



# Wyoming Secretary of State

**Chuck Gray**  
Secretary of State

**Jesse Naiman**  
Deputy Secretary of State

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**SUBJECT:** **Guidance on Amendments to Chapters 2, 4, 5, and 10 of the Secretary of State’s Securities Rules Requiring Disclosure for ESG Investing**

**SCOPE:** This document provides guidance for investment professionals on compliance with amendments to Chapters 2, 4, 5, and 10 of the Wyoming Secretary of State’s Securities Rules requiring investment professionals 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.

**INTRODUCTION:** In accordance with the Wyoming Uniform Securities Act, amendments to Chapters 2, 4, 5, and 10 of the Secretary of State’s Securities Rules (the “final rules”) were signed on February 27, 2024. The final rules require broker-dealers, securities agents, investment advisers, and investment adviser representatives who incorporate 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 to disclose to their customer or client the existence of such incorporation.

## **GUIDANCE:**

### **1. WHY IS DISCLOSURE REQUIRED?**

The final rules were promulgated and adopted upon the Secretary of State’s finding that environmental, social, and governance (“ESG”) investing strategies are inconsistent with the default fiduciary duty investment professionals owe to their customers and clients because ESG investment decisions do not focus on maximizing investment returns for customers or clients. By requiring investment professionals to disclose whether they are engaging in decisions which incorporate a social objective, the final rules are promoting the Wyoming Uniform Securities Act’s purpose of protecting investors’ expectation of anticipating that investment decision-makers will focus on maximization of investment returns for their customers or clients.



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Furthermore, the final rules promote the Wyoming Uniform Securities Act's purpose through increased transparency and disclosure in order to prevent fraud and deceit.

## 2. WHEN, AND HOW OFTEN, IS DISCLOSURE REQUIRED BY THE FINAL RULES?

If a broker-dealer, securities agent, investment adviser, or investment adviser representative does **not** incorporate 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 there is **no requirement** to make any disclosure under the final rules.

**However**, if a broker-dealer, securities agent, 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, 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 as provided by the final rules.

**Incorporating a social objective** means consideration of **social criteria** in the investment or commitment of customer or client funds. **Social criteria** include any criterion that is intended to further, or is branded, advertised, or otherwise publicly described as furthering, international, domestic, or industry agreements relating to environmental or social goals, corporate governance structures based on social characteristics, or social or environmental goals.

If required by the final rules, the **initial disclosure** shall be made **at the same time as, or before**, a broker-dealer, securities agent, investment adviser, or investment adviser representative engages in activity which would subject the broker-dealer, securities agent, investment adviser, or investment adviser representative to the disclosure requirements under the final rules. Thereafter, the disclosure shall be provided to the customer or client on an annual basis and whenever the investment professional undergoes a suitability review with a customer.



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### 3. WHO WILL BE REQUIRED TO DISCLOSE?

The final rules require broker-dealers, securities agents, investment advisers, and investment adviser representatives regulated by the state of Wyoming to make disclosures as required by the final rules.

### 4. ARE FEDERAL COVERED INVESTMENT ADVISERS REQUIRED TO DISCLOSE?

**No.** Under the final rules, federal covered investment advisers are not subject to the requirements set forth in Chapter 10, Section 15 of the final rules.

### 5. HOW DOES AN INDIVIDUAL DISCLOSE TO THEIR CUSTOMER OR CLIENT THE INCORPORATION OF A SOCIAL OBJECTIVE?

The disclosure obligation required by the final rules is satisfied by providing clear and conspicuous disclosure via written communication to the customer or client. For a best practice in providing clear and conspicuous written disclosure, see **Attachment A**.



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## ATTACHMENT A

### ESG DISCLOSURE

Pursuant to Wyoming law, I, (as applicable, name of broker-dealer, securities agent, investment adviser, or investment adviser representative), am required to disclose that I am incorporating a social objective into a discretionary investment decision made for your account, or a recommendation, advice for the purchase or sale of a security or commodity, or the selection or recommendation or advice regarding the selection of a third-party manager or subadviser to manage investments for your account.

Incorporating a social objective into discretionary investment decisions, recommendations, advice, or the selection of a third-party manager or subadviser to manage investments in regards to your account may result in investments or recommendations or advice that are not solely focused on maximizing a financial return for your account.

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Signature of (as applicable, broker-dealer, securities agent, investment adviser, or investment adviser representative)