Certification Page
Regular and Emergency Rules

Revised August 2023

☐ **Emergency Rules** *(Complete Sections 1-3 and 5-6)* ☒ **Regular Rules**

1. General Information			
a. Agency/Board Name* Wyoming Secretary of State's Office			
b. Agency/Board Address 122 W. 25th St., Herschler Building East, Suites 100 and 101	c. City Cheyenne		d. Zip Code 82002
e. Name of Agency Liaison Joe Rubino	f. Agency Liaison Telephone Number 307-777-5365		
g. Agency Liaison Email Address Joe.Rubino1@wyo.gov		h. Adoption Date 12/14/2023	
i. Program SECURITIES			
Amended Program Name (*if applicable*):			

* ☐ *By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.*

2. Legislative Enactment For purposes of this Section 2, "new" only applies to regular (non-emergency) rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these non-emergency or regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

☒ **No.** ☐ **Yes.** If the rules are new, please provide the Legislative Chapter Number and Year Enacted:	Chapter:	Year:

3. Rule Type and Information For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.

a. Provide the Chapter Number, Title* and Proposed Action for Each Chapter. *Please use the "Additional Rule Information" form to identify additional rule chapters.*

Chapter Number:	Chapter Name:	Action
2	Definitions	☐ New ☒ Amended ☐ Repealed
	Amended Chapter Name (*if applicable*):	
4	Broker Dealer Regulations	☐ New ☒ Amended ☐ Repealed
	Amended Chapter Name (*if applicable*):	
5	Securities Agent Regulations	☐ New ☒ Amended ☐ Repealed
	Amended Chapter Name (*if applicable*):	
10	Investment Adviser Regulations	☐ New ☒ Amended ☐ Repealed
	Amended Chapter Name (*if applicable*):	
		☐ New ☐ Amended ☐ Repealed
	Amended Chapter Name (*if applicable*):	
		☐ New ☐ Amended ☐ Repealed
	Amended Chapter Name (*if applicable*):	

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. ☐ **No.** ☐ **Yes.** ■ **N/A**

b. A public hearing was held on the proposed rules. ☐ **No.** ■ **Yes. Please complete the boxes below.**

Date:	Time:	City:	Location:
09/29/2023	10AM	Cheyenne, WY	Capitol Extension Conference Center Auditorium; Members of the public may attend virtually by registering at the following link: https://us06web.zoom.us/meeting/regist

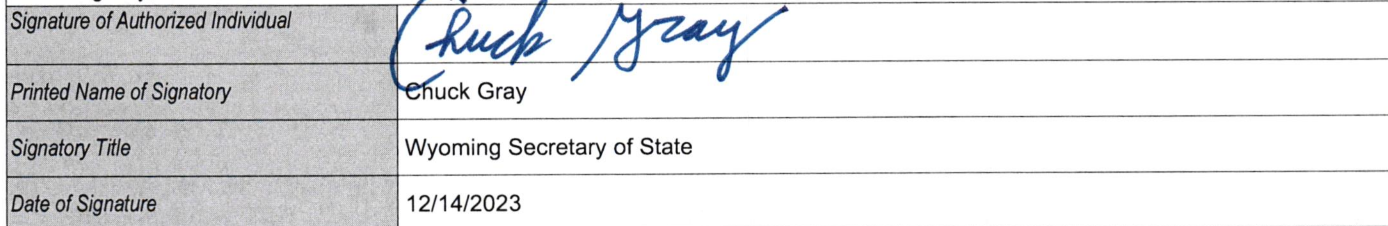
5. Checklist

a. ■ For regular rules, the Statement of Principal Reasons is attached to this Certification and, in compliance with Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule

b. ☐ For emergency rules, the Memorandum to the Governor documenting the emergency, which requires promulgation of these rules without providing notice or an opportunity for a public hearing, is attached to this Certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct. By electronically submitting the emergency or regular rules into the Wyoming Administrative Rules System, the undersigned acknowledges that the Registrar of Rules will review the rules as to form and, if approved, the electronic filing system will electronically notify the Governor's Office, Attorney General's Office, and Legislative Service Office of the approval and electronically provide them with a copy of the complete rule packet on the date approved by the Registrar of Rules. The complete rules packet includes this signed certification page; the Statement of Principal Reasons or, if emergency rules, the Memorandum to the Governor documenting the emergency; and a strike and underscore copy and clean copy of each chapter of rules.



Signature of Authorized Individual	
Printed Name of Signatory	Chuck Gray
Signatory Title	Wyoming Secretary of State
Date of Signature	12/14/2023

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

Wyoming Secretary of State

Chuck Gray
Secretary of State

Jesse Naiman
Deputy Secretary of State

Statement of Principal Reasons

As required to promulgate these rules (*see* W.S. 17-4-605(b)), the Secretary of State finds that Environmental, Social, and Governance ("ESG") investing strategies are inconsistent with the default fiduciary duty that is owed to customers and clients because entities that use ESG investment strategies do not focus on maximizing investment returns for customers or clients. The Secretary of State finds that requiring investment advisers, broker-dealers, and securities agents to disclose whether they are engaging in ESG investment strategies is consistent with the Wyoming Uniform Securities Act's purpose of protecting clients' expectation of anticipating that investment decision-makers will consider, as a default rule, maximizing investment returns.

Accordingly, these rules require investment advisers, broker-dealers, and securities agents to disclose to their customers or clients whether they are incorporating a social objective, i.e. whether they are considering social criteria in the investment or commitment of customer or client funds for the purpose of obtaining any effect other than or in addition to maximized financial return to the customer or client to ensure that customers or clients whose investments are not based solely on maximizing financial return are aware of the potential risks of their investments and provide informed consent to these investments and/or investment strategies, as required herein.

Finally, non-substantive changes have been made to ensure uniformity of formatting.

Statement in Accordance with W.S. 16-3-103(a)(i)(G)

In accordance with W.S. 16-3-103(a)(i)(G), the proposed rule change exceeds minimum substantive state statutory requirements for the following reasons:

While the Wyoming Uniform Securities Act does not provide an explicit requirement that investment advisers, broker-dealers, or securities agents disclose to their customers whether they are incorporating a social objective, i.e. whether they are considering social criteria in the investment or commitment of customer or client funds for the purpose of obtaining any effect other than or in addition to maximized financial return to the customer or client, W.S. 17-4-605 enables the Secretary of State to adopt and amend rules necessary and appropriate in the public interest or for the protection of investors. The Secretary of State finds that adopting rules requiring investment advisers, broker-dealers, and securities agents to disclose whether they are engaging in investment strategies which incorporate a social objective is consistent with the Wyoming Uniform Securities Act's purpose of protecting clients' expectation of anticipating that investment decision-makers will consider, as a default rule, maximizing investment returns.

Wyoming Secretary of State

Chuck Gray
Secretary of State

Jesse Naiman
Deputy Secretary of State

FROM: Jesse Naiman, Deputy Secretary of State

DATE: December 14, 2023

SUBJECT: Final Rules: Summary of Public Comments and Agency Responses – Securities Program

INTRODUCTION AND EXECUTIVE SUMMARY

The Secretary of State's Office published online notice of this intended rules packet, amendments to Chapters 2, 4, 5, and 10 of its Securities Rules, on August 2, 2023. The public comment period ran from August 2, 2023 to September 29, 2023. The Secretary of State's Office received a total of 46 comments regarding the proposed rules package. These comments were from a diverse set of stakeholders, and to ensure clarity, multiple comments from the same individual were consolidated into one comment. Additionally, verbal comments from the public comment hearing, which was held on September 29, 2023, were also included in the total number of comments received.

Comments in support of the proposed rules were primarily centered around a general support and a desire for increased transparency, as well as the underperformance of investment strategies which incorporate a social objective, and concern regarding the impact of ESG investments on the State of Wyoming and customers/clients in Wyoming.

Comments in opposition to the proposed rules were primarily centered around the following themes: general opposition to the proposed rulemaking, NSMIA preemption, ERISA preemption, concerns that the rules are unnecessary due to existing regulations, namely Regulation BI, concerns about excessive regulatory burden, potential confusion, alleged First Amendment concerns, and misunderstandings about "ESG investments."

In accordance with the Wyoming Administrative Procedure Act, the Wyoming Secretary of State has considered all written and verbal submissions respecting the proposed rules, and has determined the final rules packet shall be amended by deleting the proposed language originally inserted in Chapter 10, Section 3(d) which required federal covered investment advisers to adhere to the requirements set forth in Chapter 10, Section 15.

