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# EMERGENCY RULE

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## TITLE 15 – ELECTED OFFICIALS Division 30 – Secretary of State

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

#### EMERGENCY RULE

#### 15 CSR 30-51.174 Fraudulent Practices of Investment Advisers and Investment Adviser Representatives

*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 Missouri rules regarding investment advisors and representatives were invalid. The Secretary of State is filing this rule in order to prevent confusion and uncertainty in the industry by clarifying what constitutes fraudulent practices by investment advisors and representatives. The scope of this emergency rule 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.

*PURPOSE:* This rule identifies practices in the investment adviser industry that are generally associated with acts that deceive and defraud.

(1) An investment adviser or investment adviser representative who has engaged in one (1) or more of the following practices shall be deemed to have engaged in fraud in connection with the offer, sale, or purchase of a security, directly or indirectly, in violation of section 490.5-501 of the Missouri Securities Act of 2003 (the “Act”), and to have engaged in an “act, practice or course of business which operates or would operate as a fraud” as used in section 409.5-502 of the Act. Each provision of this rule is intended to be severable. This rule is not intended to be all inclusive and acts or practices not enumerated in this rule may also be deemed deceitful or fraudulent:

(A) Effecting any transaction with an investment objective that the client has not authorized at or prior to the time such transaction is affected;

1. As used in this section (1), the following terms mean:

A. “Effecting any transaction” means having effected a discretionary purchase or sale of a security for a retail client’s account; solicited or recommended, or otherwise provided advice, to a retail client to buy or sell a security; or solicited, recommended, or otherwise advised, a retail client regarding the selection of a third-party manager or subadvisor to manage the investments in such client’s account;

B. “Retail client” means any person other than an institutional investor, regardless of whether the person has an account with the investment adviser;

C. “Institutional investor,” the same meaning as under section 409.1-102, RSMo;

D. “Investment adviser,” the same meaning as under section 409.1-102, RSMo; and

E. “Person,” the same meaning as under section 409.1-102, RSMo.

2. If any portion of this subsection (A) is adjudicated to be invalid or unenforceable for any reason or in any application, the intent of the Commissioner is that this application shall

be severable and the remainder of the subsection (1)(A) in its other applications shall be enforced.

*AUTHORITY:* section 409.6-605, RSMo 2016, and section 409.4-412(d)(9), RSMo Supp. 2024. Emergency rule filed Oct. 23, 2024, effective Nov. 6, 2024, expires May 4, 2025. An emergency rule and a proposed rule covering the same material will be published in the Dec. 2, 2024, issue of the **Missouri Register**.

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