

## **STATEMENT OF BASIS AND PURPOSE**

### Promulgation of Amendments to Division Rules

Colorado Division of Securities  
\_\_\_\_\_, 2019

Pursuant to the authority found in the Colorado Securities Act (“Act”), sections §11-56-1-101, et seq., C.R.S., including part 7 of the Act, the Securities Commissioner adopts amendments to Division Rules 51-3.5, 51-3.34, 51-3.35, 51-3.36, 51-4.3(K), 51-4.6.1, 51-4.7(G), 51-4.4(IA)(E), 51-4.4(IA)(I), 51-4.6(IA)(A)(6), 51-4.6(IA)(A)(8), 51-4.6(IA)(A)(10), 51-4.6(IA)(A)(15), 51-4.6(IA)(A)(21), 51-4.7(IA), 51-4.8(IA)(introduction), 51-4.8(IA)(O), 51-4.8(IA)(V), 51-4.8(IA)(W), 51-4.8(IA)(X), 51-4.8(IA)(Y), 51-4.9(IA), 51-4.10(IA)(B)(2), and 51-4.13(IA).

Rule 51-3.5 This rule was repealed because the statute that it relied on was repealed by the passing of HB 18-1388. Both the house bill and the repeal of this rule are consistent with the federal securities law.

Rules 51-3.34, 51-3.35 & 51-3.36 Three rules were added to comply with the provisions of the Colorado Digital Token Act, 11-51.308.7, C.R.S. These rules replace emergency rules which were adopted August 2, 2019.

Rule 51-4.3(K) & 51-4.4(IA)(I) The Business Email rules were amended to allow the division to compile an accurate list of Colorado licensed sales representatives and investment adviser representatives.

Rule 51-4.6.1 The general purpose of adding rule 51-4.6.1 is to require mortgage broker-dealers to establish cybersecurity procedures. This requirement was already placed on investment advisers and broker-dealers, effective July 15, 2017. Mortgage broker-dealers should have been included at that time.

51-4.7(G) This rule was amended to require Colorado licensed broker-dealers and broker-dealer sales representatives to comply with FINRA financial and operational rules and securities offering and trading standards and practices.

51-4.4(IA)(E) This rule was amended to conform with the recently revised qualification examinations administered by FINRA.

51-4.6(IA)(A)(6) Amending this rule provides clarity to licensees with respect to the proper accounting principles that must be used.

51-4.6(IA)(A)(8) Amending this rule requires licensees to maintain a record of all clients, accounts and services provided. The amendment provides more detail than the previous rule, clearing up any ambiguity.

51-4.6(IA)(A)(10) Amending this rule adds the term “investment advisory contract” to be included in the definition of “each agreement.” The amendment provides more detail than the previous rule, clearing up any ambiguity.

51-4.6(IA)(A)(15) This rule should have been repealed following repeal of rule 51-4.9(IA)(Payment of Cash Fees for Solicitation), which was repealed effective July 31, 2018.

51-4.6(IA)(A)(21) This rule was added to provide licensed investment advisers with notice of the division’s requirement to maintain records of completed due diligence with respect to alternative and non-exchange traded products.

51-4.7(IA) Amending this rule requires all investment advisers to provide advisory clients and prospective advisory clients with a copy of the advisers Form ADV-Part 2. This amendment provides clarity to licensed investment advisers and removes any ambiguity.

51-4.8(IA) The introduction to the rule was amended to provide clarity and to conform with the NASAA model rule (Model Rule 102(a) (4)-1, as amended May 19, 2019).

51-4.8(IA)(O) This rule was amended to eliminate an inconsistency with rule 51-4.10(IA)(B)(1).

51-4.8(IA)(V) This rule was amended to clean up numbering/lettering with no substantive change to the rule.

51-4.8(IA)(W) This rule was added to require all licensed individuals to comply with child support orders as described in section 26-13-126, C.R.S.

51-4.8(IA)(X) This rule was added to require all investment advisers to provide all clients with an invoice that complies with the provisions of rule 51-4.10(IA)(B)(2).

51-4.8(IA)(Y) This rule prohibits an investment adviser or investment adviser representative from accessing a client’s account using the client’s login and password.

51-4.9(IA) This rule was added to provide additional protections for clients whose investment adviser either has custody of their assets or requires pre-payment of fees of \$500 or more six months or more in advance. This rule conforms with the NASAA model rule (Model Rule USA 2002 411(b)-1, adopted September 7, 2008).

51-4.10(IA)(B)(2) This rule was amended to provide clarity regarding invoicing and billing requirements and makes the rule consistent with rule 51-4.8(IA)(X).

51-4.13(IA) Amending this rule provides clarity to licensed investment advisers regarding the net worth requirement and is consistent with rule 51-4.6(IA)(A)(6).

The Securities Commissioner finds that the adoption of these amendments to the Rules is necessary and appropriate in the public interest, and is consistent with the purposes and provisions of the Act. The Securities Commissioner further finds that the record demonstrates

the need for the Rules; the Rules are clearly and simply stated; proper statutory authority exists for the Rules; the Rules do not conflict with any other rules or statutes governing the Division of Securities; and the Rules are coordinated with the federal acts and statutes and the rules and regulations promulgated thereunder to which references are made, to the extent coordination with them is consistent with the purposes and provisions of the Act.

This general statement of basis and purpose is incorporated by reference in the rules adopted by the Securities Commissioner on \_\_\_\_\_, 2019.

The rules become effective on \_\_\_\_\_, 2019.

DATED this \_\_\_ day of \_\_\_\_\_, 2019.

---

Chris Myklebust  
Securities Commissioner