



February 27, 2024

Chuck Gray, Wyoming Secretary of State
East, Herschler Bldg.
122 W. 25th Street, Ste. 100
Cheyenne, WY 82002

Re: ARR23-056 Securities Rules, CH 2, 4, 5, and 10

Secretary Gray,

Wyoming Statute § 16-3-103(d) requires my approval and signature for all state agency amendments, repeals, modifications, or revisions of rules prior to their filing with the registrar of rules under Wyo. Stat. Ann. § 16-3-104(a). As part of that review, Wyo. Stat. Ann. § 16-3-103(d) provides that I shall not approve any rule or revision of rules unless: (1) the rule “[i]s within the scope of the statutory authority delegated to the adopting agency,” (2) the rule “[a]ppears to be within the scope of the legislative purpose of the statutory authority,” and (3) the rule “[h]as been adopted in compliance with the procedural requirements of this [the Wyoming Administrative Procedures] act.” Having reviewed Chapters 2, 4, 5, and 10 of the proposed securities rules, I have determined that portions of the rules are not within the scope of the Secretary of State’s statutory authority. For this reason, I disapprove of the proposed language noted in the accompanying line-item veto copy and provide this letter to explain the basis for my disapproval. My decision is based on the following: (1) the vetoed language is outside the scope of the securities regulatory authority delegated under Wyoming statute, and (2) the vetoed language likely runs afoul of federal securities law and principles of preemption.

First, as noted in my May 16, 2023 letter regarding this proposed rule packet, I too vehemently oppose the national push for implementing Environmental, Social, and Governance (“ESG”) factors in investment strategies. I believe the national ESG push is a thinly veiled attempt to inject unwarranted political ideology into the lives of everyday Wyoming citizens, even at the expense of their financial wellbeing. That is why, as you know, I continue to challenge these policies nationally for not representing the best interest of investors and being beyond the scope of fiduciary responsibility. At my request, General Hill joined a 25-state coalition suing the Department of Labor over proposed rules that would inappropriately guide the investment of retirement funds in ESG-related causes. We believe ESG mandates violate otherwise well-established and proper fiduciary responsibilities to the best interests of clients. Furthermore, in addition to other efforts,

we continue our work with a multi-state coalition led by Governor Ron DeSantis coordinating state-level efforts opposing ESG nationally.

Even so, I strongly believe that our zeal to oppose this radical push does not justify implementing rules that go beyond the legal authority of a state agency. The Secretary of State can adopt and amend rules “necessary and appropriate to carry out” Wyo. Stat. Ann. §§ 17-4-101 through -701 (the “Act”). Wyo. Stat. Ann. § 17-4-605(a). Further, under Wyo. Stat. Ann. § 17-4-605(b), any rule adopted for the purpose of securities regulation must be “consistent with the purposes intended by” the Act. In short, the vetoed language is not consistent with the purposes intended by the Act. I also respectfully disagree that the rules’ requirement that consumers expressly consent to making investment decisions regarding “social criteria” in the manner prescribed is necessary and appropriate to carry out the Act, instead imposing unnecessary and burdensome state oversight into customer choices. Such a requirement is an affront to personal choice and a free market.

Crucially, Wyoming law does not dictate how consumers must make personal investment decisions involving “social criteria,” nor does it dictate that “maximizing investment returns” is the default requirement for how consumers should choose to invest their funds. That decision is largely left to the consumer, whose needs may vary greatly in circumstance. While in various instances the Act does address the dissemination of relevant information to clients by investment professionals, those disclosures help to ensure compliance with fiduciary duties and combat fraud; nowhere do they require any form of express consumer consent to a prescribed pattern of investment practice as called for under these rules. *Gaudina v. Haberman*, 644 P.2d 159, 164 (Wyo. 1982) (“Blue sky laws have as their primary purpose the suppression of fraudulent practices and the protection of the public from their own gullibility”). Combating fraud through honest disclosure is different and distinct from prescribing how Wyomingites must consent to investment decisions regarding “social criteria.” A reasonable person would construe the former to be beneficial, while the latter requirement constitutes improper government intrusion into decisions that are intensely personal. As long as a client can make an informed decision, based on honest and comprehensive information from investment professionals, Wyoming law does not force him to consent to state regulations dictating what his expectations for investment should be or whether he must disclaim them. Consequently, I have vetoed the portions of these rules mandating consumer consent, either by default or disclaimer, to government-prescribed financial expectations and policy positions. To be clear, I agree with your efforts to better illuminate investment practice and strategy through disclosure. Properly informed investors are always better able to make good decisions for themselves. Accordingly, I have left the listed requirements for disclosure largely intact.

Second, I also have significant concerns that the vetoed portions of the rules conflict with federal securities law in several areas. Specifically, these include express limits contained in federal laws

on the state regulation of (1) federally covered securities, (2) broker dealers, (3) federally covered investment advisors, (4) investment advisor representatives, and (5) securities agents. The complex array of relevant federal securities laws expressly prohibit many state conflicts with federal regulation of securities and investment professionals. Specific provisions of federal law raising conflict and preemption concerns include, but are not necessarily limited to, § 15 USCA 77r, § 15 USCA 78o, § 15 USCA 80b-3, § 15 USCA 80b-3a, and § 15 USCA 80b-18a. Given the requirements and prohibitions in these statutes, I believe the broad reach and application of the vetoed portions of the proposed rules would lead to conflicts with federal requirements, creating preemption concerns in the process. This circumstance could result in less state autonomy in the long run.

I understand you have differing points of view on this topic, as outlined in your July 19, 2023 and January 17, 2024 letters to me regarding your support of the rules and rebuttal of legal analyses provided in public comment and by the Legislative Service Office. However, based on my analysis, I respectfully disagree with your conclusions. I also note that regulations substantially similar to these were finalized by Missouri Secretary of State John Ashcroft last summer, and that Secretary Ashcroft mentioned Wyoming may follow his lead. While other states may choose to test the limits of regulatory authority, Wyoming is a conservative and prudent state not prone to impulsively testing the limits of legal propriety, especially when others are already in the field. I again want to emphasize that our appetite to oppose radical and misguided ESG initiatives in Wyoming does not justify implementing rules beyond the scope of statutory authority or interfering in the personal investment choices of Wyoming citizens. Personal responsibility and liberty are sacred principles that are all too often usurped by government mandate.

In summary, under Wyo. Stat. Ann. § 16-3-103(d)(i), I disapprove of the noted proposed language in Chapters 2, 4, 5, and 10 of the proposed securities rules because they are not within the scope of statutory authority delegated to the Secretary of State by law. Enclosed is the regular rule packet I received for these rules, with vetoed lines notated, returned to you as required by statute. A final copy of the rules, bearing my signature and clearly indicating the disapproved portions, has been filed with the registrar of rules pursuant to Wyo. Stat. Ann. § 16-3-103(d).

Sincerely,



Mark Gordon
Governor

MG:kw:kh