Administration Division: (307) 777-5343
Business Division: (307) 777-7311
Compliance Division: (307) 777-7370
Elections Division: (307) 777-5860

Herschler Building East
Suites 100 and 101
122 West 25th Street
Cheyenne, WY 82002-0020

Telephone: (307) 777-7378
E-mail: secofstate@wyo.gov
Website: https://sos.wyo.gov

The following sections delve deeper into each of these themes, providing a comprehensive understanding of the concerns and viewpoints of the various stakeholders, and a detailed discussion and response to each category of comment. *See Ron Peterson Firearms, LLC v. Jones*, 760 F.3d 1147, 1163 (10th Cir. 2014) (holding that agencies are not required to respond to every single comment); *Action on Smoking and Health v. C.A.B.*, 699 F.2d 1209, 1216 (D.C. Cir. 1983) (same).

DISCUSSION AND SUMMARY OF COMMENTS

A. COMMENT CATEGORY # 1: GENERAL SUPPORT OF PROPOSED RULES

1. Summary of Comments

A majority of comments expressed a general support of the proposed rules, as written, citing the need for increased transparency and disclosure of investment decisions that incorporate a social objective, the potential risks associated with incorporating a social or nonfinancial objective into investment decisions, and the potential negative impact of ESG investment strategies on Wyoming's industries.

2. Exemplary Comments

- "These ESG regulations do nothing for middle and small America. Please require them disclose everything." Written comment, Beckie Murway, Cheyenne, WY, received August 3, 2023.
- "Individuals should be able to know whether ESG is being used by companies and free to reject their funds being invested in such companies if they so choose. Likewise they are free to choose a company regardless of its use of ESG. Disclosure of the use of ESG is the point." Written comment, Bob and Diana Seabeck, Laramie, WY, received August 26, 2023.
- "[M]any of my constituents are investors who rely heavily on their investment income on retirement. And these individuals deserve to be informed when their hard-earned dollars are placed into funds that they do not prioritize the highest possible return and which seek to destroy the industries that Wyoming depends on. And so any opportunity to provide transparency in investing is one way we should pursue, especially during these uncertain economic times. And so I really appreciate the time to be here and for this public comment and that we're fighting against this and that we do need this transparency." Verbal comment, Representative Tomi Strock, Douglas, WY, received September 29, 2023.

3. Agency Response

The Wyoming Secretary of State agrees with the points raised in support of the proposed rules. For more information about the reasons for promulgating the proposed rules, see Statement of Principal Reasons.

B. Comment Category # 2: Underperformance of ESG Investments

1. Summary of Comments

Several investment advisers and banking/finance industry professionals spoke generally to the underperformance of ESG investing, the growing trends promoting ESG investment strategies across the country, and the need for proposed rules requiring increased disclosure to provide transparency to customers/clients in order to guard against the risks associated with ESG investment strategies.

2. Exemplary Comments

- "I have worked in the banking and finance industry for 40+ years, and most recently with LPL Financial for 15 years. Our relationships with our clients is based on what is in The Best Interest for our clients. I truly believe that if an advisor recommends incorporating a social objective or soliciting an ESG security, the client should receive full disclosure of this prior to the purchase. Requiring this disclosure would not be burdensome or unfair to either our office or the client." Written comment, Beth Johnson, Lander, WY, received September 26, 2023.
- *See generally*, verbal comment, Jerry Gruber, Laramie, WY, received September 29, 2023.
- *See generally*, verbal comment, Chris Nicholson, Strive Asset Management, received September 29, 2023.

3. Agency Response

The Wyoming Secretary of State agrees with the points raised in support of the proposed rules. For more information about the reasons for promulgating the proposed rules, see Statement of Principal Reasons.

C. Comment Category # 3: General Opposition to the Rules

1. Summary of Comments

Some comments expressed generalized opposition to the proposed rules. Allegations were made that the proposed rules are "an intrusion into investment decisions and personal opinions," and/or that these rules will restrict or prevent individuals from choosing to invest with a "social objective" in mind.

2. Exemplary Comments

- "[T]his is a terrible intrusion into investment decisions and personal opinions. I strongly object to it!" Written comment, Ann T. Tollefson, received August 2, 2023.
- *See generally*, verbal comment, Scott Meier, Wyoming Bankers Association, received September 29, 2023.

3. Agency Response

The proposed rules only require disclosure and do not in any way direct or intrude on a customer's or client's decisions. The proposed rules further the purpose of allowing customers and clients to make decisions regarding investments made on their behalf.

As there is no serious argument to rebut here, these comments are overruled in this response. *Ron Peterson Firearms*, 760 F.3d at 1163; *Action on Smoking and Health*, 699 F.2d at 1216. It is commonly understood by regulators and rulemaking bodies that there will always be individuals who oppose any rulemaking on principle, and there will additionally be individuals that oppose a specific rulemaking for purely ideological reasons. To the extent a comment expresses a substantive argument in addition to general opposition to the proposed rules, such argument is classified and addressed in the appropriate category.

D. COMMENT CATEGORY # 4: NSMIA PREEMPTION

1. Summary of Comments

Select comments argued the proposed rules are preempted by the National Securities Markets Improvement Act of 1996 (NSMIA). NSMIA aims to foster a harmonious regulatory environment that benefits both businesses and investors. NSMIA was passed with the goal of promoting a consistent federal regulatory regime across all states, and addressing the potential pitfalls of having a patchwork of differing state securities regulations. Such a disjointed approach would be inefficient, leading to confusion among businesses and investors alike. It would also place an undue administrative burden on entities operating in multiple states, forcing them to navigate and comply with a myriad of conflicting regulations. NSMIA prohibits states from imposing "registration, licensing, or qualification" requirements on any individual registered under NSMIA (or supervised by such individual). It prohibits states from imposing regulations requiring financial professionals to create records that differ from or are in addition to those mandated by federal law. And it also prevents states from placing "restrictions on the sale of covered securities."

2. Exemplary Comments

- *See generally*, NSMIA Preemption section of written comment, Marin E. Gibson, SIFMA, received September 29, 2023.
- "NSMIA prevents the creation of books and records. Excuse me, prevents states from creating additional books and records obligations that differ from those of the federal obligations" – Verbal Comment, John Cronin, LPL Financial, received September 29, 2023.

3. Agency Response

The objections based on NSMIA preemption have been considered, but federal preemption is not as broad as the comments argue.

The proposed security rules raise no express preemption concerns because there is no federal law containing explicit language preventing states from requiring disclosure for investments incorporating a social objective, especially increased disclosure focused on protecting investors and allowing for fully informed decision-making. NSMIA provides preemption of many aspects of what a state may propose, but also recognizes state power and authority in many other aspects relevant here. As one example, NSMIA allows a state to license an "investment adviser representative who has a place of business in the state." 15 U.S.C. § 80b-3a(b)(1)(A). Another example of retained state power concerns the regulation of the securities industry in order to prevent "fraud and deceit." 15 U.S.C. § 77r(c)(1)(A)(i); 15 U.S.C. § 80b-3a(b)(2). Here, NSMIA § 80b-3a(b)(1)(A) only preempts state rules "requiring the registration, licensing, or qualification" of persons. The proposed rules are rules related to disclosure and have no relation to "registration, licensing, or qualification," and so are not preempted. The objectors further argue that the proposed rules would amount to "indirect regulation," but this argument fails for the same reason as above. Finally, as the proposed rules are acting to require disclosure, they fundamentally are concerned with the prevention of "fraud and deceit," which is explicitly reserved to the states by federal law, including NSMIA.

Likewise, there is no implied preemption of the proposed rules. Conflict preemption is not a concern because investment advisers, broker-dealers, and securities agents would not be prevented from complying with any federal securities law by complying with enhanced disclosure rules. The same is true for field preemption. While securities are federally regulated, there is no "pervasive scheme" set in place such that states are prevented from also requiring increased disclosure for ESG investment strategies to prevent fraud or deceit. In fact, courts have made clear that "states enjoy broad powers to regulate such diverse subjects as: the registration of securities; the registration of broker-dealers, agents, and investment advisers; and fraud in the sale or purchase of securities and the rendering of investment advisory services." *Baker, Watts & Co. v. Miles & Stockbridge*, 876 F.2d 1101, 1107 (4th Cir. 1989) (citing L. Loss, *Fundamentals of Securities Regulation* 8-25 (2d ed. 1988)).

