

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

**PROPOSED RULE**

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

*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 (A) in its other applications shall be enforced.

*AUTHORITY: sections 409.4-412(d)(9) and 409.6-605, RSMo Supp. 2008*

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

*PRIVATE COST: This proposed rule 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 rule 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.*