer, agent, investment adviser, investment adviser representative,
95 or similar person; or

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

99 (12) is the subject of a cease and desist order issued by the Securities and Exchange
100 Commission or issued under the securities, commodities, investment, franchise, banking,
101 finance, or insurance laws of a State;

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

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

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

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

130 **final determination.**

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

133 **(1) appropriate notice to the applicant or registrant;**

134 **(2) opportunity for hearing; and**

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

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

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

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

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

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

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

2 **409.4-413. It is unlawful for a broker-dealer, investment adviser, legal firm offering**
3 **bond counsel services, or any persons having an interest in any such firms to be involved**
4 **in any manner in the issuance of bonds authorized by an election, if the firm or such**
5 **person makes any contribution of any kind whatsoever to any campaign in support of the**
6 **bond election.**

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

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

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

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

2 **409.5-502. (a) It is unlawful for a person that advises others for compensation,**
3 **either directly or indirectly or through publications or writings, as to the value of securities**
4 **or the advisability of investing in, purchasing, or selling securities or that, for**
5 **compensation and as part of a regular business, issues or promulgates analyses or reports**
6 **relating to securities:**

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

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

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

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

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

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

7 has the burden of proving the claim as an affirmative defense pursuant to section 556.056,
8 RSMo.

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

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

2 **409.5-505.** It is unlawful for a person to make or cause to be made, in a record that
3 is used in an action or proceeding or filed under this Act, a statement that, at the time and
4 in the light of the circumstances under which it is made, is false or misleading in a material
5 respect, or, in connection with the statement, to omit to state a material fact necessary to
6 make the statement made, in the light of the circumstances under which it was made, not
false or misleading.

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

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

409.5-508. (a) A person that willfully violates this Act, or a rule adopted or order

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

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

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

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

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

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

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

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

23 (c) A person is liable to the seller if the person buys a security by means of an
24 untrue statement of a material fact or omission to state a material fact necessary in order
25 to make the statement made, in light of the circumstances under which it is made, not
26 misleading, the seller not knowing of the untruth or omission, and the purchaser not

27 sustaining the burden of proof that the purchaser did not know, and in the exercise of
28 reasonable care, could not have known of the untruth or omission. An action under this
29 subsection is governed by the following:

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

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

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

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

48 (e) A person acting as an investment adviser or investment adviser representative
49 that provides investment advice for compensation in violation of Section 409.4-403(a),
50 409.4-404(a), or 409.5-506 is liable to the client. The client may maintain an action to
51 recover the consideration paid for the advice, interest at the rate of eight percent per year
52 from the date of payment, costs, and reasonable attorneys' fees determined by the court.

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

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

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

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

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

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

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

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

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

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

91 (j) A person may not obtain relief:

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

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

97 (k) A person that has made, or has engaged in the performance of, a contract in
98 violation of this Act or a rule adopted or order issued under this Act, or that has acquired

99 a purported right under the contract with knowledge of conduct by reason of which its
100 making or performance was in violation of this Act, may not base an action on the contract.

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

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

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

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

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

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

20 (C) if the basis for relief under this section may have been a violation of Section
21 409.5-509(c), an offer to tender the security, on payment by the seller of an amount equal
22 to the purchase price paid, less income received on the security by the purchaser and
23 interest at the rate of eight percent per year from the date of the sale; or if the purchaser
24 no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash,
25 damages in the amount of the difference between the price at which the security was
26 purchased and the value the security would have had at the time of the purchase in the
27 absence of the purchaser's conduct that may have caused liability and interest at the rate
28 of eight percent per year from the date of the sale;

29 (D) if the basis for relief under this section may have been a violation of Section
30 409.5-509(d); and if the customer is a purchaser, an offer to pay as specified in
31 subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified
32 in subparagraph (C);

33 (E) if the basis for relief under this section may have been a violation of Section
34 409.5-509(e), an offer to reimburse in cash the consideration paid for the advice and
35 interest at the rate of eight percent per year from the date of payment; or

36 (F) if the basis for relief under this section may have been a violation of Section
37 409.5-509(f), an offer to reimburse in cash the consideration paid for the advice, the
38 amount of any actual damages that may have been caused by the conduct, and interest at
39 the rate of eight percent per year from the date of the violation causing the loss;

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

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

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

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

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

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

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

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

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

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

409.6-602. (a) The commissioner may:

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

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

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

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

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

24 (1) hold the person in contempt;

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

61 commissioner on securities matters when requested; whether compliance with the request
62 would violate or prejudice the public policy of this State; and the availability of resources
63 and employees of the commissioner to carry out the request for assistance.

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

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

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

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

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

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

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

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

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

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

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

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

33 (e) The commissioner may create an Investor Restitution Fund for the purpose of

34 preserving and distributing to aggrieved investors, disgorgement or restitution funds
35 obtained through enforcement actions prosecuted by the commissioner. In addition to the
36 equitable powers of the court authorized above, the court may order that funds be paid
37 into the Investor Restitution Fund for distribution to aggrieved investors. It shall be the
38 duty of the commissioner to distribute such funds to those persons injured by the unlawful
39 acts, practices or courses of business. Such funds may or may not be in interest-bearing
40 accounts, but any interest, which accrues to any such account, shall be paid to the credit
41 of the Investor Education and Protection Fund. Notwithstanding the provisions of Section
42 33.080 RSMo any funds remaining in the secretary of state's Investor Restitution Fund at
43 the end of any biennium shall not be transferred to the general revenue fund, but if the
44 commissioner is unable with reasonable efforts to ascertain the aggrieved investors, then
45 the funds may be transferred to the Investor Education and Protection Fund.

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

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

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

14 (3) issue an order under Section 409.2-204.

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

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

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

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

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

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

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

 409.6-605. (a) The commissioner may:

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

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

8 (3) by rule, classify securities, persons, and transactions and adopt different

9 requirements for different classes.

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

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

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

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

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

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

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

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

42 (g) Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
43 that is created under the authority delegated in this Act shall become effective only if it
44 complies with and is subject to all of the provisions of chapter 536, RSMo, and, if

45 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
46 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
47 to review, to delay the effective date or to disapprove and annul a rule are subsequently
48 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
49 adopted after August 28, 2003, shall be invalid and void.

