

WAC 460-24A-200 Books and records to be maintained by investment advisers. (1) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you must make and keep true, accurate, and current the following books, ledgers, and records:

- (a) A journal or journals, including cash receipts and disbursement records, and any other records of original entry forming the basis of entries in any ledger.
- (b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
- (c) A memorandum of each order given by you for the purchase or sale of any security, of any instruction received by you from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda must show the terms and conditions of the order, instruction, modification or cancellation; must identify the person connected with you who recommended the transaction to the client and the person who placed the order; and must show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of a power of attorney must be so designated.
- (d) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
- (e) All bills or statements (or copies thereof), paid or unpaid, relating to your business.
- (f) All trial balances, financial statements, and internal audit working papers or other supporting financial records relating to your business as an investment adviser. For purposes of this subsection, "financial statements" means a balance sheet prepared in accordance with generally accepted accounting principles in the United States, an income statement, a cash flow statement, and a net worth computation, if applicable, as required by WAC 460-24A-170.
- (g) Physical or electronic copies of all written communications received and copies of all written communications sent by you relating to your investment advisory business including, but not limited to:
 - (i) Any recommendation made or proposed to be made and any advice given or proposed to be given;
 - (ii) Any receipt, disbursement or delivery of funds or securities; and
 - (iii) The placing or execution of any order to purchase or sell any security: Provided, however, That you will not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for you: And provided, That if you send any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, you will not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, you must retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.
- (h) A list or other record of all accounts in which you are vested with any discretionary authority over the funds, securities or transactions of any client.
- (i) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to you.

(j) A written copy of each signed agreement entered into by you with any client and all other written agreements otherwise relating to your business as an investment adviser.

(k) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including by electronic media, and all amendments thereto, that you circulate or distribute, directly or indirectly, to two or more persons (other than persons connected with you), and if such communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum by you indicating the reasons for the recommendation.

(l)(i) A record of every transaction in a security in which you or any of your advisory representatives has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither you nor any of your advisory representatives has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record must state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction will not be construed as an admission that you or your advisory representative has any direct or indirect beneficial ownership in the security. You must record each transaction not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) For the purposes of this subsection (1)(l), the following definitions will apply:

(A) "Advisory representative" means any of your partners, officers or directors; any employee who participates in any way in the determination of which recommendations will be made, or whose functions or duties relate to the determination of which recommendation will be made; any employee who, in connection with his or her duties, obtains any information concerning 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 you prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to you;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "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 twenty-five percent of the voting securities of a company will be presumed to control such company.

(iii) You will not be deemed to have violated the provisions of this subsection (1) because of the failure to record securities transactions of any supervised person if you establish that you instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(m)(i) Notwithstanding the provisions of (l) of this subsection, if you are primarily engaged in a business or businesses other than advising investment advisory clients, you must maintain a record of every transaction in a security in which you or any of your advisory representatives (as hereinafter defined) has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither you nor any of your advisory representatives has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record must state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that you or any of your advisory representatives has any direct or indirect beneficial ownership in the security. You must record a transaction not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) You are "primarily engaged in a business or businesses other than advising investment advisory clients" if, for each of your most recent three fiscal years or for the period of time since organization, whichever is lesser, you derived, on an unconsolidated basis, more than fifty percent of:

(A) Your total sales and revenues; and

(B) Your income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(iii) For purposes of this subsection (1)(m) of this section the following definitions will apply:

(A) "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:

(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.

(B) "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 twenty-five percent of the voting securities of a company will be presumed to control such company.

(iv) You will not be deemed to have violated the provisions of this subsection (1)(m) because of your failure to record securities transactions of any advisory representative if you establish that you

instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(n) The following items related to WAC 460-24A-145 and Part 2 of Form ADV:

(i) A copy of each written statement, and each amendment or revision, given or sent to any of your clients or prospective clients as required by WAC 460-24A-145;

(ii) Any summary of material changes that is required by Part 2 of Form ADV that is not included in the written statement; and

(iii) A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or prospective client who subsequently becomes a client.