The second prong of these comments concerns the creation of records. There is no new recordkeeping requirement imposed by the proposed rules. The SEC already requires the creation of a "Customer Account Record" (CAR) which contains extensive and multitudinous information, and specifically includes "investment objectives." *See* 17 C.F.R. § 240.17a-3(a)(17). The purpose of this CAR is to reduce misunderstandings, is not standardized, and "may consist of more than one document." The inclusion of the disclosures such as those of the proposed rule in the already federally-mandated CRA is both contemplated and anticipated by the existing federal regulations; thus, they are clearly not preempted. Additionally, the SEC has indicated that the CAR can "consist of more than one document." *See* SEC Release 44992, Federal Register, Vol. 66, No. 213, at 55821 (2001).

The final prong of these comments touches on a belief that these regulations "place restrictions on the sale of covered securities." This is not the case. The only requirement of the proposed rules is that disclosure of the characteristics of such securities are made to the customer. No other restrictions are implied or imposed by the proposed rules. Further, this argument is internally inconsistent, as the "social objective" component which the proposed rules require disclosure is itself a restriction of securities (or at least objectives), so the proposed rules are not

restricting the sale of securities, but rather ensuring that "social objective" restrictions are not being applied without informed consent.

Notwithstanding the above, the final rules, specifically Chapter 10, will be amended to remove Section 3(d), which, as originally proposed, provided that federally-covered investment advisers shall adhere to the requirements set forth in Chapter 10, Section 15. Thus, Chapter 10 will be amended such that it will only cover investment advisers already regulated by the State of Wyoming and investment adviser representatives who operate in the State of Wyoming, as opposed to federally-covered investment advisers.

E. COMMENT CATEGORY # 5: ERISA PREEMPTION

1. Summary of Comments

Some comments argued the proposed rules are preempted by the Employee Retirement Income Security Act of 1974 (ERISA). The thrust of these arguments state that the proposed rules would be preempted by ERISA, which extensively prevents states from regulating private and employer-sponsored pension and welfare plans. ERISA is explicit in superseding all state laws as they relate to any employee benefit plan. Federal courts have recognized ERISA for its extensive preemption clause, considering it one of the broadest ever enacted by Congress. The primary aim of ERISA is to offer a consistent regulatory framework over employee benefit plans. Its broad preemption provisions are designed to ensure that the regulation of these plans remains a federal concern..

2. Exemplary Comments

- *See generally*, ERISA Preemption section of the written comment by SIFMA, received September 29, 2023.
- “We believe the proposed amendments are unnecessary and are in conflict with existing federal laws.” – Written comment, Kristin Lee, American Council of Life Insurers, September 29, 2023.

3. Agency Response

The proposed rules are not preempted by ERISA. ERISA expressly disclaims preemption of state securities laws. ERISA itself contains a saving clause that specifically exempts from preemption any state regulation related to “insurance, banking, or securities,” such as the proposed rules. *See* 29 U.S.C. § 1144(b)(2)(A). Secondly, even if ERISA had not explicitly excluded the proposed rules from preemption, the proposed rules do not “relate to” ERISA.

F. Comment Category # 6: Unnecessary and Duplicative to Existing Regulations

1. Summary of Comments

Several comments argued the proposed rules are unnecessary and duplicative to existing regulations. The thrust of these arguments contained in the comments generally relates to Regulation Best Interest (Reg BI). *See* 17 C.F.R. § 240.15l-1. Specifically, the comments note that Reg BI requires investment advisers to act in their customers' best interests, and "without placing the financial or other interest of the broker, dealer, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer."

Reg BI also emphasizes the importance of transparency through its disclosure obligation. Advisers must provide certain prescribed disclosures before or at the time of the recommendation about the scope and terms of the relationship and all material facts relating to conflicts of interest. Further, the adviser must "[h]ave a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile...."

2. Exemplary comments:

- "Reg BI establishes an overarching obligation for Financial Professionals to act in the best interest of the customer and not place their financial or other interest above that of the customer." – *See* written comment, Mark Quinn, Cetera Financial Group, received September 29, 2023.

3. Agency Response:

The comments' reliance on Regulation BI is unconvincing. Specifically, the adviser is only at risk if he puts "the financial or other interest" of the adviser or a related party of the adviser "*ahead* of the interest of the retail customer." Further, to satisfy his obligations under this rule, he merely needs to have "a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer...". *See* 17 C.F.R. § 240.15l-1.

One aspect of "social objectives" is that they are generalized interests, and are not specifically interests of the adviser or his related parties. Further, given such a generalized interest would naturally accrue to the customer, it can be easily argued that using such a metric would not be placing such an interest *ahead* of the customer's interest. Finally, the very nature of the generalized interests served by social objectives lend themselves to being rationalized as being in the "best interest" of a customer, even if such a customer would strongly disagree if they were otherwise aware. As these arguments are unpersuasive, they are overruled.

G. Comment Category # 7: Excessively Burdensome

1. Summary of Comments

Several comments state that the proposed rules will be excessively burdensome and costly on both practitioners and customers.

2. Exemplary Comments

- "In particular, our members have informed us that obtaining initial consent for existing advisory clients may be difficult if clients prove unresponsive and could result in advisers suspending certain services and limiting offerings to Wyoming investors." – Written comment, Dorothy M. Donohue, Investment Company Institute, received September 28, 2023.

3. Agency Response

Regulatory burden and costs are always a concern when implementing new regulations. However, in this case, the burden and costs are minimal. The investment services industry is already highly regulated, and by its nature includes many disclosures that are required in order to ensure full, fair, and informed consent of the customers and clients. Ensuring that this disclosure is made, where required, does not appreciably add to that burden. Notably, of the comments received on this point, none provided a quantifiable estimate of compliance costs. Furthermore, this burden can be entirely avoided if an adviser chooses to eschew the use of "social objectives" when choosing investments for their clients, or directing them. A client is always allowed to choose such objectives on their own initiative, and these disclosures are only necessary when such "social objectives" are implicated.

It is unconvincing that "unresponsive clients" will pose an additional burden by virtue of the proposed rules. There is no reason to believe that disclosures here will increase the incidence of unresponsive clients, or somehow increase the difficulty of addressing the same.

H. Comment Category # 8: Potential for Confusion

1. Summary of Comments

Some comments discuss the confusion that could be created by the proposed rules. The confusion referenced is related to both the practitioners and customers, specifically with respect to practical implementation of required disclosures under the proposed rules.

2. Exemplary comments:

- "These changes could create confusion for Wyoming consumers..." – *See* Written comment, Kristin Lee, American Council of Life Insurers, received September 29, 2023.
- *See generally*, verbal comment, Micah Earmart, received September 29, 2023.

3. Agency Response

One of the primary purposes of an investment adviser, broker-dealer, securities agent, or any financial services professional, is to guide retail customers through the investment landscape, which can itself be inherently confusing. The proposed rules are carefully crafted to provide clear boundaries that place reasonable broker-dealers, investment advisers, and securities agents on notice about whether they are engaging in investment strategies that are not focused on achieving their core objective: maximization of financial return for their clients. For nearly 100 years, state and federal securities law has been adamant that retail investors should be provided with complete and adequate information when trusting professional advisers and brokers to make financial decisions on their behalf, and that state and federal authorities should further transparency in this regard to prevent fraud and deceit.

The proposed disclosure rules fortify these principles by increasing transparency in the investment process. Further, the proposed rules set forth sufficient parameters for disclosure and written consent to be obtained in accordance therein. Accordingly, these comments are overruled.

I. COMMENT CATEGORY # 9: FIRST AMENDMENT CONCERNS

1. Summary of Comments

One comment makes several First Amendment claims. Specifically, citing *303 Creative LLC v. Elenis*, No. 21-476, slip op. at 26 (U.S. June 30, 2023), the comment notes that businesses generally should be "free to think and speak as they wish, not as the government demands." The comment then discusses how there is no First Amendment exemption that would justify compelled misleading speech.

2. Exemplary Comments

- *See* Section 2.2 of written comment, Dorothy M. Donohue, Investment Company Institute, received September 28, 2023.

3. Agency Response

These arguments do not apply here. The proposed rules promote consumer protection through the furtherance of simple disclosure that furthers sound management of investments and prevents fraud and deception. As such, the proposed rules fully comply with the First Amendment of the United States Constitution under both of the two applicable tests, the *Zauderer* standard and the *Central Hudson* standard.