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

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

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

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

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

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

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

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

- 17 (4) a nonpublic record received from a person specified in Section 409.6-608(a);
- 18 (5) any social security number, residential address unless used as a business
- 19 address, and residential telephone number contained in a record that is filed; and
- 20 (6) a record obtained by the commissioner through a designee of the commissioner
- 21 that 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
- 24 commissioner finds the determination to be in the public interest and for the protection of
- 25 investors.
- 26 (c) If disclosure is for the purpose of a civil, administrative, or criminal
- 27 investigation, action, or proceeding or to a person specified in Section 409.6-608(a), the
- 28 commissioner may disclose a record obtained in connection with an audit or inspection
- 29 under Section 409.4-411(d) or a record obtained in connection with an investigation under
- 30 Section 409.6-602.

 409.6-608. (a) The commissioner shall, in its discretion, cooperate, coordinate,

2 consult, and, subject to Section 409.6-607, share records and information with the

3 securities regulator of another State, Canada, a Canadian province or territory, a foreign

4 jurisdiction, the Securities and Exchange Commission, the United States Department of

5 Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the

6 Securities Investor Protection Corporation, a self-regulatory organization, a national or

7 international organization of securities regulators, a federal or state banking and insurance

8 regulator, and a governmental law enforcement agency to effectuate greater uniformity in

9 securities matters among the federal government, self-regulatory organizations, States, and

10 foreign governments.

11 (b) In cooperating, coordinating, consulting, and sharing records and information

12 under this section and in acting by rule, order, or waiver under this Act, the commissioner

13 shall, in its discretion, take into consideration in carrying out the public interest the

14 following general policies:

- 15 (1) maximizing effectiveness of regulation for the protection of investors;
- 16 (2) maximizing uniformity in federal and state regulatory standards; and
- 17 (3) minimizing burdens on the business of capital formation, without adversely
- 18 affecting essentials of investor protection.

19 (c) The cooperation, coordination, consultation, and sharing of records and

20 information authorized by this section includes:

- 21 (1) establishing or employing one or more designees as a central depository for
- 22 registration and notice filings under this Act and for records required or allowed to be

23 maintained under this Act;

24 (2) developing and maintaining uniform forms;

25 (3) conducting a joint examination or investigation;

26 (4) holding a joint administrative hearing;

27 (5) instituting and prosecuting a joint civil or administrative proceeding;

28 (6) sharing and exchanging personnel;

29 (7) coordinating registrations under Sections 409.3-301 and 409.4-401 through

30 409.4-404 and exemptions under Section 409.2-203;

31 (8) sharing and exchanging records, subject to Section 409.6-607;

32 (9) formulating rules, statements of policy, guidelines, forms, and interpretative

33 opinions and releases;

34 (10) formulating common systems and procedures;

35 (11) notifying the public of proposed rules, forms, statements of policy, and

36 guidelines;

37 (12) attending conferences and other meetings among securities regulators, which

38 may include representatives of governmental and private sector organizations involved in

39 capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

40 (13) developing and maintaining a uniform exemption from registration for small

41 issuers, and taking other steps to reduce the burden of raising investment capital by small

42 businesses.

409.6-609. (a) Except as otherwise provided in this Act, any interested person

2 aggrieved by any order of the commissioner under any provision of this Act, or by any

3 refusal or failure of the commissioner to make an order pursuant to any of said provisions,

4 shall be entitled to a hearing before the commissioner in accordance with the provisions

5 of chapter 536, RSMo. A final order issued by the commissioner under this Act is subject

6 to judicial review in accordance with the provisions of chapter 536, RSMo in the circuit

7 court of Cole County.

8 (b) A rule adopted under this Act is subject to judicial review in accordance with

9 the provisions of chapter 536, RSMo in the circuit court of Cole County.

409.6-610. (a) Sections 409.3-301, 409.3-302, 409.4-401(a), 409.4-402(a), 409.4-

2 403(a), 409.4-404(a), 409.5-501, 409.5-506, 409.5-509, and 409.5-510 do not apply to a

3 person that sells or offers to sell a security unless the offer to sell or the sale is made in this

4 State or the offer to purchase or the purchase is made and accepted in this State.

5 (b) Sections 409.4-401(a), 409.4-402(a), 409.4-403(a), 409.4-404(a), 409.5-501, 409.5-

6 506, 409.5-509, and 409.5-510 do not apply to a person that purchases or offers to purchase

7 a security unless the offer to purchase or the purchase is made in this State or the offer to

8 sell or the sale is made and accepted in this State.

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

11 (1) originates from within this State; or

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

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

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

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

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

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

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

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

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

41 (f) Sections 409.4-403(a), 409.4-404(a), 409.4-405(a), 409.5-502, 409.5-505, and
42 409.5-506 apply to a person if the person engages in an act, practice, or course of business
43 instrumental in effecting prohibited or actionable conduct in this State, whether or not

44 either party is then present in this State.

2 **409.6-611. (a)** A consent to service of process complying with Section 409.6-611
3 required by this Act must be signed and filed in the form required by a rule or order under
4 this Act. A consent appointing the commissioner the person's agent for service of process
5 in a noncriminal action or proceeding against the person, or the person's successor or
6 personal representative under this Act or a rule adopted or order issued under this Act
7 after the consent is filed, has the same force and validity as if the service were made
8 personally on the person filing the consent. A person that has filed a consent complying
9 with this subsection in connection with a previous application for registration or notice
filing need not file an additional consent.

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

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

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

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

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

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

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

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

409.7-702. The following act is repealed:

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

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

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

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

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

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

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

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

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

15 **(c) Any other offer to acquire an equity security, or the acquisition of such equity**
16 **security pursuant to such offer, for the sole account of the offeror, from not more than fifty**

17 offerees, in good faith and not for the purpose of avoiding the provisions of sections 409.9-
18 900 to 409.9-929;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Complete information on the organization and operations of the offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long-term debt, financial statements for the current period and for the three most recent annual accounting periods, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their

37 property is the subject, a brief description of the business done and projected by the
38 offeror and its subsidiaries and the general development of such business over the past five
39 years, the names of all directors and executive officers together with biographical
40 summaries of each for the preceding three years to date;

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

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

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

64 (12) If debt securities or preferred stock are either offered in the takeover bid or
65 used as a source of funds in making the takeover bid, the investment rating, if any, by a
66 generally recognized rating service of such debt security or preferred stock.

