

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

PROPOSED 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 (4).

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

[(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. Amended: Filed March 31, 2008, effective Jan. 1, 2009. Amended: Filed July 19, 2019, effective Jan. 30, 2020. Amended: Filed Nov. 1, 2021, effective April 30, 2022. Amended: Filed Dec. 15, 2022, effective July 30, 2023.*

**Original authority: 409.6-605, RSMo 2003.*

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

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Secretary of State, P.O. Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*