A compelled disclosure of commercial speech between a professional and a customer survives First Amendment scrutiny so long as (1) the disclosure is "factual and uncontroversial," (2) the disclosure is related to the good or services the speaker provides, and (3) the disclosure is reasonably related to a sufficient government interest. *See Zauderer v. Off. of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626 (1985). As the rules describe a disclosure which

merely describes the implementation of a "social objective" in the services provided by an adviser, it is both "factual and uncontroversial" and related to the adviser's services, if such an implementation is indeed made. Further, as clearly contemplated by NSMIA and the plethora of rules in the investment field, ensuring adequate disclosure and preventing deception here is a well-established government interest.

While the *Central Hudson* test is slightly stricter than *Zauderer*, the outcome is the same. The government interest here is well established as a substantial and compelling interest, and requiring a simple disclosure to prevent customers from being deceived or misled both satisfies that interest and is the minimum which can be done to advance that interest. These comments are therefore overruled.

J. COMMENT CATEGORY # 10: MISUNDERSTANDING OR MISCHARACTERIZATION OF ESG

1. Summary of Comments

Some comments contend that the proposed rules are misguided and are based on a misunderstanding or mischaracterization of ESG investments.

2. Exemplary Comments

- "Underpinning the Proposed Amendments is the erroneous premise that investment professionals who incorporate ESG principles into their investment strategy will fail to maximize returns for their clients, in order to make a political point." – *See* written comment, Danielle Fugere, As You Sow, received September 27, 2023.

3. Agency Response

There are two primary points to address related to the argument that the rules are based on a faulty premise.

First, the rules do not misunderstand or mischaracterize ESG investments, or investments which incorporate a social objective. As reported by Silla Brush of Bloomberg on September 21, 2023, more ESG funds closed in 2023 than in the previous three years *combined*, even though 2023 still had one more quarter to go at the time the article was published. In addition, other reports "do not find evidence that high-sustainability funds outperform low-sustainability funds." *See* HARTZMARK, S.M. and SUSSMAN, A.B. (2019), *Do Investors Value Sustainability? A Natural Experiment Examining Ranking and Fund Flows*, The Journal of Finance, 74: 2789-2837. One Finance professor reported in the Harvard Business Review that "[t]here's also some evidence that companies publicly embrace ESG as a cover for poor business performance." *See* Sanjai Bhagat, *An Inconvenient Truth About ESG Investing*, Harvard Business Review, March 31, 2022. https://hbr.org/2022/03/an-inconvenient-truth-about-esg-investing.

Second, the proposed rules further the public's interest in increasing disclosure, and disclosure is far preferable than the status quo alternative, to persist in keeping customers ignorant of investment strategies incorporating a social objective. Even if incorporating a social objective

into investment decisions does outperform, something that has not been proven, then requiring disclosure would still only benefit customers. Nothing is gained by nondisclosure of investment strategies that incorporate a social objective.

Therefore, given the differing opinions, even in the professional literature and publications, Wyoming has a rational basis to require disclosure here: so that Wyoming customers can make an informed decision on how their investments are made.

CONCLUSION

In accordance with the Wyoming Administrative Procedure Act, the Wyoming Secretary of State has given full consideration of all written and verbal submissions respecting the proposed rules.

With the exception of the proposed amendments to Chapter 10 of the Wyoming Secretary of State's Securities Rules, which has been amended in this final rules packet such that federal covered investment advisers will not be subject to the requirements set forth in the proposed amendments to Chapter 10, comments in opposition to the proposed rules packet have been carefully considered and overruled.

Chapter 2
DEFINITIONS

Section 1. Definition by Acronym.

(a) CRD. Central Registration Depository.

(b) IARD. Investment Adviser Registration Depository.

(c) EFD. Electronic Filing Depository.

(d) FINRA. Financial Industry Regulatory Authority.

(e) NASAA. North American Securities Administrators Association.

(f) SCOR. Small Corporate Offering Registration.

(g) SEC. Securities and Exchange Commission.

(h) SRO. Self-Regulatory Organization.

(i) WIN. Wyoming Invests Now. Wyoming's Crowdfunding Exemption.

Section 2. Accredited Investor. The term shall be used as defined in 17 C.F.R. 230.501 (a).

Section 3. Correspondent. Correspondent shall mean the person or law firm listed in item 2 of the Form U-1 representing the applicant or issuer during registration of securities.

Section 4. Effective or Effectiveness. Effective or effectiveness means the status the Secretary of State has granted or approved an application for registration or received a notice filing.

Section 5. Financial Statement. Financial statement means a balance sheet, a statement of income, a statement of changes in financial condition and a statement of stockholder's equity.

Section 6. Issuer's Agent(s). Issuer's agents are those persons transacting business in securities on behalf of an issuer. Issuer's agents are restricted to transacting business in the securities of an issuer for which they are affiliated.

Section 7. Mass Transfer. Mass transfer means transfer of a broker-dealer's agents from one entity to another due to broker-dealer registration termination; broker-dealer name change or reorganization; broker-dealer acquisition, merger or succession. Mass transfer is effected through the CRD without filing individual forms U-4 or U-5.

Section 8. Net Capital. The term shall be used as defined in 17 C.F.R. 240.15c3-1.

Section 9. Open-End Investment Company. Open-end investment company means a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer.

Section 10. Portal. Portal means an internet website that is operated by a portal operator for the offer and sale of securities pursuant to W.S. § 17-4-203, Wyoming Invests Now exemption.

Section 11. Portal Operator. Portal operator means a website operator which is an entity authorized to do business in this state and operates a portal.

Section 12. Renewal. Renewal means extending a registration beyond its period of effectiveness for an additional period as specified by rule or statute.

Section 13. Secretary of State. The Secretary of State as used in these rules means the Secretary of State of Wyoming and his/her successors acting in that official capacity and as statutory Administrator of Wyoming's Uniform Securities Act.

Section 14. Segregated Account. Segregated account means any account which may receive deposits of cash located at any financial institution in the United States which insures its deposits through an agency of the federal government. This account shall be used only for deposits of offering proceeds and shall not be used for other types of deposits.

Section 15. Termination. Termination means the ending of a period of registration after which the registration is no longer in force or effect.

Section 16. Uniform Forms. A list of Uniform forms are referred to in these rules as follows:

(a) Form U-1 is the Uniform Application to Register Securities.

(b) Form U-2 is the Uniform Consent to Service of Process.

(c) Form U-2a is the Uniform Corporate Resolution.

(d) Form U-4 is the Uniform Application for Securities Industry Registration.

(e) Form U-5 is the Uniform Termination Notice for Securities Industry Registration.

(f) Form U-7 is the disclosure document and instructions for completion of the disclosure document known as the Registration Form for Small Corporate Offerings.

(g) Form ADV is the Uniform Application for Investment Adviser Registration.

(h) Form ADV-W is the Uniform Request for Withdrawal from Registration as an Investment Adviser.

(i) Form D is Notice of Exempt Offering of Securities.

(j) Form BD is the Uniform Application for Broker-Dealer Registration.

(k) Form BDW is the Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(l) Model Accredited Investor Exemption Uniform Notice of Transaction is the notice of sale of securities pursuant to accredited investor exemption.

(m) Form NF is the Uniform Investment Company Notice Filing.

(n) Regulation A – Tier 2 Notice Filing Form is the Uniform Notice Filing Regulation A – Tier 2 Offering.

Section 17. Unit Investment Trust. Unit Investment Trust means an investment company which is organized under a trust indenture, contract of custodianship or agency, or similar instrument which does not have a board of directors and issues only redeemable securities each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust.

Section 18. Incorporates a Social Objective. Incorporates a social objective means the consideration of social criteria in the investment or commitment of customer or client funds for the purpose of obtaining any effect other than or in addition to a maximized financial return to the customer or client.

Section 19. Social Criteria. Social criteria include any criterion that is intended to further, or is branded, advertised, or otherwise publicly described 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;

(c) Social or environmental goals;

(d) Refusal to invest or to commit customer or client funds to an industry or sector of the economy for any reason other than a reasonable, good-faith belief that such an investment would not maximize investment returns for a customer or client.

(i) Example: consideration of religious factors when deciding whether to invest customer or client funds would be consideration of social criteria.

Chapter 4
BROKER-DEALER REGULATIONS

Section 1. Initial Registration. An applicant seeking broker-dealer registration in Wyoming:

(a) Shall make initial application by completing the Form BD in accordance with the form instructions, filing the form with the CRD, and paying the fee set forth in W.S. §17-4-410.

(b) Shall supply their last annual audited financial statement prepared by an independent certified public accountant and filed with the SEC pursuant to SEC Rule 17a-5(d).

