

State-Level
Anti-ESG Efforts
Affecting
Financial Advisors

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So far, only 2 states have added requirements that financial advisors communicate about their ESG integration

Key Takeaways

- Anti-ESG laws and regulations impacting financial advisors and broker-dealers are not widespread and show no signs of expanding.
- Missouri and Wyoming enacted regulatory rules which require specific disclosure to registrant's clients of the incorporation of a 'social objective' into investment decision-making.
- In state legislatures, only 7 out of 366, or 1.9%, of anti-ESG bills introduced from 2021-2024 impacted financial advisors and broker-dealers and 0 bills have passed.
- SIFMA is currently suing Missouri and its Secretary of State for its regulation.



Overview

Over the past two years, there has been a flurry of attacks on the consideration of environmental, social and corporate governance criteria by investment professionals. There have been many anti-ESG bills making headlines both in Congress and in states across the country. Yet, most of the bills are focused on the investment of state and federal funds and do not affect financial advisors or broker-dealers.

Since 2021, there have been [366 anti-ESG bills](#) introduced in state houses around the United States. Of those bills, the majority have to do with the investment of state funds and public pensions. Only 7 out of the 366 introduced anti-ESG bills, or about 1.9% of the bills, impact financial advisors and broker-dealers. And, importantly, none of the proposed state laws impacting financial advisors and broker-dealers have been passed into law.

In Missouri, two bills were introduced to the State House in 2023, both of which died in that chamber, and one was introduced to the State House in 2024 but has yet to gain any traction. With the bills not moving in the legislature, the Secretary of State in Missouri used the state Administrative Procedures Act to pass a rule that requires financial advisors and broker-dealers to disclose to their clients and get specific consent if they incorporate a “social objective” into their discretionary investment decisions. The Missouri regulation has been in effect since July 30, 2023.

The Secretary of State of Wyoming issued a similar rule that went into effect on December 14, 2023. In February 2024, Wyoming Governor Mark Gordon used his [line-item veto power](#) to strip out certain parts of the state’s anti-ESG disclosure rules for financial advisors and broker-dealers, including removing the section requiring specific consent from clients to consider ESG factors.

While the rules in Missouri and Wyoming have both been in effect since 2023, the state has yet to pursue any enforcement actions under them. Outside of the two states, there has been no indication that similar rules will emerge in other jurisdictions or that bills will pass through state legislatures enforcing similar disclosure rules.

Anti-ESG efforts directly impacting financial advisors and broker-dealers are not widespread.

What the Regulations Say

Regulations in both Missouri and Wyoming require broker-dealers, securities agents and investment advisors, including financial advisors, to disclose to their clients if they incorporate a “social objective” into their discretionary investment decisions. Yet, following a line-item veto by Wyoming Governor Mark Gordon in February 2024, the final rule in Wyoming is significantly watered down compared to the rule originally produced by Wyoming Secretary of State, Chuck Gray. The following section describes what each regulation says. For a more detailed breakdown of the regulations in each state, please continue to the chart in the appendix or read the [final Missouri regulations](#) and the [final Wyoming regulations](#).

What Do Missouri’s Regulations Say?

The regulations in Missouri are titled “Dishonest or Unethical Business Practices by Broker-Dealer and Agents” and “Dishonest or Unethical Business Practices by Investment Advisers and Investment Adviser Representatives.” They state that any broker-dealer or investment adviser that incorporates a “social objective or non-financial objective into [their] discretionary investment decisions” must provide disclosure to their clients and obtain written consent and acknowledgment.

Consent is required at the initial opening of a customer’s account or establishment of an advisory relationship and before the consideration of social objectives or non-financial objectives affects any investment decision, the selection of a third-party manager or sub-advisor, and any recommendations or solicitations. The disclaimer for the written consent must be substantially similar to a disclaimer provided in the regulation, which among other things states that the incorporation of a social or non-financial objective into the investment decision-making process will “result in investments and recommendations/solicitations that are not solely focused on maximizing a financial return” for the client.

It is unclear whether and how the state of Missouri will check if this regulation is being followed. Yet, if an advisor does not follow the regulation, the rules state that it is grounds for discipline or disqualification, both for the registrant and for any partner, officer, director or person of similar status or performing similar duties as the registrant.

What Do Wyoming’s Regulations Say?

The regulations in Wyoming are amendments to chapters 2, 4, 5 and 10 of the Wyoming Securities Rules. They state that any broker-dealer, securities agent or investment advisor that incorporates a “social objective into [their] discretionary investment decisions” must provide “clear and conspicuous” disclosure to their clients via written communications. There is no requirement for written or verbal consent from the client.

Disclosure by a registrant to its clients must occur when their relationship begins and then on an annual basis and when they undergo a suitability review with a customer. [Guidance](#) issued by the state in May 2024 includes “best practice in providing clear and conspicuous written disclosure” which includes language that the consideration of ESG criteria “may result in investments or recommendations or advice that are not solely focused on maximizing financial return for your account.”

It is unclear whether and how the state of Wyoming will check if the regulations are being followed. It is also unclear whether and how the regulations will be enforced.