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

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

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

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

409.9-911. 1. Every person who willfully violates any provision of sections 409.9-
2 **900 to 409.9-929 shall be guilty of a class A misdemeanor.**

3 **2. Every person who violates any provision of sections 409.9-900 to 409.9-929 shall**
4 **be subject to a civil penalty of one thousand dollars per violation if a natural person or ten**
5 **thousand dollars per violation if a corporation. When the violation is the failure to file a**
6 **registration statement as required by subsection 1 of section 409.9-902 the failure to file a**
7 **solicitation or recommendation as required by subsection 3 of section 409.9-902 or the**
8 **failure to amend such registration statement as required by subsection 2 of section 409.9-**
9 **903 each business day of nonregistration or failure to file a recommendation or solicitation**
10 **or failure to amend constitutes a separate violation. The penalty imposed by this section**
11 **shall be cumulative and more than one penalty shall be recoverable in the same action in**
12 **any court of competent jurisdiction.**

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

5 **2. The commissioner of securities may establish fees for the filing of any**
6 **registration statement, not to exceed two thousand five hundred dollars, to recover the**
7 **costs of administering sections 409.9-900 to 409.9-929. Such fees may vary according to the**

8 maximum consideration payable by the offeror for the securities which are the subject of
9 the takeover bid.

409.9-913. The attorney general may prosecute every person charged with the
2 commission of a criminal offense arising from the violation of any provision of sections
3 409.9-900 to 409.9-929. In all such proceedings, the attorney general may appear in person
4 or by his deputy before any court of record or any grand jury and exercise all the powers
5 and perform all the duties in respect of such actions or proceedings which the prosecuting
6 attorney would otherwise be authorized or required to exercise or perform; or the attorney
7 general may in his discretion transmit evidence, proof and information as to such offense
8 to the prosecuting attorney of the county or counties in which the alleged violation has
9 occurred, and every prosecuting attorney to whom such evidence, proof and information
10 is so transmitted shall forthwith proceed to prosecute any corporation, company,
11 association, or officer, manager or agent thereof, or any firm or person charged with such
12 violation. In any such proceeding, wherein the attorney general has appeared either in
13 person or by deputy, the prosecuting attorney shall only exercise such powers and perform
14 such duties as are required of him by the attorney general or the deputy attorney general
15 so appearing.

409.9-914. 1. Every nonresident offeror, whether or not such offeror has filed a
2 registration statement, except a foreign corporation which has appointed and keeps a
3 resident agent in this state, shall be deemed to have appointed the secretary of state as his
4 agent upon whom may be served any lawful process, authorized by sections 409.9-900 to
5 409.9-929, with the same effect as though served upon the offeror personally.

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

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

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

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

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

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

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

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

 409.9-927. In the event any provision or application of sections 409.9-900 to 409.9-
2 929 is held illegal or invalid for any reason, such holding shall not affect the legality or
3 validity of any other provision or application thereof.

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

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

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

8 (3) Equity securities deposited pursuant to a takeover bid may be withdrawn at any
9 time until the expiration of thirty business days after the commencement of the takeover
10 bid and at any time after the expiration of sixty-five days from the commencement of the
11 takeover bid, if the shares have not been purchased, and until the expiration of ten business
12 days following the date of commencement of another offeror's takeover bid for the same
13 equity securities if the shares have not been purchased and if the bidder has received notice
14 or otherwise has knowledge of the commencement of such takeover bid;

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

20 shareholder;

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

25 (6) Within ten days of the filing of a registration statement as required by section
26 409.9-902 the commissioner of securities may schedule a public hearing or hearings or
27 conduct such investigation as he deems necessary concerning any takeover bid for the
28 purpose of determining compliance with the requirements of sections 409.9-900 to 409.9-
29 929. Any such hearing or investigation shall be declared by order of the commissioner of
30 securities. Any initial hearing shall commence within twenty days of the filing of a
31 registration statement;

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

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

42 (9) Any stay payment order issued by the commissioner of securities pursuant to
43 subdivision (7) of this section shall automatically expire within sixty days from its issuance
44 except where the commissioner of securities has in his order containing findings of fact and
45 conclusions of law conditioned the purchase and payment for shares tendered upon
46 changes or modifications in the registration statement, in which event any stay payment
47 order shall be vacated by the commissioner of securities after he is satisfied that such
48 changes or modifications have been publicly disseminated to offerees;

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

2 409.9-929. Any offeree whose equity securities are the subject of a takeover bid and
3 who has been injured by any violation of sections 409.9-900 to 409.9-929 may bring an
action in his or her own name to enjoin such unlawful act or practice and to recover actual

4 **damages together with reasonable attorney fees in the event the offeree is successful.**

2 [409.101. It is unlawful for any person, in connection with the offer, sale or
purchase of any security, directly or indirectly

3 (1) to employ any device, scheme, or artifice to defraud,

4 (2) to make any untrue statement of a material fact or to omit to state a
5 material fact necessary in order to make the statements made, in the light of the
6 circumstances under which they are made, not misleading, or

7 (3) to engage in any act, practice, or course of business which operates or
8 would operate as a fraud or deceit upon any person.]

2 [409.102. (a) It is unlawful for any person who receives, directly or
indirectly, any consideration from another person primarily for advising the other
3 person as to the value of securities or their purchase or sale, whether through the
4 issuance of analyses or reports or otherwise:

5 (1) To employ any device, scheme, or artifice to defraud the other person;

6 (2) To engage in any act, practice, or course of business which operates or
7 would operate as a fraud or deceit upon the other person; or

8 (3) Acting as principal for his own account, knowingly to sell any security
9 to or purchase any security from a client, or acting as broker for a person other than
10 such client, knowingly to effect any sale or purchase of any security for the account
11 of such client, without disclosing to such client in writing before the completion of
12 such transaction the capacity in which he is acting and obtaining the consent of the
13 client to such transaction. The prohibitions of this subparagraph shall not apply to
14 any transaction with a customer of a broker-dealer if such broker-dealer is not acting
15 as an investment adviser in relation to such transaction.

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

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

23 (1) That the investment adviser shall not be compensated on the basis of a
24 share of capital gains upon or capital appreciation of the funds or any portion of the
25 funds of the client;

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

28 (3) That the investment adviser, if a partnership, shall notify the other party
29 to the contract of any change in the membership of the partnership within a
30 reasonable time after the change.