(i) If a recently formed broker-dealer does not have an audited financial statement, an unaudited financial statement may be substituted if it has been signed and dated within 90 days of the date of application by an appropriate officer or principal of the broker-dealer. A copy of SEC Form X-17A-5 (Focus Report Part II or IIA) may be used as an unaudited financial statement provided that document includes Part II or Part IIA dated within 90 days of the date of application.

(ii) The unaudited financial statement shall contain a compilation of net capital figured according to net capital regulations contained in federal laws and rules.

(c) Shall supplement the audited financial statement with the latest SEC Form X-17a-5 (Focus Report Part II or IIA). If the applicant does not report using the FOCUS Part II or IIA, an applicant may instead submit an unaudited financial statement signed and dated within 90 days of the date of application by an appropriate officer or principal of the broker-dealer which contains a statement of net capital compliance.

(d) Shall be registered with or be a member in good standing with the SEC and the appropriate Self-Regulatory Organization ("SRO") prior to submission of an initial application for broker-dealer registration.

Section 2. Registration Procedures.

(a) When registering a broker-dealer, the Secretary of State may:

(i) Accept application materials by email addressed to compliance@wyo.gov.

(ii) Accept an initial application pursuant to this section and delay the effectiveness of the registration until January 1 at the request of the applicant provided the information on Form BD remains current.

Section 3. General Broker-Dealer Requirements.

(a) Compliance with all current SEC regulations is a condition of registration as a broker-dealer in Wyoming.

(b) Upon request broker-dealers may be required to provide the Secretary of State any notices, computations, and reports required for submission to the SEC or an SRO.

(c) Broker-dealers shall make, maintain and preserve books and records in compliance with SEC Rules and make them available for inspection to the Secretary of State upon request.

(d) Following initial registration approval, broker-dealers shall file amendments to Form BD with the CRD system whenever the information on file with the CRD becomes inaccurate, but not later than 30 days following any material change.

(e) Shall remain in good standing with the SEC and the appropriate SRO. The Secretary of State may summarily suspend any broker-dealer registration if that broker-dealer is not registered in good standing with the SEC and the appropriate SRO.

Section 4. Renewal.

(a) Every broker-dealer registered in Wyoming which desires to renew its registration shall renew through the CRD and follow the renewal procedures established by the CRD of each year.

(b) If renewal fees are not paid on or before the cut-off date established by the CRD, a broker-dealer's registration may be subject to administrative action on January 1 or thereafter for willful failure to comply with any provision of the Act or rules following notice, opportunity for hearing, and written findings of fact and conclusions of law.

(i) Notice, as contemplated in this section, shall be given by the Secretary of State via a letter to the broker-dealer's last known address advising the broker-dealer of its failure to renew and need for immediate compliance;

(ii) To the extent the broker-dealer cannot be located, mailing a copy of any Order Canceling Broker-Dealer Registration to the broker-dealer's last known address shall be deemed sufficient notice and service by the Secretary of State of the requirement and failure of the broker-dealer to renew;

(c) Broker-dealers which do not participate in CRD renewal by the CRD cut-off date, but which contact the Secretary of State and deliver the appropriate renewal fees for the broker-dealer and agents before a final Order of revocation is entered, may have their registration renewed for another year subject to payment of an administrative penalty pursuant to W.S. §17-4-412 in an amount not to exceed two hundred dollars ($200) for failure to comply with the Act and Rules.

Section 5. Termination/Cancellation. A broker-dealer desiring to end its registration in Wyoming shall submit executed Form BDW with the CRD.

Section 6. Conduct. Every broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices including but not limited to items set forth by NASAA on DISHONEST OR UNETHICAL BUSINESS PRACTICES OF BROKER-DEALERS AND AGENTS (Statement of Policy) adopted May 23, 1983 (found at nasaa.org), herein incorporated by reference, may be considered contrary to such standards. These acts and practices may constitute dishonest or unethical practices as found in W.S. §17-4-412(d)(xiii) or other listed grounds for denial, suspension or revocation of registration, monetary penalty or such other action authorized by statute.

Section 7. Required Disclosures for Investments that Incorporate a Social Objective.

(a) If a broker-dealer incorporates a social objective into a discretionary investment decision to buy or sell a security or commodity for a customer or client, a recommendation or solicitation to a customer or client for the purchase or sale of a security or commodity, or the selection, recommendation or advice to a customer or client regarding the selection of a third-party manager or subadviser to manage the investments in the customer or client's account, then such broker-dealer shall disclose to such customer or client the existence of such incorporation.

(b) The disclosure obligation under subsection (a) of this section is satisfied by providing clear and conspicuous disclosure, via simultaneous verbal and written communication, and obtaining written consent and acknowledgment from the customer or client. Written consent shall be obtained at the establishment of the brokerage relationship or prior to effecting the initial discretionary investment for the customer or client's account, providing the initial recommendation, advice, or solicitation regarding the purchase or sale of a security or commodity in a customer or client's account, or selecting, recommending, or advising on the selection of a third-party manager or subadviser to manage the investments in a customer or client's account. Thereafter, the disclosure shall be provided to the customer or client on an annual basis and whenever the broker-dealer undergoes a suitability review with a customer. Not less than every three years, the customer or client shall consent to the disclosure in writing. Consent may be revoked in writing at any time at the discretion of the customer or client, but such revocation shall not affect investment decisions which have already been made.

(c) Written consent required under subsection (b) of this section shall be satisfied by providing a disclosure form to be signed by the customer or client, which is separate and distinct from any other disclosure form provided to the customer or client, captioned in boldface type not less than twenty-four (24) points "ESG DISCLOSURE AND CONSENT," and which states, in type not less than twelve (12) points, as follows: "I, (NAME OF CUSTOMER/CLIENT), consent to (NAME OF BROKER-DEALER) incorporating a social objective into any discretionary investment decision my broker-dealer makes for my account; any recommendation, advice, or solicitation my broker-dealer makes to me for the purchase or sale of a security or commodity; or the selection my broker-dealer makes, or recommendation or advice my broker-dealer 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, 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 or advice that are not solely focused on maximizing a financial return for me or my account. This consent shall remain valid until the next time consent is required by law or until otherwise revoked in writing by me at my discretion. Revocation of this consent shall not affect investment decisions which have already been made."

Chapter 5
SECURITIES AGENT REGULATIONS

Section 1. Initial Registration. Persons applying for securities agent registration shall:

(a) Be affiliated with a broker-dealer who is currently registered with the Secretary of State, unless registering as an agent of an issuer under Section 2 of this Chapter.

(b) Make initial application by completing the Uniform Application for Securities Industry Registration, Form U-4, in accordance with the form instructions, filing the form with the CRD, and paying the fee set forth in W.S. §17-4-410(b) through the CRD.

(c) Take and achieve a passing score on the Uniform Securities Agent State Law Examination (USASLE, Series 63) or the Uniform Combined State Law Exam (Series 66) and take and pass any qualification examination for agents appropriate to the category of registration requested with FINRA or other securities exchange. The Secretary of State may waive this requirement if:

(i) The applicant has taken and achieved a passing score on the Series 63 exam or Series 66 exam within two years of the date of application; or

(ii) The applicant has taken and achieved a passing score on the Series 63 exam or Series 66 exam and has been registered in another jurisdiction without a lapse in registration for two or more years, or;

(iii) The applicant was registered as a securities agent in Wyoming before January 1, 1982 and has been continuously registered since that time; or

(iv) The applicant has been continuously registered in another jurisdiction not requiring the Series 63 Examination since January 1, 1982 or before or;

(v) Is an executive corporate officer, director, corporate officer of a general partner or manager of an issuer marketing its own securities and who does not receive sales related remuneration.

Section 2. Agent of an Issuer.

(a) If registering as an agent representing an issuer, complete the appropriate portions of Form U-4. Sections of the Form U-4 solely applicable to registration as an agent for a brokerdealer may be left blank. Submit the application to the Secretary of State along with the fee as prescribed in W.S. §17-4-410(b).

(b) Take and achieve a passing score on the Uniform Securities Agent State Law Examination (USASLE, Series 63) or the Uniform Combined State Law Exam (Series 66) consistent with the provisions in Chapter 5, Section 1(c) above.

(c) The Secretary of State may make an agent of an issuer registration effective during the period an issuer's securities are being sold pursuant to an effective registration statement or being sold pursuant to certain pertinent securities exemptions. The agents of an issuer cease to be registered as securities agents when:

(i) the issuer's registration statement ceases to be effectively registered; or

(ii) the exempt offering is complete.