Litigation in Missouri

On August 10, 2023, the Securities Industry and Financial Markets Association (SIFMA) [filed a federal court challenge](#) to the two Missouri documentation rules on the use of ESG criteria in investment by financial advisors and broker-dealers. SIFMA challenged the rules on the grounds that the rules are preempted by the National Securities Markets Improvement Act of 1966 (NSMIA) and the Employee Retirement Income Security Act of 1974 (ERISA), and that they are invalid under the First Amendment of the U.S. Constitution. NSMIA was enacted to stop a “patchwork quilt” of conflicting state

regulations on firms and securities and gave the Securities and Exchange Commission (SEC) exclusive authority to regulate investment advisors managing \$100 million or more in client assets and their representatives. Missouri moved to dismiss the case, stating that SIFMA did not have the standing to sue and that their complaint failed to state a claim. In January 2024, [the court denied](#) Missouri’s motion on all fronts, adopting SIFMA’s analysis of the case in its brief. The case is now awaiting trial in the US District Court for the Western District of Missouri, Central Division.



Conclusion

The type of anti-ESG regulations that are impacting financial advisors and broker-dealers in Missouri and Wyoming are not widespread. No similar regulations have been passed in any of the other 48 states nor at the federal level. Since 2023, Missouri, Kentucky and South Carolina are the only states that have seen bills impacting financial advisors proposed in one house of the legislature, but none of these bills have come close to being enacted into law.

In the May 2024 guidance issued by the state of Wyoming, the state claimed that “ESG investment decisions do not focus on maximizing investment returns for customers or clients.” This represents a fundamental divergence from the capital markets assessment that various ESG data may be material to investment decisions. As with many of the anti-ESG efforts in the states, politicians and government officials are operating with a limited understanding of the markets’ interpretation of these issues. This is bound to create confusion for financial professionals operating in these two states.

For now, these appear to be isolated incidents and we have not seen a widespread proliferation of anti-ESG laws impacting financial advisors and broker-dealers that require that they receive specific consent from their clients for the consideration of these factors.

Appendix:

Comparison of the Missouri and Wyoming Rules

	Missouri	Wyoming
What is the regulation's name?	<p>15 CSR 30-51.170 - Dishonest or Unethical Business Practices by Broker-Dealers and Agents</p> <p>15 CSR 30-51.172 - Dishonest or Unethical Business Practices by Investment Advisers and Investment Adviser Representatives</p>	<p>Amendments to Chapters 2 (definitions), 4 (broker-dealer regulations), 5 (securities agent regulations) and 10 (investment advisor regulations) of Wyoming Securities rules – requiring the disclosure of the use of ESG investment strategies by financial advisors, broker-dealers and securities agents</p>
When did the regulation go into effect?	July 30, 2023	December 14, 2023
Definitions of considerations requiring disclosure	<p><i>Incorporates a Social Objective:</i> The consideration of social criteria in the investment or commitment of a customer or client funds to obtain an effect “other than a maximized financial return” to the customer</p> <p><i>Social Criteria:</i> Criterion intended to further or is branded, advertised or publicly described as</p> <ul style="list-style-type: none"> ▪ International, domestic or industry agreements relating to environmental or social goals ▪ Corporate governance structures based on social criteria ▪ Environmental or social goals 	<p><i>Incorporates a Social Objective:</i> The consideration of social criteria in the investment or commitment of a customer or client funds</p> <p><i>Social Criteria:</i> Criterion intended to further or is branded, advertised or publicly described as</p> <ul style="list-style-type: none"> ▪ International, domestic or industry agreements relating to environmental or social goals ▪ Corporate governance structures based on social criteria ▪ Environmental or social goals

	Missouri	Wyoming
What does the regulation say?	<p>Broker-Dealers and Investment Advisors:</p> <ul style="list-style-type: none"> ▪ Shall provide prior disclosure and obtain written consent and acknowledgment if they incorporate “a social objective or non-financial objective into a discretionary investment decision” when: <ul style="list-style-type: none"> ○ Buying/selling a security or commodity, or ○ Recommending/soliciting to customers/clients to buy/sell securities or commodities, or ○ Recommending a third-party manager or subadvisor ▪ Need consent either: <ul style="list-style-type: none"> ○ At the initial opening of a customer’s account; or ○ Before effecting any investment decision, providing any recommendations or solicitations of securities, or recommendations or solicitations of a third-party manager or subadvisor ▪ Written consent must be <i>substantially similar</i> to: <ul style="list-style-type: none"> ○ “I acknowledge and understand that incorporating a social objective or non-financial objective into discretionary investment decisions, recommendations, advice and/or the selection of a third-party manager or subadvisor... will result in investments and recommendations/advice that are not solely focused on maximizing a financial return for me or my account.” 	<p>Broker-Dealers, Securities Agents, and Investment Advisors:</p> <ul style="list-style-type: none"> ▪ Shall provide disclosure if they incorporate “a social objective into a discretionary investment decision” when: <ul style="list-style-type: none"> ○ Buying/selling a security or commodity, or ○ Recommending/soliciting to customers to buy/sell securities or commodities, or ○ Recommending a third-party manager or subadvisor ▪ The investment professional must provide “clear and conspicuous” disclosure via written communication ▪ Disclosure must be provided at the time of the activity, on an annual basis thereafter, and when the investment professional undergoes a suitability review with a customer
What is the enforcement mechanism?	<p>Enforcement Mechanism:</p> <ul style="list-style-type: none"> ▪ Grounds for discipline or disqualification (under section 409.4-412(d) of the MO Securities Act of 2003) and if in the public interest, within a 10-year period: <ul style="list-style-type: none"> ○ The commissioner may revoke, suspend, condition or limit the registration of the registrant and any partner, officer, director or person of similar status or performing similar functions <p>The commissioner may censure, impose a bar or impose a civil penalty to a registrant and on any partner, officer, director or person of similar status or performing similar functions (no greater than \$25,000 per violation)</p>	<p>Enforcement Mechanism:</p> <ul style="list-style-type: none"> ▪ Not clear how this will be enforced



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