



Colorado Division of Securities 2024 Investment Adviser Examination Priorities

The Examination Staff of the Colorado Division of Securities (the “Staff”) is issuing its 2024 investment adviser examination priorities.¹ These priorities are not an exhaustive list of compliance matters covered during an examination. This year, Staff are highlighting key clarifications and changes set out in the new rules adopted by the Commissioner that became effective in March 2023.

The new rules are located on the Division’s website at [Statutes and Rules](#). Information on What to Expect from an Examination, a Compliance Guide for Investment Advisers, and other resources for firms can be found on the Division’s website at [For Firms and Industry Professionals](#).

Written Suitability Information

- Rule 51-4.6(IA)(17) requires advisers to maintain updated and thorough written information about each investment advisory client. This written information is the basis for making any recommendations. Advisers that recommend riskier or unusual trading strategies should concern themselves with fastidiously maintaining the full breadth of written information to support their recommendations, particularly when the clients’ funds may be subject to substantial losses. Advisers that offer financial planning or consulting should also maintain written information that is the basis for their recommendations to clients.

This written information, often referred to as “suitability” information, should be captured even before beginning a client relationship. Often, the first advice provided to a new client is to transfer their brokerage account(s) or rollover an employer-sponsored plan to the adviser’s custodian. The Staff will look for documentation to verify that advisers have relevant written information, including analysis of the employer plan, to support this advice. Written suitability information is expected to be updated regularly and to accurately reflect clients’ current financial situations. Advisers should also maintain updated written information to support any new or material changes in investment strategy for a particular client.

¹ The views expressed herein are those of the Staff and intended to be informational and not all inclusive of your firm’s responsibilities. Your firm is responsible for and must comply with all required rules and regulations. This document does not supersede any part of the Colorado Revised Statutes, Securities Act, or Rules. The contents of this document do not constitute legal advice.

- Rule 51-4.8 (IA)(A) states that dishonest and unethical conduct includes recommending to a client, to whom investment supervisory, management or consulting services are provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

Sales Representative Unfair and Dishonest Dealings and Reg BI

- 51-4.7(C) was amended to incorporate U.S. Securities & Exchange Commission Regulation Best Interest and include a violation of the rule as unfair and dishonest dealings. Dual licensed representatives should be aware of the obligations for any products that they recommend through their broker-dealer.

Investment Adviser Representative Continuing Education

- 51-4.4.1(IA) creates a continuing education requirement for all licensed investment adviser representatives. The first reporting period begins in 2024 and the Division will be providing further information to firms. This rule adopts a North American Securities Administrators Association (“NASAA”) model rule. See the Staff’s [IARCE FAQs](#) for more information.

Books and Records Rules 51-4.6(IA)

- 51-4.6(IA)(3) will require firms to keep additional information on their memorandum of trade orders (trade blotter). In the memorandum, firms with non-discretionary trading authority will now be required to document information concerning the client approval of trades including the date and the method by which the adviser received the client approval. Additionally, firms will be required to document trade orders entered in error including the actions the adviser took to correct the orders entered in error.
- 51-4.6(IA)(5) will require firms to also maintain copies of “invoices” in addition to bills and statements of the investment adviser.
- 51-4.6(IA)(6) clarifies that investment adviser’s financial statements, prepared in accordance with generally accepted accounting principles (GAAP), must include an income statement and a cash flow statement in addition to a balance sheet.
- 51-4.6(IA)(7) expands the records requirement of firms to *all* written communications relating to the business of the investment adviser. This includes text messages, emails, and other social media messages.
- 51-4.6(IA)(8) will require firms, as part of their obligation, to maintain a record of all clients and accounts to include the value of each account, a list of the

services provided, and identification of those accounts in which the adviser has discretionary authority.

- 51-4.6(IA)(16) will require firms to maintain a written summary of all *oral* complaints in addition to the current requirement to maintain written communications concerning litigation and customer complaints.

Dishonest and Unethical Conduct Rules 51-4.8(IA)

- 51-4.8(IA)(P) provides clarity on the information that firms are required to disclose in investment advisory contracts with clients. It will be dishonest and unethical conduct for advisers to enter into or renew any investment advisory contract unless such contract is in writing and discloses the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract. This rule adopts a NASAA model rule, though the Staff has been advising for years that investment advisory contracts contain this information.

New Investment Adviser Written Policies and Procedures Rules Rule 51-4.12(IA)

- 51-4.12(IA)(A) clarifies the written policies and procedures that a firm must maintain. The rule makes it unlawful for firms to provide investment advice to clients unless the firm establishes, maintains, and enforces written policies and procedures for compliance, supervision, physical and cyber security, a code of ethics, material non- public information, and business continuity and succession planning.
- 51-4.12(IA)(B) requires advisers to review, no less frequently than annually, the adequacy of the policies and procedures required by this section and the effectiveness of implementation. These rules adopt a NASAA model rule.
- 51-4.12(IA)(C) requires the investment adviser to designate a chief compliance officer. The CCO must be licensed and have “...the authority and resources to develop and enforce the investment adviser’s policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.”

Reach Out: Investment advisers can always call the Division with questions. Ask the main desk to speak with an examiner. We interact with hundreds of firms every year and while the Staff cannot offer legal advice, we can offer best practice recommendations on complying with certain regulations and direct you to relevant rules to review. The Division can be reached at 303-894-2320 or by email at dora_SecuritiesWebsite@state.co.us.