

## Wyoming Administrative Rules

# Secretary of State

## Securities

### Chapter 10: Investment Adviser Regulations

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## **Chapter 10**

### **Investment Adviser Regulations**

#### **Section 1. Investment Adviser Registration.**

(a) Initial Registration. The application for initial registration as an investment adviser pursuant to W.S. § 17-4-403(a) shall be made by completing the Uniform Application for Investment Adviser Registration, Form ADV, in accordance with the form instructions and by filing the form electronically with IARD. The application for initial registration shall include the following:

(i) Proof of compliance by the investment adviser with the examination requirements of Section 5 of this chapter;

(ii) Financial statements as set forth in Section 7 of this chapter, including a copy of the balance sheet for the last fiscal year, and if the balance sheet is older than 45 days from the date of filing of the application, an unaudited balance sheet prepared as set forth in Section 7;

(iii) A copy of the surety bond required by Section 10, if applicable;

(iv) The fee required by W.S. § 17-4-410(c), and;

(v) Any other information the Secretary of State may reasonably require.

(b) FORM ADV PART II. The Secretary of State may accept:

(i) A copy of Part II of Form ADV filed electronically with IARD; or

(ii) A paper copy of Part II of Form ADV filed directly with the Secretary of State.

(c) Annual renewal. The application for annual renewal registration as an investment adviser shall be filed electronically with IARD. The application for annual renewal registration shall include the following:

(i) The fee required by W.S. § 17-4-410(c), and;

(ii) A copy of the surety bond required by Section 10, if applicable.

(d) Updates and amendments. An investment adviser must file electronically with IARD, in accordance with the instructions in the Form ADV, any amendments to the investment adviser's Form ADV;

(i) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event requiring an amendment; and

(ii) Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file electronically with IARD an Annual Updating Amendment to the Form ADV.

(e) Completion of filing. An application for initial or renewal registration is not considered filed for purposes of W.S. § 17-4-403(a) until the required fee and all required submissions have been received by the Secretary of State.

(f) Withdrawal. The application for withdrawal of registration as an investment adviser pursuant to W.S. § 17-4-409 shall be completed by following the instructions on the Notice of Withdrawal from Registration as Investment Adviser, Form ADV-W, and by filing the form electronically with IARD.

## **Section 2. Investment Adviser Representative Registration.**

(a) Initial registration. The application for initial registration as an investment adviser representative pursuant to W.S. § 17-4-404(a) shall be made by completing the Uniform Application for Securities Industry Registration or Transfer, Form U4, in accordance with the form instructions and by filing the form electronically with IARD. The application for initial registration shall include the following:

(i) Proof of compliance by the investment adviser representative with the examination requirements of Section 5;

(ii) The fee required by W.S. § 17-4-410(d).

(b) Annual Renewal. The application for annual renewal registration as an investment adviser representative shall be filed electronically with IARD and shall include the fee required by W.S. § 17-4-410(d).

(c) Updates and amendments. The investment adviser representative is under a continuing obligation to update information required by Form U4 as changes occur.

(i) An investment adviser representative and the investment adviser must electronically file promptly with IARD any amendments to the representative's Form U4; and

(ii) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event requiring an amendment.

(d) Completion of filing. An application for initial or renewal registration is not considered filed for purposes of W.S. § 17-4-404(a) until the required fee and all required submissions have been received by the Secretary of State.

(e) Withdrawal. The application for withdrawal of registration as an investment adviser representative pursuant to W.S. § 17-4-408(a) shall be completed by following the

instructions on Uniform Termination Notice for Securities Industry Registration, Form U5, and by filing the form electronically with IARD within 30 days of the date of termination.

### **Section 3. Notice Filing Requirements for Federal Covered Investment Advisers**

(a) The notice filing for a federal covered investment adviser pursuant to W.S. § 17-4-405(a) shall be filed electronically with IARD on an executed Form ADV. A notice filing of a federal covered investment adviser shall be considered filed when the fee required by W.S. § 17-4-410(e) and the Form ADV are filed electronically with and accepted by IARD on behalf of the state.