(o) For each client that you obtained by means of a solicitor to whom you paid a cash fee:

(i) Evidence of a written agreement to which you are a party related to the payment of such fee;

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of your disclosure statement and a written disclosure statement of the solicitor; and

(iii) 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 275.206 (4)-3 of the Investment Advisers Act of 1940.

For purposes of this subsection, the term "solicitor" means any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(p) All accounts, books, internal working papers, and any other records or documents that are 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 you circulate or distribute, directly or indirectly, to two or more persons (other than persons connected with you); 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 will be deemed to satisfy the requirements of this subsection.

(q) A file containing a copy of all written communications received or sent regarding any litigation involving you or any investment adviser representative or employee, and regarding any written customer or client complaint.

(r) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client. The written information about the investment advisory client must include, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the client may disclose to the investment adviser in connection with such recommendation or investment advice. On an annual basis, the investment adviser must make a reasonable effort to confirm or update the written information about each investment advisory client.

(s) Written information about each security that you recommended a client buy or sell that is the basis for making any recommendation or providing any investment advice to such client.

(t) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(u) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to you or your advisory representatives as that term is defined in (m)(iii)(A) of this subsection, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(v) If you inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or forwarded third-party checks within three business days, you must keep the following records relating to the inadvertent custody:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) For debt instruments, the denomination, interest rate and maturity date;

(v) Certificate number, including alphabetical prefix or suffix;

(vi) Name in which registered;

(vii) Date given to the adviser;

(viii) Date sent to client or sender;

(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(w) Copies, with signatures of your appropriate signatory and the investment adviser representative, of each initial Form U4 and each amendment to Disclosure Reporting Pages (DRPs) must be retained by you (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(x) If you obtain possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under WAC 460-24A-109(1), you must keep the following records:

(i) A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(ii) A copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(y) A copy of a current written business continuity and succession plan adopted in accordance with WAC 460-24A-126.

(z) Written policies and procedures required to be established pursuant to WAC 460-24A-120, 460-24A-122, and 460-24A-125, and any records required to be created or maintained thereunder.

(aa) A copy of a written code of ethics that establishes standards of business conduct which reflect your fiduciary obligations and those of your supervised persons.

(bb) Written physical and cyber security policies and procedures that are reasonably designed to ensure the security and integrity of your physical and electronic records.

(cc) A copy of the written advisory fee billing information provided clients in accordance with WAC 460-24A-135, and a written record of the services provided to each client during the billing period.

(dd) Documentation of client's authorization for each nondiscretionary securities transaction.

(2)(a) If you are subject to subsection (1) of this section and have custody or possession of securities or funds of any client, the records required to be made and kept under subsection (1) of this section must include:

(i) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(ii) 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.

(iii) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase or sale, and all debits and credits.

(iv) Copies of confirmations of all transactions effected by or for the account of any client.

(v) A record for each security in which any client has a position, which record must show the name of each client having any interest in each security, the amount of interest of each client, and the location of each security.

(vi) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If you also generate a statement that is delivered to the client, you must also maintain copies of such statements along with the date such statements were sent to the clients.

(vii) If applicable to your situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(viii) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(ix) If applicable, evidence of the client's designation of an independent representative.

(b) If you have custody because you advise a pooled investment vehicle, as defined in WAC 460-24A-005 (6)(a)(iii), you must also keep the following records:

(i) True, accurate and current account statements;

(ii) Where you comply with WAC 460-24A-107 (1)(b) the records required to be made and kept must include:

(A) The date of the audit;

(B) A copy of the audited financial statements; and

(C) Evidence of the mailing of the audited financial statements to all limited partners, members or other beneficial owners within one hundred twenty days of the end of its fiscal year.

(iii) Where you comply with WAC 460-24A-107 (1)(a) the records required to be made and kept must include:

(A) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent party; and

(B) Copies of all invoices and receipts showing the approval by the independent party for payment through the qualified custodian.