31 (d) Subparagraph (c)(1) of this section does not prohibit an investment
32 advisory contract which provides for compensation based upon the total value of a
33 fund averaged over a definite period, or as of definite dates or taken as of a definite
34 date. "Assignment", as used in subparagraph (c)(2) of this section, includes any

35 direct or indirect transfer or hypothecation of an investment advisory contract by the
36 assignor or of a controlling block of the assignor's outstanding voting securities by
37 a security holder of the assignor; but, if the investment adviser is a partnership, no
38 assignment of an investment advisory contract is considered to result from the death
39 or withdrawal of a minority of the members of the investment adviser having only a
40 minority interest in the business of the investment adviser, or from the admission to
41 the investment adviser of one or more members who, after admission, will be only
42 a minority of the members and will have only a minority interest in the business.

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

45 (1) The commissioner by rule prohibits custody; or

46 (2) In the absence of rule, the investment adviser fails to notify the
47 commissioner that he has or may have custody.

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

2 [409.107. No investment firm, legal firm offering bond counsel services, or
any persons having an interest in any such firms shall be involved in any manner in
3 the issuance of bonds authorized by an election in which the firm or person made any
4 contribution of any kind whatsoever to any campaign in support of the bond
5 election.]

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

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

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

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

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

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

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

are designated by rule or order of the commissioner; or

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

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

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

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

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

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

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

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

(e) It is unlawful for any:

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

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

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

(g) Except with respect to advisers whose only clients are those described in section 409.201(c)(3) of this act, it is unlawful for any federal covered adviser to

conduct advisory business in this state unless such person complies with the provisions of section 409.202(b) and (c).

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

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

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

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

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

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

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

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

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

(c) Fees:

(1) Every applicant for initial registration as a broker-dealer or as an

investment adviser shall pay a filing fee of two hundred dollars;

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

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

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

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

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

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

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

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

[409.203. (a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner by rule prescribes, except as provided by section 15 of the Securities Exchange Act of 1934 (for broker-dealers), and section 222 of the

Investment Advisers Act of 1940 (for investment advisers). All records so required, with respect to an investment adviser, shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records.

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

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

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

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

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

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

15 material fact;

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

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

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

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

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

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

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

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

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

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

55 (L) Has been denied the right to do business in the securities industry, or the
56 person's respective authority to do business in the securities industry has been
57 revoked by any other state, federal or foreign governmental agency or self-regulatory

organization for cause, or is the subject of a final order in a criminal action for securities or fraud related violations of the law of any state, federal, or foreign governmental unit, or within the last ten years the person has been the subject of a final order in a civil, injunctive or administrative action for securities or fraud related violations of the law of any state, federal, or foreign governmental unit.

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

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

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

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

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

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

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

(c) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding pursuant to this section, including a proceeding to determine the completeness of an application or where the commissioner is requesting additional information regarding the application. Upon the entry of the order, the commissioner shall promptly notify the applicant or

101 registrant, as well as the employer or prospective employer if the applicant or
102 registrant is an agent or investment adviser representative, that it has been entered
103 and of the reasons therefor and that within fifteen days after the receipt of a written
104 request the matter will be set down for hearing. If no hearing is requested and none
105 is ordered by the commissioner, the order will remain in effect until it is modified or
106 vacated by the commissioner. If hearing is requested or ordered, the commissioner,
107 after notice of and opportunity for hearing, may modify or vacate the order or extend
108 it until final determination.

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

115 (e) Withdrawal from registration as a broker-dealer, agent, investment
116 adviser or investment adviser representative becomes effective thirty days after
117 receipt of an application to withdraw or within such shorter period of time as the
118 commissioner may determine, unless a revocation or suspension proceeding is
119 pending when the application is filed or a proceeding to revoke or suspend or to
120 impose conditions upon the withdrawal is instituted within thirty days after the
121 application is filed. If a proceeding is pending or instituted, withdrawal becomes
122 effective at such time and upon such conditions as the commissioner by order
123 determines. If no proceeding is pending or instituted and withdrawal automatically
124 becomes effective, the commissioner may nevertheless institute a revocation or
125 suspension proceeding pursuant to section 409.204(a)(2)(B) within one year after
126 withdrawal became effective and enter a revocation or suspension order as of the last
127 date on which registration was effective.

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

135 (2) The administrative hearing commission shall conduct hearings and make
136 findings of fact and conclusions of law in those cases wherein a person files a
137 petition with the commission, which petition states that the commissioner has denied
138 any registration of any agent, broker-dealer or investment adviser pursuant to sections
139 409.101 to 409.419.

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

upon which the hearing on the complaint or petition will be held.

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

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

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

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

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

[409.302. (a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 409.303: any security whose issuer and any predecessors have been in continuous operation for at least five years if (A) there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision, and (B) the issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least

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

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

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

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

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

(4) a description of the security being registered;

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

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

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

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

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

(2) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other

instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

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

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

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

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

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

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

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

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

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

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

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

(6) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a

description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;

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

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

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

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

(11) the dates of, parties to, and general effect concisely stated of, every

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

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

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

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

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

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

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

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

112 (d) The commissioner may by rule or order require as a condition of
113 registration under this section that a prospectus containing any designated part of the
114 information specified in subsection (b) be sent or given to each person to whom an
115 offer is made before or concurrently with (1) the first written offer made to him
116 (otherwise than by means of a public advertisement) by or for the account of the
117 issuer or any other person on whose behalf the offering is being made, or by any

underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs.]

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

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

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

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

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

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

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

(g) The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed

copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order.

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

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

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

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

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

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

16 acting for the issuer, or (iii) any underwriter;

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

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

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

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

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

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

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

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

56 (c) No stop order may be entered under any part of this section except the
57 first sentence of subsection (b) without (1) appropriate prior notice to the applicant
58 or registrant, the issuer, and the person on whose behalf the securities are to be or

59 have been offered, (2) opportunity for hearing, and (3) written findings of fact and
60 conclusions of law.

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

2 [409.307. (a) The commissioner, by rule or order, may require the filing of
3 any or all of the following documents with respect to a covered security under section
4 18(b)(2) of the Securities Act of 1933:

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

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

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

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

27 (b) With respect to any security that is a covered security under section
28 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or order, may
29 require the issuer to file a notice on SEC Form D and a consent to service of process
30 signed by the issuer no later than fifteen days after the first sale of such covered
31 security in this state, together with a filing fee of one hundred dollars.