(i) FORM ADV PART II. The Secretary of State may:

(A) Accept a copy of Part II of Form ADV as filed electronically with IARD; or

(B) Consider Part II of Form ADV filed if a federal covered investment adviser provides, within 5 days of a request, Part II of Form ADV to the Secretary of State. The Secretary of State considers Part II of Form ADV to be filed, therefore, a federal covered investment adviser is not required to submit Part II of Form ADV to the Secretary of State unless requested.

(b) Renewal. The annual renewal of the notice filing for a federal covered investment adviser pursuant to W.S. § 17-4-405(c) shall be filed electronically with IARD. The renewal of the notice filing for a federal covered investment adviser shall be considered filed when the fee required by W.S. § 17-4-410(e) is filed with and accepted by IARD on behalf of the state.

(c) Updates and amendments. A federal covered investment adviser must file electronically with IARD, in accordance with the instructions in Form ADV, any amendments to the federal covered investment adviser's Form ADV.

### **Section 4. Registration Exemption for Investment Advisers to Private Funds.**

The Secretary of State incorporates by reference NASAA's Registration Exemption for Investment Advisers to Private Funds Model Rule, adopted December 16, 2011, and amended October 8, 2013, found at [www.nasaa.org](http://www.nasaa.org).

### **Section 5. Examination Requirements.**

(a) Unless otherwise waived by the Secretary of State, an investment adviser or an investment adviser representative shall take and pass within the two year period immediately preceding the date of the application:

(i) The Uniform Investment Adviser State Law Examination (S65); or

(ii) The Uniform Combined State Law Examination (S66) and the General Securities Representative Examination (S7).

(b) If the investment adviser is an entity, then a supervisory or control individual shall take and pass the examination(s) as required in subsection (a) of this Section.

(c) Any person who has been registered as an investment adviser or an investment adviser representative in any state requiring the licensing, registration or qualification of investment advisers or investment adviser representatives within the two year period immediately preceding the date of filing an application shall not be required to comply with the examination requirement set forth in subsection (a) of this Section.

(d) Compliance with subsections (a) and (b) is waived if the applicant has been awarded any of the following designations and at the time of filing an application is current and in good standing:

(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planners Board of Standards.

(ii) Chartered Financial Consultant (ChFC) or Masters of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania.

(iii) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts.

(iv) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

(v) Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association.

(e) An applicant who has taken and passed the Uniform Investment Adviser State Law Examination (S65) within two years prior to the date the application is filed with the Secretary of State or at any time if the applicant has been registered or licensed as an investment adviser, investment adviser representative or securities agent within the two years prior to the date the application is filed with the Secretary of State, is exempt from taking the Uniform Investment Adviser State Law Examination.

(f) An applicant who is an agent for a broker-dealer/investment adviser and who is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative but who has previously met the examination requirement in subsection (a) of this Section necessary to provide advisory services on behalf of the broker-dealer/investment adviser, is exempt from taking the Uniform Investment Adviser State Law Examination (S65).

(g) Persons considered to be investment adviser representatives only because they solicit, offer or negotiate for the sale of or sell investment advisory services in this state are not be required to take and pass the examinations in subsection (a) of Section 5.

## **Section 6. Minimum Financial Requirements for Investment Advisers.**

(a) For purposes of this Section, the term "net worth," shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(b) An investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 except:

(i) An investment adviser having custody solely due to direct fee deduction and complying with the terms described under Section 11, subsection (b)(3) and related books and records, as described in Section 8, shall not be required to comply with the net worth or bonding requirements of this Section.

(ii) An investment adviser having custody solely due to advising pooled investment vehicles and complying with the terms described under Section 11, subsection (a)(v) or Section 11, subsection (b)(iv) and related books and records, as described in Section 8, shall not be required to comply with the net worth or bonding requirements of this Section.

(iii) An investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of \$10,000.

(iv) An investment adviser having custody of or discretionary authority over client fund who is bonded in accordance with Section 10(c) of this Chapter.

(c) Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the Secretary of State if such investment adviser's net worth is less than the minimum required. On the following business day after transmitting such notice, each investment adviser shall file by the close of business, a report with the Secretary of State of its financial condition, including the following:

- (i) A trial balance of all ledger accounts;
- (ii) A statement of all client funds or securities which are not segregated;
- (iii) A computation of the aggregate amount of client ledger debit balances;

and

(iv) A statement as to the number of client accounts.