Section 3. Securities Agent Renewal.

(a) Securities agents employed by broker-dealers renew through the CRD according to instructions provided by CRD each year.

(b) Agents of an issuer who wish to renew their registration shall renew registration on their anniversary effective date by submitting a letter to the Secretary of State.

(c) All agents shall amend information on their application Form U-4 whenever the information on file changes, but not later than thirty days following a material change.

Section 4. Termination.

(a) When an agent ends its affiliation with a broker-dealer, the broker-dealer shall file the Uniform Termination Notice for Securities Industry Registration, Form U-5, with CRD. A broker-dealer shall file the U-5 of any agent within 30 days unless a longer period of time is approved by the Secretary of State.

(b) Agents of an issuer may end their registration by submitting a letter to the Secretary of State indicating their desire to terminate their registration.

(c) Issuers may end an agent's registration by submitting a letter to the Secretary of State indicating their desire to terminate the agent's registration.

Section 5. Conduct. Every agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices including but not limited to items set forth by NASAA on DISHONEST OR UNETHICAL *BUSINESS PRACTICES OF BROKER-DEALERS AND AGENTS (*Statement of Policy) adopted May 23, 1983 (found at www.nasaa.org), herein incorporated by reference, may be considered contrary to such standards. These acts and practices may constitute dishonest or unethical practices as found in W.S. 17-4-412(d)(xiii) or other listed grounds for denial, suspension or revocation of registration or such other action authorized by statute.

Section 6. Required Disclosures for Investments that Incorporate a Social Objective.

(a) If a securities agent incorporates a social objective into a discretionary investment decision to buy or sell a security or commodity for a customer or client, a recommendation or solicitation to a customer or client for the purchase or sale of a security or commodity, or the selection, recommendation or advice to a customer or client regarding the selection of a third-party manager or subadviser to manage the investments in the customer or client's account, then such securities agent shall disclose to such customer or client the existence of such incorporation.

(b) The disclosure obligation under subsection (a) of this section is satisfied by providing clear and conspicuous disclosure, via simultaneous verbal and written communication, and obtaining written consent and acknowledgment from the customer or client. Written consent shall be obtained at the establishment of the brokerage relationship or prior to effecting the initial discretionary investment for the customer or client's account, providing the initial recommendation, advice, or solicitation regarding the purchase or sale of a security or commodity in a customer or client's account, or selecting, recommending, or advising on the selection of a third-party manager or subadviser to manage the investments in a customer or client's account. Thereafter, the disclosure shall be provided to the customer or client on an annual basis and whenever the securities agent undergoes a suitability review with a customer or client. No less than every three years, the customer or client shall consent to the disclosure in writing. Consent may be revoked in writing at any time at the discretion of the customer or client, but such revocation shall not affect investment decisions which have already been made.

(c) Written consent required under subsection (b) of this section shall be satisfied by providing a disclosure form to be signed by the customer or client, which is separate and distinct from any other disclosure form provided to the customer or client, captioned in boldface type not less than twenty-four (24) points "ESG DISCLOSURE AND CONSENT," and which states, in type not less than twelve (12) points, as follows: "I, (NAME OF CUSTOMER/CLIENT), consent to (NAME OF SECURITIES AGENT) incorporating a social objective into any discretionary investment decision my securities agent makes for my account; any recommendation, advice, or solicitation my securities agent makes to me for the purchase or sale of a security or commodity; or the selection my securities agent makes, or recommendation or advice my securities agent 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, 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 or advice that are not solely focused on maximizing a financial return for me or my account. This consent shall remain valid until the next time consent is required by law or until otherwise revoked in writing by me at my discretion. Revocation of this consent shall not affect investment decisions which have already been made."

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; and

(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.

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 brokerdealer 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.

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.

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.

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.

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.

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.

Section 15. Required Disclosures for Investments that Incorporate a Social Objective.

(a) If an investment adviser or investment adviser representative incorporates a social objective into a discretionary investment decision to buy or sell a security or commodity for a customer or client, advice or a recommendation to a customer or client for the purchase or sale of a security or commodity, or the selection, or advice or a recommendation to a customer or client regarding the selection of a third-party manager or subadviser to manage the investments in the customer or client's account, then such investment adviser or investment adviser representative shall disclose to such customer or client the existence of such incorporation.

(b) The disclosure obligation under subsection (a) of this section is satisfied by providing clear and conspicuous disclosure, via simultaneous verbal and written communication, and obtaining written consent and acknowledgment from the customer or client. Written consent shall be obtained either at the establishment of the advisory relationship or prior to effecting the initial discretionary investment for the customer or client's account, providing the initial recommendation or advice regarding the purchase or sale of a security or commodity in a customer or client's account or selecting, recommending, or advising on the selection of a third-party manager or subadviser to manage the investments in a customer or client's account. Thereafter, the disclosure shall be provided to the customer or client on an annual basis and whenever the investment adviser or investment adviser representative undergoes a suitability review with a customer or client. No less than every three years, the customer or client shall consent to the disclosure in writing. Consent may be revoked in writing at any time at the discretion of the customer or client, but such revocation shall not affect investment decisions which have already been made.

(c) Written consent required under subsection (b) of this section shall be satisfied by providing a disclosure form to be signed by the customer or client, which is separate and distinct from any other disclosure form provided to the customer or client, captioned in boldface type not less than twenty-four (24) points "ESG DISCLOSURE AND CONSENT," and which states, in type not less than twelve (12) points, as follows: "I, (NAME OF CUSTOMER/CLIENT), consent to (as applicable, NAME OF INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE) incorporating a social 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, 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 or advice that are not solely focused on maximizing a financial return for me or my account. This consent shall remain valid until the next time consent is required by law or until otherwise revoked in

writing by me at my discretion. Revocation of this consent shall not affect investment decisions which have already been made."

Chapter 2
DEFINITIONS

Section 1. Definition by Acronym.

(a) CRD. Central Registration Depository.

(b) IARD. Investment Adviser Registration Depository.

(c) EFD. Electronic Filing Depository.

(d) FINRA. Financial Industry Regulatory Authority.

(e) NASAA. North American Securities Administrators Association.

(f) SCOR. Small Corporate Offering Registration.

(g) SEC. Securities and Exchange Commission.

(h) SRO. Self-Regulatory Organization.

(i) WIN. Wyoming Invests Now. Wyoming's Crowdfunding Exemption.

Section 2. Accredited Investor. The term shall be used as defined in 17 C.F.R. 230.501 (a).

Section 3. Correspondent. Correspondent shall mean the person or law firm listed in item 2 of the Form U-1 representing the applicant or issuer during registration of securities.

Section 4. Effective or Effectiveness. Effective or effectiveness means the status the Secretary of State has granted or approved an application for registration or received a notice filing.

Section 5. Financial Statement. Financial statement means a balance sheet, a statement of income, a statement of changes in financial condition and a statement of stockholder's equity.

Section 6. Issuer's Agent(s). Issuer's agents are those persons transacting business in securities on behalf of an issuer. Issuer's agents are restricted to transacting business in the securities of an issuer for which they are affiliated.

Section 7. Mass Transfer. Mass transfer means transfer of a broker-dealer's agents from one entity to another due to broker-dealer registration termination; broker-dealer name change or reorganization; broker-dealer acquisition, merger or succession. Mass transfer is effected through the CRD without filing individual forms U-4 or U-5.

Section 8. **Net Capital.** The term shall be used as defined in 17 C.F.R. 240.15c3-1.

Section 9. **Open-End Investment Company.** Open-end investment company means a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer.

Section 10. **Portal.** Portal means an internet website that is operated by a portal operator for the offer and sale of securities pursuant to W.S. § 17-4-203, Wyoming Invests Now exemption.

Section 11. **Portal Operator.** Portal operator means a website operator which is an entity authorized to do business in this state and operates a portal.

Section 12. **Renewal.** Renewal means extending a registration beyond its period of effectiveness for an additional period as specified by rule or statute.

Section 13. **Secretary of State.** The Secretary of State as used in these rules means the Secretary of State of Wyoming and his/her successors acting in that official capacity and as statutory Administrator of Wyoming's Uniform Securities Act.

Section 14. **Segregated Account.** Segregated account means any account which may receive deposits of cash located at any financial institution in the United States which insures its deposits through an agency of the federal government. This account shall be used only for deposits of offering proceeds and shall not be used for other types of deposits.

Section 15. **Termination.** Termination means the ending of a period of registration after which the registration is no longer in force or effect.