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

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

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

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

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

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

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

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

41 (e) "Federal covered security" means any security that is a covered security

pursuant to section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder;

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

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

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

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

(j) "Issuer" means any person who issues or proposes to issue any security, except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons

performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas, or mining titles or leases, or in payments out of production under such titles or leases there is not considered to be any "issuer";

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized pursuant to the laws of the United States, or any

14 bank, savings institution, or trust company organized and supervised pursuant to the
15 laws of any state;

16 (4) Any security issued by and representing an interest in or a debt of, or
17 guaranteed by, any federal savings and loan association, or any building and loan or
18 similar association organized pursuant to the laws of any state and authorized to do
19 business in this state;

20 (5) Any security issued by an agricultural cooperative corporation organized
21 pursuant to the laws of this state and operated as an agricultural "cooperative
22 association" if the commissioner is notified in writing thirty days, or such shorter
23 period of time as the commissioner may by rule or order specify, before any such
24 security is sold or offered for sale other than in transactions exempted pursuant to
25 subsection (b) of this section, which notification shall contain the form of prospectus
26 or other sales literature intended to be used in connection with the offering of such
27 security together with financial statements;

28 (6) Any security issued or guaranteed by any federal credit union or any
29 credit union, industrial loan association, or similar association organized and
30 supervised pursuant to the laws of this state;

31 (7) Any security issued or guaranteed by any railroad, other common carrier,
32 public utility, or holding company which is (A) subject to the jurisdiction of the
33 Interstate Commerce Commission; (B) a registered holding company pursuant to the
34 Public Utility Holding Company Act of 1935 or a subsidiary of such a company
35 within the meaning of that act; (C) regulated in respect of its rates and charges by a
36 governmental authority of the United States or any state; or (D) regulated in respect
37 of the issuance or guarantee of the security by a governmental authority of the United
38 States, any state, Canada, or any Canadian province;

39 (8) Any security listed or approved for listing upon notice of issuance on the
40 New York Stock Exchange, the American Stock Exchange, or the Midwest Stock
41 Exchange or any other duly organized stock exchange approved by the commissioner
42 by rule or order; any other security of the same issuer which is of senior or
43 substantially equal rank, any security called for by subscription rights or warrants so
44 listed or approved; or any warrant or right to purchase or subscribe to any of the
45 foregoing;

46 (9) Any security issued by any person organized and operated not for private
47 profit but exclusively for religious, educational, benevolent, charitable, fraternal,
48 social, athletic, or reformatory purposes, or as a chamber of commerce or trade or
49 professional association if the commissioner is notified in writing thirty days, or such
50 shorter period of time as the commissioner may by rule or order specify, before any
51 such security is sold or offered for sale other than in transactions exempted pursuant
52 to subsection (b) of this section;

53 (10) Any commercial paper which arises out of a current transaction or the
54 proceeds of which have been or are to be used for current transactions, and which
55 evidences an obligation to pay cash within nine months of the date of issuance,
56 exclusive of days of grace, or any renewal of such paper which is likewise limited,

or any guarantee of such paper or of any such renewal;

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

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

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

(2) Any nonissuer distribution of an outstanding security if (A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order to buy if the broker-dealer acts as agent for the purchaser and receives no commission or other compensation from any source other than the purchase; but the commissioner may by rule require that the purchaser acknowledge upon a specified form that his or her order to buy was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

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

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all

the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this act;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profitsharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction by an issuer in a security of its own issue if immediately thereafter the total number of persons who are known to the issuer to have any direct or indirect record or beneficial interest in any of its securities (but not including persons with whom transactions have been exempted by paragraph (8) of this subsection) does not exceed twenty-five and if no commission or other remuneration is paid or given to anyone for procuring or soliciting the transaction;

(10) Any transaction by an issuer in a security of its own issue if (A) during the twelve months' period ending immediately after such transaction the issuer will have made no more than fifteen transactions exempted by this paragraph (other than transactions also exempted by paragraphs (8) and (9), and (B) the issuer reasonably believes that the buyer is purchasing for investment and the buyer so represents in writing and (C) no commission or other remuneration is paid or given to anyone for procuring or soliciting the sale; but the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of prior transactions permitted by clause (A) or waive the conditions in clauses (B) or (C) with or without the substitution of a limitation on remuneration;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days;

(12) Any offer (but not a sale) of a security for which registration statements have been filed pursuant to both this act and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending pursuant to either act;

(13) Any nonissuer transaction by a person who does not control, or who is not controlled by or under common control with, the issuer in a security which has been (and securities which are of the same class as securities of the same issuer

which have been) either registered for sale pursuant to the laws of this state regulating the sale of securities or lawfully sold in this state as a security exempt from such registration;

(14) Any nonissuer transaction in a security which at the time of such transaction would be eligible for registration by notification;

(15) Any nonissuer transaction by a person who does not control, and is not controlled by or under common control with, the issuer if (i) the transaction is at a price reasonably related to the current market price, and (ii) the security is registered with the Securities and Exchange Commission pursuant to section 12 of the Securities Exchange Act of 1934 and the issuer files reports with the Securities and Exchange Commission pursuant to section 13 of that act;

(16) Any patronage distributions of an agricultural cooperative corporation received by a patron or member in the form of capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice.

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

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

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

(f) In any proceeding pursuant to this act, the burden of proving an exemption, qualification as a federal covered security, or an exception from a

definition is upon the person claiming it.

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

[409.403. The commissioner may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempted by section 409.402 or the security is a federal covered security or the transaction is with respect to a federal covered security.]

[409.404. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.]

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

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

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

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

[409.407. (a) The commissioner in his discretion:

(1) May make such public or private investigations and inspections within or outside of this state as he deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about

5 to violate any provision of this act or any rule or order hereunder, or to aid in the
6 enforcement of this act or in the prescribing of rules and forms hereunder,

7 (2) May require or permit any person to file a statement in writing, under
8 oath or otherwise as the commissioner determines, as to all the facts and
9 circumstances concerning the matter to be investigated, and

10 (3) May publish information concerning any violation of this act or any rule
11 or order hereunder.

12 (b) For the purpose of any investigation or proceeding under this act, the
13 commissioner or any officer designated by him may administer oaths and
14 affirmations, subpoena witnesses, compel their attendance, take evidence and require
15 the production of any books, papers, correspondence, memoranda, agreements or
16 other documents or records which the commissioner deems relevant or material to
17 the inquiry.