(d) For purposes of this Section an investment adviser shall not be considered to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if:

(i) The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account; and

(ii) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

(iii) A third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(e) The Secretary of State may require that a current appraisal be submitted in order to establish the worth of any asset.

(f) Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's minimum capital requirements.

#### **Section 7. Financial Reporting Requirements for Investment Advisers.**

(a) Every registered investment adviser who has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client shall file with the Secretary of State an audited balance sheet as of the end of the investment adviser's most recent fiscal year. Each balance sheet filed pursuant to this Section must be:

(i) Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

(ii) Audited by an independent certified public accountant; and

(iii) Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

(b) Every registered investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the Secretary of State a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles or such other basis of accounting acceptable to the Secretary of State and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's most recent fiscal year.

(c) The financial statements required by this Section shall be filed with the Secretary of State within 90 days following the end of the investment adviser's fiscal year.

(d) Every investment adviser that has its principal place of business in a state other than this state shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's financial reporting requirements.

**Section 8. Recordkeeping Requirements.** The Secretary of State incorporates by reference NASAA's Recordkeeping Requirements for Investment Advisers Model Rule USA 2002 411(c)-1, Alternative 1, adopted September 17, 2008, and amended on September 11, 2011, and April 15, 2013, located at [www.nasaa.org](http://www.nasaa.org).

**Section 9. Business Continuity and Succession Planning.** Every investment adviser shall establish, implement, and maintain written procedures relating to a Business Continuity and Succession Plan. The plan shall be based upon the facts and circumstances of the investment adviser's business model including the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The plan shall provide for at least the following:

(a) The protection, backup, and recovery of books and records.

(b) Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

(c) Office relocation in the event of temporary or permanent loss of a principal place of business.

(d) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.

(e) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

(f) The Secretary of State incorporates by reference NASAA's GUIDANCE ON BUSINESS CONTINUITY AND SUCCESSION PLANNING FOR STATE-REGISTERED INVESTMENT ADVISERS adopted April 13, 2015, located at [www.nasaa.org](http://www.nasaa.org).

## **Section 10. Bonding Requirements for Investment Advisers**

(a) Any bond required by this Section shall be issued by a company qualified to do business in this state in the form determined by the Secretary of State and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

(b) Every investment adviser registered or required to be registered under the Act having custody of or discretionary authority over client funds or securities shall be bonded in the amount of \$10,000 unless a greater amount is otherwise determined by the Secretary of State.

(c) Independent of the bond amount required by subsection (b) of this Section, every investment adviser registered or required to be registered under the Act who has custody or discretion of client funds or securities who does not meet the minimum net worth standard in Section 6 shall be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000. However an investment adviser registered or required to be registered under the Act who accepts prepayment of more than \$500 per client and six or more months in advance shall maintain at all times a positive net worth of \$35,000.

(d) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subsection (a) of this Section, provided that the investment adviser is registered or licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

(e) Required bond amounts of subsections (b) and (c) of this Section may be on separate bonds or combined in one bond at the discretion of the investment adviser and their surety holder unless otherwise determined by the Secretary of State.

**Section 11. Custody Requirements for Investment Advisers.** The Secretary of State incorporates by reference NASAA's Custody Requirements for Investment Advisers Model Rule USA 2002 411(f)-(1), Alternative 1, adopted September 17, 2008 and amended September 11, 2011, and April 15, 2013, located at [www.nasaa.org](http://www.nasaa.org).

**Section 12. Investment Adviser Brochure.** The Secretary of State incorporates by reference NASAA's Brochure Rule Requirements for Investment Advisers Model Rule 203(b)-1 adopted September 3, 1987 and amended September 11, 2011, located at [www.nasaa.org](http://www.nasaa.org).

**Section 13. Prohibited Conduct in Providing Investment Advice.** The Secretary of State incorporates by reference NASAA's Prohibited Conduct of Investment Advisers, Investment Adviser Representatives and Federal Covered Investment Advisers Model Rule USA 2002 502(b) adopted September 17, 2008, located at [www.nasaa.org](http://www.nasaa.org).

**Section 14. Contents of an Investment Advisory Contract.** The Secretary of State incorporates by reference NASAA's Contents of Investment Advisory Contract Model Rule USA 2002 502(c) adopted April 15, 2013, located at [www.nasaa.org](http://www.nasaa.org).