(c) If you have custody because you are acting as the trustee for a beneficial trust as it is described in WAC 460-24A-109(3), you must also keep the following records until the account is closed or the adviser is no longer acting as trustee:

(i) A copy of the written statement given to each beneficial owner setting forth a description of the requirements of WAC 460-24A-105 and the reason why you will not be complying with those requirements; and

(ii) A written acknowledgment signed and dated by each beneficial owner, and evidencing receipt of the statement required under WAC 460-24A-109 (3)(b).

(3) If you are subject to subsection (1) of this section and you render any investment supervisory or management service to any client, you must, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by you, make and keep true, accurate and current:

(a) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase or sale.

(b) For each security in which any client has a current position, information from which you can promptly furnish the name of each client, and the current amount or the interest of the client.

(4) Any books or records required by this section may be maintained by you in such manner that the identity of any client to whom you render investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(5) If you are subject to subsection (1) of this section, you must preserve the following records in the manner prescribed:

(a) All books and records required to be made under the provisions of subsections (1) to (3), inclusive, of this section except for books and records required to be made pursuant to subsection (1)(k) and (p) of this section must be maintained and preserved in an easily accessible place for at least six years from the date the last entry was made on the record, the first two years in your principal office.

(b) Your partnership articles and any amendments, articles of incorporation, charter documents, minute books and stock certificate books of you and any of your predecessors, must be maintained in your principal office and preserved until at least three years after termination of the enterprise.

(c) Books and records required to be made pursuant to subsection (1)(k) and (p) of this section must be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in your principal office, from the end of the fiscal year during which you last published or otherwise disseminated, directly or indirectly, including by electronic media, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(d) Notwithstanding other record preservation requirements of this section, you must maintain the following records or copies at your business location from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (1)(c), (g) through (j), (l), (m), (n), (o), and (q) through (dd), (2), and (3) of this section must be maintained for the period prescribed in (a) of this subsection; and

(ii) Records or copies required pursuant to subsection (1)(k) and (p) of this section 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 must be maintained for the period prescribed in (c) of this subsection.

(6) If you are an investment adviser subject to subsection (1) of this section, you must, before ceasing to conduct or discontinuing business as an investment adviser, arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and must notify the director in writing of the exact address where the books and records will be maintained during the period.

(7)(a) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(i) Paper or hard copy form, as those records are kept in their original form;

(ii) Micrographic media, including microfilm, microfiche, or any similar medium; or

(iii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(b) If you are an investment adviser required to maintain and preserve records pursuant to this section, you must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the director may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(c) If the records that the investment adviser is required to maintain and preserve pursuant to this section are created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the director; and

(iii) To reasonably ensure that any reproduction of a nonelectronic original record on electronic storage media is complete, true, and legible when retrieved.

(8) As used in this section, "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 "discretionary authority" 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.

(9) Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section, will be deemed to be made, kept, maintained, and preserved in compliance with this section.

(10) If you are an investment adviser registered or required to be registered in this state and have your principal place of business in a state other than this state, you are exempt from the requirements of this section, provided you are registered in the state where you have your principal place of business and are in compliance with that state's recordkeeping requirements.

(11) If you are an investment adviser registered or required to be registered under RCW 21.20.040, you must make the records required to be maintained under this section easily accessible for inspection by the director or the director's representatives. In the conduct of an examination authorized by RCW 21.20.100(4), you must honor all requests by the director or the director's representatives to have physical access to all areas of the office that is the subject of the examination. Upon request, you must permit the director or the director's representatives to access, copy, scan, image, and examine all records and electronic data that you are required to retain under this section.

[Statutory Authority: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, and 21.20.702. WSR 19-03-133, § 460-24A-200, filed 1/18/19, effective 2/18/19; WSR 14-13-068, § 460-24A-200, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. WSR 01-16-125, § 460-24A-200, filed 7/31/01, effective 10/24/01; Order 304, § 460-24A-200, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]