18 (c) In case of contumacy by, or refusal to obey a subpoena issued to, any
19 person, the circuit court of any county of the state or the city of St. Louis, upon
20 application by the commissioner may issue to the person an order requiring him to
21 appear before the commissioner, or the officer designated by him, there to produce
22 documentary evidence if so ordered or to give evidence touching the matter under
23 investigation or in question. Failure to obey the order of the court may be punished
24 by the court as a contempt of court.

25 (d) It shall be the duty of all officers of the state of Missouri charged with the
26 enforcement of criminal law to render and furnish to the commissioner when
27 requested all information and assistance in their possession or within their power.

28 (e) No person is excused from attending and testifying or from producing any
29 document or record before the commissioner or in obedience to the subpoena of the
30 commissioner or any officer designated by him, or in any proceeding instituted by the
31 commissioner, on the ground that the testimony or evidence (documentary or
32 otherwise) required of him may tend to incriminate him or subject him to a penalty
33 or forfeiture; but no individual may be prosecuted or subjected to any penalty or
34 forfeiture for or on account of any transaction, matter, or thing concerning which he
35 is compelled, after claiming his privilege against self-incrimination, to testify or
36 produce evidence (documentary or otherwise) except that the individual testifying is
37 not exempt from prosecution and punishment for perjury or contempt committed in
38 testifying.

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

45 (g) The commissioner may issue and apply to enforce subpoenas and
46 subpoenas duces tecum in this state at the request of a securities agency or the
47 administrator of another state if the activities constituting the alleged violation for

48 which the information is sought would be a violation of sections 409.101 to 409.418
49 if the activities had occurred in this state.

50 (h) The commissioner may appoint such special investigators to aid in
51 investigation of persons under sections 409.101 to 409.419. Such investigators shall
52 have all authority of a law enforcement officer meeting the requirements of chapter
53 590, RSMo, except the authority to carry weapons.]

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

16 (b) Whenever it shall appear to the commissioner, either upon complaint or
17 otherwise, that any person in connection with the purchase or sale of any security,
18 including any security exempted under any of the provisions of section 409.402, or
19 in connection with investment advisory activities, is acting or about to act
20 fraudulently therein, or is employing or about to employ any device, scheme, or
21 artifice to defraud or for obtaining money or property by means of any false pretense,
22 representation, or attempting to make in the state of Missouri fictitious or pretended
23 purchases or sales of any such security or to engage in unlawful investment advisory
24 activities, or is engaged in or about to engage in any practice or transaction or course
25 of business relating to the purchase or sale of any such security or the business of an
26 investment adviser which is fraudulent or in violation of law and if the commissioner
27 deems it in the public interest to do so, he may require such person to file a statement
28 in writing, under oath or otherwise, as to all the facts and circumstances concerning
29 the subject matter, which he believes it to be in the interest of the public to
30 investigate and may make or have made such further investigation as he may deem
31 necessary, and if the commissioner shall believe, from evidence satisfactory to him,
32 that such person is engaged or about to engage in any of the fraudulent or illegal
33 practices or transactions above in this subsection referred to, he may issue and cause
34 to be served upon such person and any other person or persons concerned or in any
35 way participating in or about to participate in such fraudulent or illegal practices or
36 transactions, an order prohibiting such person and such other person or persons from
37 continuing such fraudulent or illegal practices or transactions or engaging therein or
doing any act or acts in furtherance thereof and the commissioner shall have full

power in each case to make such order or orders under this section as he may deem just and he may either prohibit the further sale by such person or persons of any securities connected with or related to said fraudulent or illegal practices or transaction, or he may fix the terms and conditions on which the sale of such securities may be made, or he may prohibit such person or persons from acting as an investment adviser, or he may fix the terms and conditions under which such person or persons may act as investment adviser, and it is hereby made unlawful for any person having been served with any such order, or having knowledge of the issuance of said order, and while said order remains in effect, either as originally issued or as modified, to violate any of the provisions thereof.]

[409.409. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, he may in his discretion bring an action in the circuit court of any county of the state or the city of St. Louis to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.]

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

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

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

[409.411. (a) Any person who:

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

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

under subsection (j) of this section.

(b) Any person who:

(1) Engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities in violation of section 409.102, 409.201(c) or (d), 409.405(b); or

(2) Receives directly or indirectly any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice or course of business which operates or would operate as a fraud or deceit on such other person, is liable to that person who may sue either at law or in equity to recover the consideration paid for such advice and any loss due to such advice, together with interest at eight percent per year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice in the amount specified in subsection (j) of this section.

(c) Every person who directly or indirectly controls a person liable under subsections (a) and (b) of this section, including every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the conduct giving rise to the liability, and every broker-dealer or agent who materially aids in such conduct is also liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(d) Any tender specified in this section may be made at any time before entry of judgment.

(e) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(f) No person may sue under this section more than three years after the contract of sale, or the rendering of investment advice.

(g) No person may sue under this section (1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at eight percent per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty days of its receipt, or (2) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty days of its receipt.

(h) No person who has made or engaged in the performance of any contract in violation of any provision of sections 409.101 to 409.419 or any rule or order

hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

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

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

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

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

(b) The circuit court of Cole County shall have jurisdiction in equity to review, modify, amend or annul any ruling, finding or order of the commissioner. At any hearing in the course of such proceeding, a transcript of any testimony before the commissioner in such case, duly certified by the commissioner, shall be admitted as evidence.

(c) Any such final order or decree of the circuit court of Cole County may be reexamined and affirmed, reversed or modified by the supreme court of the state of Missouri upon appeal by either party to be taken in the same manner and under the same rules as exist or may be hereafter provided in cases of appeals from decrees rendered in circuit court.

(d) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

(e) Every hearing in an administrative proceeding shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.]

[409.413. (a) The commissioner may from time to time make, amend, and

2 rescind such rules, forms, and orders as are necessary to carry out the provisions of
3 this act, including rules and forms governing registration statements, applications,
4 and reports, and defining any terms, whether or not used in this act, insofar as the
5 definitions are not inconsistent with the provisions of this act. For the purpose of
6 rules and forms, the commissioner may classify securities, persons, and matters
7 within his jurisdiction, and prescribe different requirements for different classes.

8 (b) No rule, form, or order may be made, amended, or rescinded unless the
9 commissioner finds that the action is necessary or appropriate in the public interest
10 or for the protection of investors and consistent with the purposes fairly intended by
11 the policy and provisions of this act. In prescribing rules and forms the
12 commissioner may cooperate with the securities commissioners of the other states
13 and the Securities and Exchange Commission with a view to effectuating the policy
14 of this statute to achieve maximum uniformity in the form and content of registration
15 statements, applications, and reports wherever practicable.

