

Investment Adviser Books and Records Requirements

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 received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. 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; and
 - 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;
4. All check books, bank statements, canceled checks and cash reconciliations of the investment adviser;
5. All bills or statements (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) 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 prepared in accordance with generally accepted accounting principles, an income statement and a cash flow statement];
7. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:
 - a. any recommendation made or proposed to be made and any advice given or proposed to be given;
 - b. any receipt, disbursement or delivery of funds or securities; or

- c. the placing or execution of any order to purchase or sell any security, provided, however, that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement, a memorandum describing the list and its source;
8. A list or other record of all accounts, in which list are identified the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;
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 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;
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 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:

- 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. For each client obtained by the investment adviser by means of a solicitor to whom a cash fee was paid by the investment adviser:
- a. evidence of a written agreement to which the investment adviser is a party related to the payment of such fee;
 - b. a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and,
 - c. a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 51-4.9(IA) or Rule 275.206(4)-3 of the 40 Act.

- d. For purposes of this Rule subsection (A)(15), the term “solicitor” means any individual, person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.
16. 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)(16).
 17. A file containing 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.
 18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.
 19. Written procedures to supervise the activities of employees and investment adviser representatives.
 - a. Annual Review. At least annually, an investment adviser must conduct a review of the businesses in which the investment adviser engages. The review must be reasonably designed to ensure compliance with all applicable laws and regulations.
 - b. Supervisory Procedures. An investment adviser must establish and maintain written supervisory procedures that are reasonably designed to ensure compliance with all applicable laws, regulations, and any rules of any self-regulatory organization. An investment adviser must maintain copies of such written supervisory procedures at each investment-adviser branch office.
 - i. In determining whether the supervisory procedures are reasonably designed the commissioner may consider:
 - A. The firm’s size;
 - B. The firm’s organizational structure;
 - C. The scope of the firm’s business activities;
 - D. The number and location of the offices;

- E. The nature and complexity of products and services offered;
 - F. The firm's volume of business;
 - G. The number of investment adviser representatives assigned to a location;
 - H. The specification of the office as a non-branch location;
 - I. The firm's use of electronic communication;
 - J. The disciplinary history of the licensed investment adviser representatives.
- ii. At minimum, written supervisory procedures must include:
- A. The designation of an appropriately licensed investment adviser representative with the authority to oversee the supervisory responsibilities of the investment adviser;
 - B. The assignment an investment adviser responsible for supervising each investment adviser representative licensed with an investment adviser;
 - C. That the investment adviser will make reasonable efforts to ensure that all supervisory personnel are qualified to carry out their assigned responsibilities;
 - D. Procedures for conducting, at minimum, an annual review to ensure compliance with the written supervisory policies and procedures;
 - E. Procedures for internal review and written endorsement by supervisory personnel described in subparagraph (ii) above of all transaction and correspondence pertaining to the rendering of investment advice; and
 - F. Procedures for ensuring the good character, business repute, qualifications, and experience of any person applying for a license in association with the investment adviser.
- c. Fee Based Accounts. An investment adviser must implement supervisory procedures for the periodic review of fee-based accounts to determine whether they remain appropriate for customers owning them.
- d. Supervision of Non-Investment Adviser Branch Offices. The procedures established and the reviews conducted must provide sufficient supervision at remote offices to ensure compliance with applicable securities laws and

regulations. Based on the factors specified in subdivision (2) above, the commissioner may require more frequent reviews or more stringent supervision for certain non-investment adviser branch offices.

- e. Failure to Supervise. An investment adviser who fails to comply this subsection (A) is deemed to have violated C.R.S. §11-51-410(1)(g) .
20. 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.
 21. 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.