

MEMO# 35913

November 1, 2024

Missouri Secretary of State Files Emergency Amendment and Rule Identifying Fraudulent Practices

[35913]

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TO: ICI Members

Broker/Dealer Advisory Committee

ESG Advisory Group

Investment Advisers Committee SUBJECTS: State Issues RE: Missouri Secretary of State
Files Emergency Amendment and Rule Identifying Fraudulent Practices

After its previously promulgated rules seeking to impose certain conditions on financial professionals were enjoined,[\[1\]](#) the Missouri Secretary of State filed an emergency amendment and an emergency rule, each effective November 6, 2024, identifying practices in the brokerage industry and investment adviser industry that are generally associated with acts that deceive and defraud.[\[2\]](#) The emergency amendment applies to broker-dealers and agents, and the emergency rule applies to investment advisers and investment adviser representatives.

These actions make "[e]ffecting any transaction with an investment objective that the [customer/client] has not authorized at or prior to the time such transaction is effected" a fraudulent practice. They define "effecting any transaction" to mean "having effected a discretionary purchase or sale of a security for a retail [customer/client]'s account; solicited or recommended, or otherwise provided advice, to a retail [customer/client] to buy or sell a security; or solicited, recommended, or otherwise advised, a retail [customer/client] regarding the selection of a third-party manager or subadviser to manage the investments in such [customer/client]'s account." Additionally, "retail [customer/client]" is defined as "any person other than an institutional investor, regardless of whether the person has an account with the [broker-dealer/ investment adviser]."

The filings indicate that the emergency actions expire May 4, 2025 and that a proposed amendment and a proposed rule covering the same material will be published in the Dec. 2, 2024 issue of the Missouri Register.

Notes

[1] ICI's memorandum regarding the dismissal of Missouri's appeal can be viewed at <https://www.ici.org/memo35879>. ICI's summary of the Court's order in the matter of Securities Industry and Financial Markets Association vs. John R. Ashcroft and Douglas M. Jacoby, Case No. 23-cv-04154-SRB (Aug. 14, 2024) can be viewed at <https://www.ici.org/memo35806>. ICI's summary of the complaint in the matter of Securities Industry and Financial Markets Association vs. John R. Ashcroft and Douglas M. Jacoby, Civil Action NO. 2:23-cv-4154 (Aug. 10, 2023) can be viewed at <https://www.ici.org/memo35414>.

[2] 15 CSR 30-51.169, Fraudulent Practices of Broker-Dealers and Agents, is available at <https://www.sos.mo.gov/CMSImages/AdRules/main/15c30-51.169IE.pdf>. 15 CSR 30-51.174, Fraudulent Practices of Investment Advisers and Investment Adviser Representatives, is available at <https://www.sos.mo.gov/CMSImages/AdRules/main/15c30-51.174IE.pdf>. Each rule set is substantially similar, but for the provision in the emergency amendment that "[n]othing in this subsection (I) shall require broker-dealers or their agents to create or retain any record memorializing the required customer authorization," which appears only in the emergency amendment and not in the emergency rule.