16 (c) The commissioner may by rule or order prescribe (1) the form and content
17 of financial statements required under this act, (2) the circumstances under which
18 consolidated financial statements shall be filed, and (3) whether any required
19 financial statements shall be certified by independent or certified public accountants.
20 All financial statements shall be prepared in accordance with generally accepted
21 accounting practices.

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

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

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

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

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

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

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

(f) An exemplification of the record under the hand and the seal of the commissioner shall be good and sufficient evidence of any record made or entered by said commissioner. A certificate under the hand and seal of the commissioner showing that the securities in question have not been recorded in the register of qualified securities, shall constitute prima facie evidence that such securities have not been qualified for sale pursuant to the provisions of this chapter, and shall be admissible in evidence in any proceeding to enforce the provisions of this chapter.]

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

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

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

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

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

(f) Sections 409.102 and 409.201(c), as well as section 409.405 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this act and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner in such form as he by rule prescribes, an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this act or any rule or order hereunder, and he has not filed a consent to service of process under subsection (g) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.]

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

[409.418. (a) Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before January 1, 1968, except that no civil suit or action

4 may be maintained to enforce any liability under prior law unless brought within any
5 period of limitation which applied when the cause of action accrued and in any event
6 within two years after January 1, 1968.

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

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

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

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

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

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

15 (2) Making a joint registration examination or investigation;

16 (3) Holding a joint administrative hearing;

17 (4) Filing and prosecuting a joint civil or administrative proceeding;

18 (5) Sharing and exchanging personnel;

19 (6) Sharing and exchanging information and documents subject to the
20 restrictions of 15 CSR 30-50.020(10); and

21 (7) Formulating, in accordance with chapter 536, RSMo, rules or proposed
22 rules on matters such as statements of policy, guidelines, and interpretative opinions
and releases.]

2 [409.421. 1. No rule or portion of a rule promulgated under the authority of
3 sections 409.101 to 409.420 shall become effective until it has been approved by the
4 joint committee on administrative rules in accordance with the procedures provided
5 in this section, and the delegation of the legislative authority to enact law by the
adoption of such rules is dependent upon the power of the joint committee on

6 administrative rules to review and suspend rules pending ratification by the senate
7 and the house of representatives as provided in this section.

8 2. Upon filing any proposed rule with the secretary of state, the
9 commissioner shall concurrently submit such proposed rule to the committee, which
10 may hold hearings upon any proposed rule or portion thereof at any time.

11 3. A final order of rulemaking shall not be filed with the secretary of state
12 until thirty days after such final order of rulemaking has been received by the
13 committee. The committee may hold one or more hearings upon such final order of
14 rulemaking during the thirty-day period. If the committee does not disapprove such
15 order of rulemaking within the thirty-day period, the commissioner may file such
16 order of rulemaking with the secretary of state and the order of rulemaking shall be
17 deemed approved.

18 4. The committee may, by majority vote of the members, suspend the order
19 of rulemaking or portion thereof by action taken prior to the filing of the final order
20 of rulemaking only for one or more of the following grounds:

21 (1) An absence of statutory authority for the proposed rule;

22 (2) An emergency relating to public health, safety or welfare;

23 (3) The proposed rule is in conflict with state law;

24 (4) A substantial change in circumstance since enactment of the law upon
25 which the proposed rule is based.

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

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

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

2 [409.500. Sections 409.500 to 409.566 may be cited as the "Missouri
Takeover Bid Disclosure Act".]

2 [409.506. As used in sections 409.500 to 409.566, the following terms shall
have the following meanings:

3 (1) "Takeover bid", the acquisition of or offer to acquire by an offeror from
4 an offeree, pursuant to a tender offer or request or invitation for tenders, any equity

5 security of a target company, if after acquisition thereof the offeror would, directly
6 or indirectly, be a beneficial owner of more than five percent of any class of the
7 issued and outstanding equity securities of such target company. Such term does not
8 include:

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

11 (b) An offer to acquire such equity security solely in exchange for other
12 securities, or the acquisition of such equity security pursuant to such offer, for the
13 sole account of the offeror, in good faith and not for the purpose of avoiding this
14 section, and not involving any public offering of such other securities within the
15 meaning of section 4 of title I of the Securities Act of 1933, (48 Stat. 77, 15 U.S.C.
16 77 d (2)); as amended;

17 (c) Any other offer to acquire an equity security, or the acquisition of such
18 equity security pursuant to such offer, for the sole account of the offeror, from not
19 more than fifty offerees, in good faith and not for the purpose of avoiding the
20 provisions of sections 409.500 to 409.566;

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

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

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

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

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

2 [409.511. 1. No offeror shall make a takeover bid unless as soon as
3 practicable on the date of commencement of the takeover bid he files with the
4 commissioner of securities and delivers to the target company at its principal
5 executive offices a registration statement containing the information required by
section 409.516.

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

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

 [409.516. 1. The registration statement required to be filed pursuant to
2 subsection 1 of section 409.511 shall include:

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

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

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

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

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

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

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

32 (8) Complete information on the organization and operations of the offeror,
33 including without limitation the year of organization, form of organization,
34 jurisdiction in which it is organized, a description of each class of the offeror's capital

stock and of its long-term debt, financial statements for the current period and for the three most recent annual accounting periods, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past five years, the names of all directors and executive officers together with biographical summaries of each for the preceding three years to date;

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

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

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

(12) If debt securities or preferred stock are either offered in the takeover bid or used as a source of funds in making the takeover bid, the investment rating, if any, by a generally recognized rating service of such debt security or preferred stock.

2. If any material change occurs in the facts set forth in the registration statement required by subsection 1 of section 409.511, the offeror who filed such statement shall promptly notify the commissioner of securities and the target company of such change in writing or by telephone confirmed in writing and shall amend the registration statement, to reflect such change promptly but not later than the date such change is first published, sent or given to offerees.

3. The commissioner of securities may permit the omission of any information required by subsection 1 of this section to be included in the registration

78 statement if he determines that such information is immaterial or otherwise
79 unnecessary for the protection of offerees.]

