
EMERGENCY RULE

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

EMERGENCY AMENDMENT

15 CSR 30-51.172 Dishonest or Unethical Business Practices by Investment Advisers and Investment Adviser Representatives. The secretary is deleting sections (3) and renumbering as necessary.

PURPOSE: This emergency amendment amends the rule to be in compliance with a federal court order.

EMERGENCY STATEMENT: The Secretary of State finds that an immediate danger to the public welfare requires this emergency action and is necessary to preserve a compelling government interest in that a federal court determined certain elements of the original rule were invalid. The Secretary of State is filing this amendment in order to prevent confusion and uncertainty in the industry. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The Secretary of State believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency amendment was filed October 23, 2024, becomes effective November 6, 2024, and expires May 4, 2025.

[(3)] Failing to disclose to any client or prospective client the following material fact:

(A) If an investment adviser or investment adviser representative incorporates a social objective or other nonfinancial objective into a discretionary investment decision to buy or sell a security or commodity for a client, advice or a recommendation to a client for the purchase or sale of a security or commodity, or the selection, or advice or a recommendation to a client regarding the selection, of a third-party manager or subadviser to manage the investments in the client's account, then such investment adviser or investment adviser representative shall disclose to such client the existence of such incorporation;

(B) As used in this section, the following terms mean:

1. "Incorporates a social objective," means the material fact to consider socially responsible criteria in the investment or commitment of client funds for the purpose of seeking to obtain an effect other than the maximization of financial return to the client;

2. "Investment adviser," the same meaning as under section 409.1-102;

3. "Investment adviser representative," the same meaning as under section 409.1-102;

4. "Nonfinancial objective," means the material fact to consider criteria in the investment or commitment of client funds for the purpose of seeking to obtain an effect other than the maximization of financial return to the client;

5. "Socially responsible criteria," any criterion that is intended to further, or is branded, advertised, or otherwise publicly described by the investment adviser or investment adviser representative as furthering, any of the following:

A. International, domestic, or industry agreements relating to environmental or social goals;

B. Corporate governance structures based on social characteristics; or

C. Social or environmental goals;

(C) The disclosure obligation under subsection (3)(A) is satisfied by providing clear and conspicuous prior disclosure and obtaining written acknowledgment and consent from the client. Written consent shall be obtained either—

1. At the establishment of the advisory relationship; or

2. Prior to—

A. Effecting the initial discretionary investment for the client's account;

B. Providing the initial recommendation or advice regarding the purchase or sale of a security or commodity in a client's account; or

C. Selecting, or recommending or advising on the selection of, a third-party manager or subadviser to manage the investments in a client's account;

3. Such disclosure, thereafter, shall be provided to the client on an annual basis and, no less than every three (3) years, consented in writing by the client; and

(D) Written consent required in subsection (3)(C) shall contain language that is substantially similar to the following:

"I, [NAME OF CLIENT], consent to my [as applicable, NAME OF INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE] incorporating a social objective or other nonfinancial objective into any discretionary investment decision my [as applicable, investment adviser or investment adviser representative] makes for my account; any recommendation or advice my [as applicable, investment adviser or investment adviser representative] makes to me for the purchase or sale of a security or commodity; or the selection my [as applicable, investment adviser or investment adviser representative] makes, or recommendation or advice my [as applicable, investment adviser or investment adviser representative] makes to me regarding the selection of, a third-party manager or subadviser to manage the investments in my account. Also, I acknowledge and understand that incorporating a social objective or other nonfinancial objective into discretionary investment decisions, recommendations, advice, and/or the selection of a third-party manager or subadviser to manage the investments, in regards to my account, will result in investments and recommendations/ advice that are not solely focused on maximizing a financial return for me or my account."

[(4)](3) The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure or incomplete disclosure of material fact or other deceptive practices are dishonest or unethical business practices.

AUTHORITY: section 409.6-605, RSMo 2016. Original rule filed April 8, 2004, effective Oct. 30, 2004. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Oct. 23, 2024, effective Nov. 6, 2024, expires May 4, 2025. An emergency amendment and a proposed amendment covering the same material will be published in the Dec. 2, 2024, issue of the **Missouri Register**.

PUBLIC COST: This emergency amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.

PRIVATE COST: This emergency amendment will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.