Section 16. **Uniform Forms.** A list of Uniform forms are referred to in these rules as follows:

(a) Form U-1 is the Uniform Application to Register Securities.

(b) Form U-2 is the Uniform Consent to Service of Process.

(c) Form U-2a is the Uniform Corporate Resolution.

(d) Form U-4 is the Uniform Application for Securities Industry Registration.

(e) Form U-5 is the Uniform Termination Notice for Securities Industry Registration.

(f) Form U-7 is the disclosure document and instructions for completion of the disclosure document known as the Registration Form for Small Corporate Offerings.

(g) Form ADV is the Uniform Application for Investment Adviser Registration.

(h) Form ADV-W is the Uniform Request for Withdrawal from Registration as an Investment Adviser.

(i) Form D is Notice of Exempt Offering of Securities.

(j) Form BD is the Uniform Application for Broker-Dealer Registration.

(k) Form BDW is the Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(l) Model Accredited Investor Exemption Uniform Notice of Transaction is the notice of sale of securities pursuant to accredited investor exemption.

(m) Form NF is the Uniform Investment Company Notice Filing.

(n) Regulation A – Tier 2 Notice Filing Form is the Uniform Notice Filing Regulation A – Tier 2 Offering.

Section 17. Unit Investment Trust. Unit Investment Trust means an investment company which is organized under a trust indenture, contract of custodianship or agency, or similar instrument which does not have a board of directors and issues only redeemable securities each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust.

Section 18. Incorporates a Social Objective. Incorporates a social objective means the consideration of social criteria in the investment or commitment of customer or client funds for the purpose of obtaining any effect other than or in addition to a maximized financial return to the customer or client.

Section 19. Social Criteria. Social criteria include any criterion that is intended to further, or is branded, advertised, or otherwise publicly described 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;

(c) Social or environmental goals;

(d) Refusal to invest or to commit customer or client funds to an industry or sector of the economy for any reason other than a reasonable, good-faith belief that such an investment would not maximize investment returns for a customer or client.

(i) Example: consideration of religious factors when deciding whether to invest customer or client funds would be consideration of social criteria.

Chapter 4
BROKER-DEALER REGULATIONS

Section 1. Initial Registration. An applicant seeking broker-dealer registration in Wyoming:

(a) Shall make initial application by completing the Form BD in accordance with the form instructions, filing the form with the CRD, and paying the fee set forth in W.S. §17-4-410.

(b) Shall supply their last annual audited financial statement prepared by an independent certified public accountant and filed with the SEC pursuant to SEC Rule 17a-5(d).

(i) If a recently formed broker-dealer does not have an audited financial statement, an unaudited financial statement may be substituted if it has been signed and dated within 90 days of the date of application by an appropriate officer or principal of the broker-dealer. A copy of SEC Form X-17A-5 (Focus Report Part II or IIA) may be used as an unaudited financial statement provided that document includes Part II or Part IIA dated within 90 days of the date of application.

(ii) The unaudited financial statement shall contain a compilation of net capital figured according to net capital regulations contained in federal laws and rules.

(c) Shall supplement the audited financial statement with the latest SEC Form X-17a-5 (Focus Report Part II or IIA). If the applicant does not report using the FOCUS Part II or IIA, an applicant may instead submit an unaudited financial statement signed and dated within 90 days of the date of application by an appropriate officer or principal of the broker-dealer which contains a statement of net capital compliance.

(d) Shall be registered with or be a member in good standing with the SEC and the appropriate Self-Regulatory Organization ("SRO") prior to submission of an initial application for broker-dealer registration.

Section 2. Registration Procedures.

(a) When registering a broker-dealer, the Secretary of State may:

(i) Accept application materials by email addressed to compliance@wyo.gov.

(ii) Accept an initial application pursuant to this section and delay the effectiveness of the registration until January 1 at the request of the applicant provided the information on Form BD remains current.

Section 3. General Broker-Dealer Requirements.

(a) Compliance with all current SEC regulations is a condition of registration as a broker-dealer in Wyoming.

(b) Upon request broker-dealers may be required to provide the Secretary of State any notices, computations, and reports required for submission to the SEC or an SRO.

(c) Broker-dealers shall make, maintain and preserve books and records in compliance with SEC Rules and make them available for inspection to the Secretary of State upon request.

(d) Following initial registration approval, broker-dealers shall file amendments to Form BD with the CRD system whenever the information on file with the CRD becomes inaccurate, but not later than 30 days following any material change.

(e) Shall remain in good standing with the SEC and the appropriate SRO. The Secretary of State may summarily suspend any broker-dealer registration if that broker-dealer is not registered in good standing with the SEC and the appropriate SRO.

Section 4. Renewal.

(a) Every broker-dealer registered in Wyoming which desires to renew its registration shall renew through the CRD and follow the renewal procedures established by the CRD of each year.

(b) If renewal fees are not paid on or before the cut-off date established by the CRD, a broker-dealer's registration may be subject to administrative action on January 1 or thereafter for willful failure to comply with any provision of the Act or rules following notice, opportunity for hearing, and written findings of fact and conclusions of law.

(i) Notice, as contemplated in this section, shall be given by the Secretary of State via a letter to the broker-dealer's last known address advising the broker-dealer of its failure to renew and need for immediate compliance;

(ii) To the extent the broker-dealer cannot be located, mailing a copy of any Order Canceling Broker-Dealer Registration to the broker-dealer's last known address shall be deemed sufficient notice and service by the Secretary of State of the requirement and failure of the broker-dealer to renew;

(c) Broker-dealers which do not participate in CRD renewal by the CRD cut-off date, but which contact the Secretary of State and deliver the appropriate renewal fees for the broker-dealer and agents before a final Order of revocation is entered, may have their registration renewed for another year subject to payment of an administrative penalty pursuant to W.S. §17-4-412 in an amount not to exceed two hundred dollars ($200) for failure to comply with the Act and Rules.

Section 5. Termination/Cancellation. A broker-dealer desiring to end its registration in Wyoming shall submit executed Form BDW with the CRD.

Section 6. Conduct. Every broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices including but not limited to items set forth by NASAA on DISHONEST OR UNETHICAL BUSINESS PRACTICES OF BROKER-DEALERS AND AGENTS (Statement of Policy) adopted May 23, 1983 (found at nasaa.org), herein incorporated by reference, may be considered contrary to such standards. These acts and practices may constitute dishonest or unethical practices as found in W.S. §17-4-412(d)(xiii) or other listed grounds for denial, suspension or revocation of registration, monetary penalty or such other action authorized by statute.

Section 7. Required Disclosures for Investments that Incorporate a Social Objective.

(a) If a broker-dealer incorporates a social objective into a discretionary investment decision to buy or sell a security or commodity for a customer or client, a recommendation or solicitation to a customer or client for the purchase or sale of a security or commodity, or the selection, recommendation or advice to a customer or client regarding the selection of a third-party manager or subadviser to manage the investments in the customer or client's account, then such broker-dealer shall disclose to such customer or client the existence of such incorporation.

(b) The disclosure obligation under subsection (a) of this section is satisfied by providing clear and conspicuous disclosure, via simultaneous verbal and written communication, and obtaining written consent and acknowledgment from the customer or client. Written consent shall be obtained at the establishment of the brokerage relationship or prior to effecting the initial discretionary investment for the customer or client's account, providing the initial recommendation, advice, or solicitation regarding the purchase or sale of a security or commodity in a customer or client's account, or selecting, recommending, or advising on the selection of a third-party manager or subadviser to manage the investments in a customer or client's account. Thereafter, the disclosure shall be provided to the customer or client on an annual basis and whenever the broker-dealer undergoes a suitability review with a customer. Not less than every three years, the customer or client shall consent to the disclosure in writing. Consent may be revoked in writing at any time at the discretion of the customer or client, but such revocation shall not affect investment decisions which have already been made.

(c) Written consent required under subsection (b) of this section shall be satisfied by providing a disclosure form to be signed by the customer or client, which is separate and distinct from any other disclosure form provided to the customer or client, captioned in boldface type not less than twenty-four (24) points "ESG DISCLOSURE AND CONSENT," and which states, in type not less than twelve (12) points, as follows: "I, (NAME OF CUSTOMER/CLIENT), consent to (NAME OF BROKER-DEALER) incorporating a social objective into any discretionary investment decision my broker-dealer makes for my account; any recommendation, advice, or solicitation my broker-dealer makes to me for the purchase or sale of a security or commodity; or the selection my broker-dealer makes, or recommendation or advice my broker-dealer 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, 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 or advice that are not solely focused on maximizing a financial return for me or my account. This consent shall remain valid until the next time consent is required by law or until otherwise revoked in writing by me at my discretion. Revocation of this consent shall not affect investment decisions which have already been made."

