

State of Missouri  
Office of Secretary of State

Case No. AP-08-06

IN THE MATTER OF:

ANDREW GARRETT, INC.  
380 Lexington Avenue, Suite 2135  
New York, NY 10168

*Respondent.*

**Consent Order**

1. The Missouri Securities Division (the "Securities Division") alleges that Andrew Garrett, Inc. ("Garrett") transacted business in the state of Missouri as an investment adviser without being registered, or exempt from registration, in violation of Section 409.4-403(a), RSMo. (Cum. Supp. 2007).
2. Garrett desires to settle the allegations and the matters raised by the Securities Division relating to unregistered activities as an investment adviser.
3. Garrett and the Securities Division consent to the issuance of this Consent Order (the "Order").
4. Garrett stipulates and agrees to the issuance of this Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
5. Garrett waives its right to a hearing with respect to this matter.
6. Garrett stipulates and agrees that it waives any rights that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Further, Garrett specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.
7. Garrett stipulates and agrees that, should the facts contained herein prove to be false or incomplete, the Missouri Securities Division preserves the right to pursue any and all legal or administrative remedies at its disposal.

**STIPULATIONS OF FACT**

8. Garrett is a broker-dealer and investment adviser with an address of 380 Lexington Avenue, Suite 2135, New York, NY 10168.
9. Garrett became registered in Missouri as a broker-dealer on August 7, 1992.
10. On May 16, 2002, Garrett was approved as a federal-covered investment adviser with the Securities and Exchange Commission. On that same date, a notice-filing for Garrett's federal-covered investment adviser was accepted by the Division. Garrett's registration as a federal-covered investment adviser with the SEC was terminated on October 27, 2003. Garrett's notice-filing with the Division was also withdrawn on October 27, 2003.
11. From October 28, 2003 to date, Garrett transacted business in the State of Missouri as an unregistered investment adviser.
12. On August 16, 2007, a request for registration as an investment adviser in the State of Missouri was filed by Garrett.
13. Garrett reported during the application process that it had provided investment advisory services to four Missouri clients during the period the firm was unregistered. For these services, Garrett collected investment advisory fees in the amount of \$15,837.27.
14. In its application, Garrett claimed that it had relied on the registration exemption pursuant to Section 409.4-403(b)(2), RSMo. (Cum. Supp. 2007) in transacting business with Missouri clients.
15. Section 409.4-403(b)(2) provides "The following persons are exempt from the registration requirement of subsection (a): A person without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state . . . ." Garrett is unable to rely on this exemption since Garrett has maintained branches in Missouri since at least 1996.
16. On February 9, 2006, Garrett entered into an order with the Missouri Commissioner of Securities for employing an unregistered securities agent in violation of Section 409.201(a), RSMo. 2000.

**JURISDICTIONAL BASIS**

17. Section 409.6-601(a), RSMo. (Cum. Supp. 2007), provides that the Securities Act of 2003 shall be administered by the commissioner of securities (the "Commissioner").
18. Section 409.6-604(a), RSMo. (Cum. Supp. 2007), provides that if the Commissioner determines that a person is engaging in an act, practice or course of business constituting a violation of the Securities Act, the Commissioner may issue an order directing the person to take action necessary or appropriate to comply with the Securities Act.
19. Section 409.6-604(h), RSMo. (Cum. Supp. 2007) provides that the Commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

#### CONCLUSIONS OF LAW

20. Garrett violated Section 409.4.403(a), RSMo. (Cum. Supp. 2007) when it transacted business in this state as an investment adviser without being registered, or exempt from registration under the Securities Act.

#### ORDER

**WHEREAS**, the Commissioner, after consideration of the above and on the consent of Garrett and the Securities Division, finds the following Order to be in the public interest, necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo. (Cum. Supp. 2007).

**NOW, THEREFORE**, it is hereby Ordered that:

- A. Garrett will retain, at its expense, an outside consultant ("Consultant") not unacceptable to the Commissioner, no later than one (1) month after the execution of this Consent Order. Within six (6) months of the execution of this Order, the Consultant will furnish an initial report to Garrett concerning Garrett's supervisory and compliance-related policies, procedures and practices and will make recommendations to improve these activities. If the Consultant becomes unable to perform his or her duties, Garrett shall have thirty (30) days to select a replacement Consultant not unacceptable to the Commissioner.
- B. The Consultant will prepare follow-up reports twelve (12), eighteen (18), and twenty-four (24) months following the execution of this Consent Order unless the Consultant affirmatively determines that such follow-up reports are unnecessary. These follow-up reports, if any, will make further recommendations and discuss the extent to which Garrett has implemented the Consultant's earlier recommendations.
- C. Garrett will provide to the Division copies of all reports prepared by the Consultant. The Division may speak with the Consultant at any time during the period that the Consultant is retained by Garrett. Any costs and/or fees associated with the Division's speaking with the Consultant shall be borne by the Division.
- D. Garrett will promptly adopt and implement the processes, procedures and practices recommended by the Consultant, however, Garrett may propose alternative procedures ("Alternative Procedures") designed to achieve the same objective or purpose as those that were recommended by the Consultant. Garrett may adopt the Alternative Procedures if the Consultant agrees that Garrett's proposed procedures will achieve the same objectives or purposes as the Consultant's original recommendations. In the event that Garrett and the Consultant disagree regarding any recommendation by the Consultant, Garrett shall have thirty (30) days to appeal such recommendation to the Commissioner and shall be bound by the decision of the Commissioner.
- E. Garrett will make available upon request by the Division all written communications between Garrett, its employees and the Consultant, as well as all documents that the Consultant has advised Garrett in writing that the Consultant reviewed or relied upon in connection with this engagement.
- F. For a period of six (6) months following the conclusion of the Consultant's work, Garrett, its affiliates and any of its officers may not employ or hire the Consultant in any capacity.
- G. Garrett shall deliver a cashier's check to the Securities Division in the amount of fifteen thousand dollars (\$15,000) made payable to the Missouri Secretary of State's Investor Education and Protection Fund. This amount shall be due and payable within ten (10) business days from the date this Consent Order is executed; and
- H. Garrett will pay its own costs and attorneys fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 28th DAY OF APRIL, 2008.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)

MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:

Missouri Securities Division

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Nathan J. Soendker  
Chief Registration Counsel

Andrew Garrett, Inc.

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Signature

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Print Name

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Title