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## Wyoming Mid-Sized Advisers Can No Longer Register with the SEC

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By John I. Sanders

Wyoming required investment advisers to register with the state for the first time on July 1, 2017.<sup>[i]</sup> Wyoming's decision primarily affects those Wyoming-based advisers with between \$25 million and \$100 million in assets under management ("Mid-Sized Advisers"). Generally, Mid-Sized Advisers may not register with the SEC.<sup>[ii]</sup> However, Wyoming-based Mid-Sized Advisers were required to register with the SEC pursuant to an exception to the general rule.<sup>[iii]</sup> That exception requires a Mid-Sized Adviser to register with the SEC if its principal office or place of business is in a state that does not require it to register.<sup>[iv]</sup> Wyoming's lack of a registration requirement for Mid-Sized Advisers and the SEC's exception made Wyoming a destination for Mid-Sized Advisers who wanted to tout SEC registration.<sup>[v]</sup> Some Mid-Sized Advisers went as far as to fraudulently claim to be based in Wyoming so that they could boast SEC registration.<sup>[vi]</sup> Wyoming's decision to require investment advisers to register with the state means that Wyoming-based Mid-Sized Advisers (real and fictitious) are no longer permitted to register with the SEC. Instead, they must register with Wyoming and comply with its new regulatory regime.<sup>[vii]</sup> This continues a shift, which we first noted in 2011, of primary responsibility for the regulatory oversight of Mid-Sized Advisers to the states.<sup>[viii]</sup> Please contact us if you have any questions about the new law or its potential impact on your investment advisory business. **John I. Sanders** is an associate based in the firm's Winston-Salem office. <sup>[i]</sup> Wyoming Secretary of State, FAQs (March 14, 2017), available at [http://soswy.state.wy.us/Investing/Docs/investment\\_faq\\_final.pdf](http://soswy.state.wy.us/Investing/Docs/investment_faq_final.pdf). <sup>[ii]</sup> 15 USC 80b-3a (2017); see also SEC, Division of Investment Management: Frequently Asked Questions Regarding Mid-Sized Advisers, available at <https://www.sec.gov/divisions/investment/midsizedadviserinfo.htm> (providing additional commentary related to the effect of certain Dodd-Frank Act provisions on Mid-Sized Advisers). <sup>[iii]</sup> *Id.* <sup>[iv]</sup> *Id.* <sup>[v]</sup> See Danielle Andrus, ThinkAdvisor, *Wyoming to Begin Registering RIAs* (July 13, 2016), available at <http://www.thinkadvisor.com/2016/07/13/wyoming-to-begin-registering-riAs>; see also Christine Idzelis, Investment News, *Wyoming poised to scrutinize its RIA industry for the first time* (July 6, 2016), available at <http://www.investmentnews.com/article/20160706/FREE/160709978/wyoming-poised-to-scrutinize-its-ria-industry-for-the-first-time>. <sup>[vi]</sup> See *In re Matter of New Line Capital, LLC and David A Nagler*, IA-4017 (February 4, 2015), available at <https://www.sec.gov/litigation/admin/2015/ia-4017.pdf>; and *In the matter of Wyoming Investment Services, LLC and Criag M. Scariot*, IA-4014 (February 4, 2015), available at <https://www.sec.gov/litigation/admin/2015/ia-4014.pdf>. <sup>[vii]</sup> Wyoming Secretary of State, *Proposed Rules*, available at <http://soswy.state.wy.us/Investing/Docs/WyomingProposedRulesforIA.pdf>. <sup>[viii]</sup> Paul Foley, Kilpatrick Townsend & Stockton, LLP Investment Management Blog, *Deadline for Meeting the New Investment Adviser Regulatory Requirements Under the Dodd-Frank Act is Quickly Approaching* (Sept. 20, 2011), available at [http://www.kilpatricktownsend.com/en/Knowledge\\_Center/Alerts\\_and\\_Podcasts/Legal\\_Alerts/2011/09](http://www.kilpatricktownsend.com/en/Knowledge_Center/Alerts_and_Podcasts/Legal_Alerts/2011/09)



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