Chapter 5
SECURITIES AGENT REGULATIONS

Section 1. Initial Registration. Persons applying for securities agent registration shall:

(a) Be affiliated with a broker-dealer who is currently registered with the Secretary of State, unless registering as an agent of an issuer under Section 2 of this Chapter.

(b) Make initial application by completing the Uniform Application for Securities Industry Registration, Form U-4, in accordance with the form instructions, filing the form with the CRD, and paying the fee set forth in W.S. §17-4-410(b) through the CRD.

(c) Take and achieve a passing score on the Uniform Securities Agent State Law Examination (USASLE, Series 63) or the Uniform Combined State Law Exam (Series 66) and take and pass any qualification examination for agents appropriate to the category of registration requested with FINRA or other securities exchange. The Secretary of State may waive this requirement if:

(i) The applicant has taken and achieved a passing score on the Series 63 exam or Series 66 exam within two years of the date of application; or

(ii) The applicant has taken and achieved a passing score on the Series 63 exam or Series 66 exam and has been registered in another jurisdiction without a lapse in registration for two or more years, or;

(iii) The applicant was registered as a securities agent in Wyoming before January 1, 1982 and has been continuously registered since that time; or

(iv) The applicant has been continuously registered in another jurisdiction not requiring the Series 63 Examination since January 1, 1982 or before or;

(v) Is an executive corporate officer, director, corporate officer of a general partner or manager of an issuer marketing its own securities and who does not receive sales related remuneration.

Section 2. Agent of an Issuer.

(a) If registering as an agent representing an issuer, complete the appropriate portions of Form U-4. Sections of the Form U-4 solely applicable to registration as an agent for a brokerdealer may be left blank. Submit the application to the Secretary of State along with the fee as prescribed in W.S. §17-4-410(b).

(b) Take and achieve a passing score on the Uniform Securities Agent State Law Examination (USASLE, Series 63) or the Uniform Combined State Law Exam (Series 66) consistent with the provisions in Chapter 5, Section 1(c) above.

(c) The Secretary of State may make an agent of an issuer registration effective during the period an issuer's securities are being sold pursuant to an effective registration statement or being sold pursuant to certain pertinent securities exemptions. The agents of an issuer cease to be registered as securities agents when:

(i) the issuer's registration statement ceases to be effectively registered; or

(ii) the exempt offering is complete.

Section 3. Securities Agent Renewal.

(a) Securities agents employed by broker-dealers renew through the CRD according to instructions provided by CRD each year.

(b) Agents of an issuer who wish to renew their registration shall renew registration on their anniversary effective date by submitting a letter to the Secretary of State.

(c) All agents shall amend information on their application Form U-4 whenever the information on file changes, but not later than thirty days following a material change.

Section 4. Termination.

(a) When an agent ends its affiliation with a broker-dealer, the broker-dealer shall file the Uniform Termination Notice for Securities Industry Registration, Form U-5, with CRD. A broker-dealer shall file the U-5 of any agent within 30 days unless a longer period of time is approved by the Secretary of State.

(b) Agents of an issuer may end their registration by submitting a letter to the Secretary of State indicating their desire to terminate their registration.

(c) Issuers may end an agent's registration by submitting a letter to the Secretary of State indicating their desire to terminate the agent's registration.

Section 5. Conduct. Every agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices including but not limited to items set forth by NASAA on DISHONEST OR UNETHICAL *BUSINESS PRACTICES OF BROKER-DEALERS AND AGENTS (*Statement of Policy) adopted May 23, 1983 (found at www.nasaa.org), herein incorporated by reference, may be considered contrary to such standards. These acts and practices may constitute dishonest or unethical practices as found in W.S. 17-4-412(d)(xiii) or other listed grounds for denial, suspension or revocation of registration or such other action authorized by statute.

Section 6. Required Disclosures for Investments that Incorporate a Social Objective.

(a) If a securities agent incorporates a social objective into a discretionary investment decision to buy or sell a security or commodity for a customer or client, a recommendation or solicitation to a customer or client for the purchase or sale of a security or commodity, or the selection, recommendation or advice to a customer or client regarding the selection of a third-party manager or subadviser to manage the investments in the customer or client's account, then such securities agent shall disclose to such customer or client the existence of such incorporation.

(b) The disclosure obligation under subsection (a) of this section is satisfied by providing clear and conspicuous disclosure, via simultaneous verbal and written communication, and obtaining written consent and acknowledgment from the customer or client. Written consent shall be obtained at the establishment of the brokerage relationship or prior to effecting the initial discretionary investment for the customer or client's account, providing the initial recommendation, advice, or solicitation regarding the purchase or sale of a security or commodity in a customer or client's account, or selecting, recommending, or advising on the selection of a third-party manager or subadviser to manage the investments in a customer or client's account. Thereafter, the disclosure shall be provided to the customer or client on an annual basis and whenever the securities agent undergoes a suitability review with a customer or client. No less than every three years, the customer or client shall consent to the disclosure in writing. Consent may be revoked in writing at any time at the discretion of the customer or client, but such revocation shall not affect investment decisions which have already been made.

(c) Written consent required under subsection (b) of this section shall be satisfied by providing a disclosure form to be signed by the customer or client, which is separate and distinct from any other disclosure form provided to the customer or client, captioned in boldface type not less than twenty-four (24) points "ESG DISCLOSURE AND CONSENT," and which states, in type not less than twelve (12) points, as follows: "I, (NAME OF CUSTOMER/CLIENT), consent to (NAME OF SECURITIES AGENT) incorporating a social objective into any discretionary investment decision my securities agent makes for my account; any recommendation, advice, or solicitation my securities agent makes to me for the purchase or sale of a security or commodity; or the selection my securities agent makes, or recommendation or advice my securities agent 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, 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 or advice that are not solely focused on maximizing a financial return for me or my account. This consent shall remain valid until the next time consent is required by law or until otherwise revoked in writing by me at my discretion. Revocation of this consent shall not affect investment decisions which have already been made."

Chapter 10
~~Investment Adviser Regulations~~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; and

(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.

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 brokerdealer 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.

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.

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.

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.

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.

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.

Section 15. <u>Required Disclosures for Investments that Incorporate a Social Objective.</u>

(a) <u>If an investment adviser or investment adviser representative incorporates a social objective into a discretionary investment decision to buy or sell a security or commodity for a customer or client, advice or a recommendation to a customer or client for the purchase or sale of a security or commodity, or the selection, or advice or a recommendation to a customer or client regarding the selection of a third-party manager or subadviser to manage the investments in the customer or client's account, then such investment adviser or investment adviser representative shall disclose to such customer or client the existence of such incorporation.</u>

(b) <u>The disclosure obligation under subsection (a) of this section is satisfied by providing clear and conspicuous disclosure, via simultaneous verbal and written communication, and obtaining written consent and acknowledgment from the customer or client. Written consent shall be obtained either at the establishment of the advisory relationship or prior to effecting the initial discretionary investment for the customer or client's account, providing the initial recommendation or advice regarding the purchase or sale of a security or commodity in a customer or client's account or selecting, recommending, or advising on the selection of a third-party manager or subadviser to manage the investments in a customer or client's account. Thereafter, the disclosure shall be provided to the customer or client on an annual basis and whenever the investment adviser or investment adviser representative undergoes a suitability review with a customer or client. No less than every three years, the customer or client shall consent to the disclosure in writing. Consent may be revoked in writing at any time at the discretion of the customer or client, but such revocation shall not affect investment decisions which have already been made.</u>

(c) <u>Written consent required under subsection (b) of this section shall be satisfied by providing a disclosure form to be signed by the customer or client, which is separate and distinct from any other disclosure form provided to the customer or client, captioned in boldface type not less than twenty-four (24) points "ESG DISCLOSURE AND CONSENT," and which states, in type not less than twelve (12) points, as follows: "I, (NAME OF CUSTOMER/CLIENT), consent to (as applicable, NAME OF INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE) incorporating a social 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, 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 or advice that are not solely focused on maximizing a financial return for me or my account. This consent shall remain valid until the next time consent is required by law or until otherwise revoked in</u>

writing by me at my discretion. Revocation of this consent shall not affect investment decisions which have already been made."