2 [409.521. 1. The commissioner of securities may conduct such investigation
3 as he deems necessary concerning any takeover bid for the purpose of determining
4 compliance with the requirements of sections 409.500 to 409.566. As part of such
5 investigation the commissioner of securities may require persons to file statements
6 in writing and under oath with his office, subpoena witnesses, compel their
7 attendance, examine them under oath and require the production of books, records,
8 documents and papers.

9 2. In the event the commissioner of securities determines that any person is
10 violating or about to violate any provision of sections 409.500 to 409.566, or any
11 order, rule or regulation issued pursuant thereto, he may seek, in court, an injunction
12 temporarily or permanently barring that person from making or taking part in or
13 continuing a takeover bid or from taking up or paying for shares tendered by offerees
14 pursuant to a takeover bid, and the court may grant the relief applied for or so much
thereof as it may deem proper.]

2 [409.526. 1. Every person who willfully violates any provision of sections
3 409.500 to 409.566 shall be guilty of a class A misdemeanor.

4 2. Every person who violates any provision of sections 409.500 to 409.566
5 shall be subject to a civil penalty of one thousand dollars per violation if a natural
6 person or ten thousand dollars per violation if a corporation. When the violation is
7 the failure to file a registration statement as required by subsection 1 of section
8 409.511 the failure to file a solicitation or recommendation as required by subsection
9 3 of section 409.511 or the failure to amend such registration statement as required
10 by subsection 2 of section 409.516 each business day of nonregistration or failure to
11 file a recommendation or solicitation or failure to amend constitutes a separate
12 violation. The penalty imposed by this section shall be cumulative and more than
13 one penalty shall be recoverable in the same action in any court of competent
jurisdiction.]

2 [409.531. 1. Sections 409.500 to 409.566 shall be administered by the
3 commissioner of securities and employees designated by him. The commissioner of
4 securities is hereby empowered to promulgate, alter, amend or revoke rules and
5 regulations necessary to carry out the purposes of sections 409.500 to 409.566.

6 2. The commissioner of securities may establish fees for the filing of any
7 registration statement, not to exceed two thousand five hundred dollars, to recover
8 the costs of administering sections 409.500 to 409.566. Such fees may vary
9 according to the maximum consideration payable by the offeror for the securities
which are the subject of the takeover bid.]

2 [409.536. The attorney general may prosecute every person charged with the
3 commission of a criminal offense arising from the violation of any provision of
4 sections 409.500 to 409.566. In all such proceedings, the attorney general may appear
5 in person or by his deputy before any court of record or any grand jury and exercise
all the powers and perform all the duties in respect of such actions or proceedings

6 which the prosecuting attorney would otherwise be authorized or required to exercise
7 or perform; or the attorney general may in his discretion transmit evidence, proof and
8 information as to such offense to the prosecuting attorney of the county or counties
9 in which the alleged violation has occurred, and every prosecuting attorney to whom
10 such evidence, proof and information is so transmitted shall forthwith proceed to
11 prosecute any corporation, company, association, or officer, manager or agent
12 thereof, or any firm or person charged with such violation. In any such proceeding,
13 wherein the attorney general has appeared either in person or by deputy, the
14 prosecuting attorney shall only exercise such powers and perform such duties as are
15 required of him by the attorney general or the deputy attorney general so appearing.]

2 [409.541. 1. Every nonresident offeror, whether or not such offeror has filed
3 a registration statement, except a foreign corporation which has appointed and keeps
4 a resident agent in this state, shall be deemed to have appointed the secretary of state
5 as his agent upon whom may be served any lawful process, authorized by sections
6 409.500 to 409.566, with the same effect as though served upon the offeror
7 personally.

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

2 [409.546. 1. No person shall make any untrue statement of a material fact
3 or omit to state any material fact necessary in order to make the statements made, in
4 the light of the circumstances under which they are made, not misleading, or engage
5 in any fraudulent, deceptive, or manipulative acts or practices, in connection with any
6 takeover bid or any solicitation of offerees in opposition to or in favor of any such
7 takeover bid.

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

[409.551. Sections 409.500 to 409.566 shall not apply when:

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

6 (2) The offeror or the target company is a bank or a bank holding company
7 as subject to the Bank Holding Company Act of 1956, (70 Stat. 133, 12 U.S.C.
8 1841), and subsequent amendments thereto, and the takeover bid is subject to
9 approval by the appropriate federal agency as provided in such act;

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

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

[409.556. In the event any provision or application of sections 409.500 to
2 409.566 is held illegal or invalid for any reason, such holding shall not affect the
3 legality or validity of any other provision or application thereof.]

[409.561. If the takeover bid is not subject to the requirements of section
2 14(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78n(d), the following
3 additional requirements shall apply to the takeover bid:

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

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

8 (3) Equity securities deposited pursuant to a takeover bid may be withdrawn
9 at any time until the expiration of thirty business days after the commencement of the
10 takeover bid and at any time after the expiration of sixty-five days from the
11 commencement of the takeover bid, if the shares have not been purchased, and until
12 the expiration of ten business days following the date of commencement of another
13 offeror's takeover bid for the same equity securities if the shares have not been
14 purchased and if the bidder has received notice or otherwise has knowledge of the
15 commencement of such takeover bid;

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

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

26 (6) Within ten days of the filing of a registration statement as required by
27 section 409.511 the commissioner of securities may schedule a public hearing or
28 hearings or conduct such investigation as he deems necessary concerning any
29 takeover bid for the purpose of determining compliance with the requirements of
30 sections 409.500 to 409.566. Any such hearing or investigation shall be declared by
31 order of the commissioner of securities. Any initial hearing shall commence within
32 twenty days of the filing of a registration statement;

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

38 Every person shall comply with every such order;

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

43 (9) Any stay payment order issued by the commissioner of securities pursuant
44 to subdivision (7) of this section shall automatically expire within sixty days from its
45 issuance except where the commissioner of securities has in his order containing
46 findings of fact and conclusions of law conditioned the purchase and payment for
47 shares tendered upon changes or modifications in the registration statement, in which
48 event any stay payment order shall be vacated by the commissioner of securities after
49 he is satisfied that such changes or modifications have been publicly disseminated
50 to offerees;

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

2 [409.566. Any offeree whose equity securities are the subject of a takeover
3 bid and who has been injured by any violation of sections 409.500 to 409.566 may
4 bring an action in his or her own name to enjoin such unlawful act or practice and to
5 recover actual damages together with reasonable attorney fees in the event the offeree
is successful.]