

3. "Credit" means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.
4. "Home State" means the state in which the investment adviser representative has its principal office and place of business.
5. "IAR Ethics and Professional Responsibility Content" means Approved IAR Continuing Education Content that addresses an investment adviser representative's ethical and regulatory obligation.
6. "IAR Products and Practice Content" means Approved IAR Continuing Education Content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.
7. "Investment adviser representative" or "IAR" means an individual who meets the definition of "investment adviser representative" under 11-51-201(9.6)(a) and (b), C.R.S.
8. "NASAA" means the North American Securities Administrators Association or a committee designated by its Board of Directors.
9. "Reporting Period" means one twelve-month (12) period as determined by NASAA. An investment adviser representative's initial Reporting Period with this state commences the first day of the first full Reporting Period after the individual is licensed or required to be licensed with this state.

**51-4.5(IA) Withdrawal of an Investment Adviser or Investment Adviser Representative License**

- A. An application for withdrawal from licensing as an investment adviser in Colorado and any amendment to such application shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) and filed upon Form ADV-W with IARD.
- B. An application for withdrawal from licensing as an investment adviser representative for an investment adviser or federal covered adviser in Colorado and any amendment to such application shall be completed by following the instructions on Form U-5 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5 with IARD.
- C. The Securities Commissioner may deem an application for licensing as an investment adviser or investment adviser representative to be abandoned when an applicant fails to adequately respond to any request for additional information required under § 11-51-403, C.R.S. or the regulations thereunder. The Commissioner shall provide written notice of warning 30 calendar days before such the application is deemed abandoned. The applicant may, with the consent of the Commissioner, withdraw the application.

**51-4.6(IA) Books and Records Requirements for Licensed Investment Advisers**

- A. Except as otherwise provided in section I for out-of-state investment advisers investment advisers, every investment adviser licensed or required to be licensed under the Act shall make and keep true, accurate and current the following books, ledgers and records:
  1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;
  2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;

3. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction or non-discretionary client approval received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, of any modification or cancellation of any such order or instruction, and of any trade order entered in error. In any such memorandum, the investment adviser shall:
  - a. show the terms and conditions of the order, instruction, modification or cancellation;
  - b. identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order;
  - c. show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate;
  - d. orders entered pursuant to the exercise of discretionary power shall be so designated and orders entered pursuant to the exercise of non-discretionary authority shall document the date and method by which the investment adviser received client approval and
  - e. show the actions taken to correct orders entered in error.
4. All check books, bank statements, canceled checks and cash reconciliations of the investment adviser;
5. All bills, statements, and invoices (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser;
6. All trial balances, financial statements (prepared in accordance with generally accepted accounting principles i.e. accrual basis) and internal audit working papers relating to the investment adviser's business as an investment adviser. [For purposes of this subsection, the term "financial statements" means a balance sheet, an income statement, and a cash flow statement prepared in accordance with generally accepted accounting principles.];
7. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser;
8. A list or other record of all clients and accounts, including a list of services provided to each client/account, the value of each account, and identification of those accounts in which the investment adviser is vested with any discretionary authority;
9. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser;
10. A copy in writing of each agreement or investment advisory contract entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser;
11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and, if in such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media), the investment adviser recommends the purchase or sale of a specific security but does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation;

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12. A record of transactions in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership (except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control, and transactions in securities that are direct obligations of the United States),
- a. such record shall state:
    - i. the title and amount of the security involved;
    - ii. the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition);
    - iii. the price at which it was effected; and
    - iv. the name of the broker-dealer or bank with or through whom the transaction was effected.
  - b. The record may also contain a statement in which the investment adviser declares that the reporting or recording of any transaction shall not be construed as an admission the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.
  - c. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.
  - d. For purposes of this Rule subsection (A)(12):
    - i. the term "advisory representative" means:
      - A. any partner, officer or director of the investment adviser;
      - B. any employee who participates in any way in the determination of which recommendations shall be made;
      - C. any employee who, in connection with his/her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and
      - D. any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:
        - I. any person in a control relationship to the investment adviser;
        - II. any affiliated person of a controlling person; and
        - III. any affiliated person of an affiliated person;
    - ii. the term "control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company is presumed to control such company.
  - e. An investment adviser shall not be deemed to have violated the provisions of this
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Rule subsection (A)(12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. Notwithstanding the provisions of Rule subsection (A)(12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership (except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities that are direct obligations of the United States),
  - a. such record shall state:
    - i. the title and amount of the security involved;
    - ii. the date and nature of the transaction (*i.e.*, purchase, sale, or other acquisition or disposition);
    - iii. the price at which it was effected; and
    - iv. the name of the broker-dealer or bank with or through whom the transaction was effected.
  - b. The record may also contain a statement in which the investment adviser declares that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.
  - c. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.
  - d. For purposes of this Rule subsection (A)(13):
    - i. An investment adviser is “primarily engaged in a business or businesses other than advising investment advisory clients” when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of:
      - A. its total sales and revenues; and
      - B. its income (or loss) before income taxes and extraordinary items, from such other business or businesses.
    - ii. the term “advisory representative”, when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

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- A. any person in a control relationship to the investment adviser;
  - B. any affiliated person of a controlling person; and
  - C. any affiliated person of an affiliated person; and
- iii. the term “control” means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.
- e. An investment adviser shall not be deemed to have violated the provisions of this Rule subsection (A)(13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.
14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of section 11-51-409.5, C.R.S. and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.
15. All accounts, books, internal working papers, and any other records or documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts satisfies the requirements of this Rule subsection (A)(11).
16. A file containing a written summary of all oral client complaints and a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.
17. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.
18. Written procedures to supervise the activities of employees and investment adviser representatives.
- An investment adviser must establish and maintain written supervisory procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.
19. A file containing a copy of each document (other than any notices of general dissemination) filed with or received from any state or federal agency or self-regulatory organization and that pertains to the licensee or its advisory representatives as that term is defined in Rule subsection (A)(12)(d) above, which file should contain, but is not limited to, all applications, amendments, renewal filings and correspondence.

20. Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser and on behalf of the investment adviser representative for whom it is filing, and must be made available for inspection upon request by the Securities Commissioner.
  21. A file memorializing the due diligence conducted for alternative and non-exchange traded investment products recommended to or purchased on behalf of clients.
- B. If an investment adviser has custody or possession of securities or funds of any client, the following records are required to be made and kept in addition to those required in section (A) above:
1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts;
  2. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;
  3. Copies of confirmations of all transactions effected by or for the account of any client; and
  4. A record for each security in which any client has a position, in which record shall be shown the name of each client having any interest in each security, the amount or interest of each client, and the location of each security;
- C. Every investment adviser licensed or required to be licensed as such under the Act who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:
1. Records in which are shown separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale; and
  2. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client;
- D. Any required books or records may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services are indicated by numerical or alphabetical code or some similar designation;
- E. Every investment adviser licensed or required to be licensed as such under the Act shall preserve the following records in the manner prescribed:
1. All books and records required to be made under the provisions of Rule sections (A) and (B) and subsection (C)(1) above, inclusive, [except for books and records required to be made under the provisions of Rule subsections (A)(11) and (16) above], shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser;
  2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise;
  3. Books and records required to be made under the provisions of Rule subsections (A)(11) and (16) above shall be maintained and preserved in an easily accessible place for a

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- period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media;
4. Books and records required to be made under the provisions of subsections (A)(17)-(A)(20), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was licensed or required to be licensed in the state, if less;
  5. Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:
    - a. records required to be preserved under Rule subsections (A)(3), (7)-(10), (14)-(15), (17)-(19), and sections (B) and (C) above, inclusive; and
    - b. records or copies required under the provision of Rule subsections (A)(11) and (16) above in which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number.
    - c. The records will be maintained for the period described in this Rule section (E)
- F. An investment adviser licensed or required to be licensed as such under the Act, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the Securities Commissioner in writing of the exact address where the books and records will be maintained during the period.
1. The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in Rule subsection (F)(2) below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:
    - a. arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
    - b. be ready at all times to provide promptly any facsimile enlargement of film or computer printout or copy of the computer storage medium that the examiners or other representatives of the Securities Commissioner request;
    - c. store separately from the original one other copy of the film or computer storage medium for the time required;
    - d. with respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and
    - e. with respect to records stored on photographic film, at all times have available for the Securities Commissioner's examination of its records pursuant to section 11-51-409 of the Act, facilities for immediate, easily readable projection of the film
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and for producing easily readable facsimile enlargements.

2. Pursuant to Rule subsection (F)(1) above, an investment adviser may maintain and preserve on computer tape or disk or other computer storage medium records that, in the ordinary course of the investment adviser's business, are created by the investment adviser on electronic media or are received by the investment adviser solely on electronic media or by electronic data transmission.
- G. For purposes of Rule 51-4.6(IA):
1. the term "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and
  2. the term "discretionary power" does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.
- H. Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the 34 Act that is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Rule 51-4.6(IA) shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.
- I. Every investment adviser licensed or required to be licensed in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this Rule, provided the investment adviser is licensed or registered in such state and is in compliance with such state's recordkeeping requirements.

**51-4.7(IA) Mandatory Disclosure**

- A. An investment adviser and its investment adviser representative shall furnish each advisory client and prospective advisory client a copy of Part 2 of the investment adviser's Form ADV.
- B. INITIAL DELIVERY. An investment adviser and its investment adviser representative, except as provided in section (F), shall deliver the disclosure statement required by this section to an advisory client or prospective advisory client:
1. not less than 48 hours prior to entering into any written investment advisory contract with such client or prospective client, or
  2. at the time of entering into any such contract, if the advisory client has a right to terminate the contract without fees or penalty within five business days after entering into the contract.
- C. ANNUAL DELIVERY: An investment adviser and its investment adviser representative, except as provided in section (F) must:
1. Deliver within one hundred twenty days of the end of your fiscal year a free, updated Part 2 of the investment adviser's Form ADV disclosure statement required by this section which include or are accompanied by a summary of the material changes; or
  2. Deliver within one hundred twenty days at the end of your fiscal year a free summary of material changes that includes an offer to provide a copy of the updated Part 2 of the investment adviser's Form ADV disclosure statement and information on how the client may obtain a copy of the disclosure statement.
- D. An investment adviser and its investment adviser representative shall furnish each advisory client or prospective client participating in a wrap fee program a copy of Part 2 of the investment advisors Form ADV in addition to a copy of Part 2A Appendix 1 of Form ADV (the wrap fee