

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 10 - RECORDKEEPING BY INVESTMENT ADVISERS

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120 of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to recordkeeping by investment advisers is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case-by-case basis, and with prior written notice to the affected persons, require adherence to additional standards or policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 apply to the provisions of this Rule, unless otherwise specified.

001.05 Federal statutes and rules of the Securities and Exchange Commission ("SEC") or the Financial Industry Regulatory Authority ("FINRA") referenced herein shall mean those statutes and rules as amended on or before the effective date of this Rule. A copy of the statutes or rules referenced in this Rule is available as an appendix to this rule at <https://ndbf.nebraska.gov/about/legal/administrative-rules-and-regulations>.

002 GENERAL RECORD-KEEPING REQUIREMENTS. Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

002.01 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.

002.02 General and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income and expense accounts.

002.03 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.

002.03A Such memorandum shall identify:

002.03A1 The terms and conditions of the order, instruction, modification or cancellation;

002.03A2 The person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and

002.03A3 The account for which entered, the date of entry, and the broker-dealer or other entity by or through whom executed, where appropriate.

002.03B The memorandum shall designate whether the orders were entered pursuant to the exercise of discretionary power.

002.04 All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

002.05 All bills or statements, or copies thereof, paid or unpaid, relating to the business of the investment adviser as such.

002.06 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.

002.06A For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net capital computation, as required by 48 NAC 7.008 and 48 NAC 7.009.

002.07 Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

002.07A The recommendation made or proposed to be made and the advice given or proposed to be given;

002.07B The receipt, disbursement or delivery of funds or securities; or

002.07C The placement or execution of any order to purchase or sell any security.

002.07D The investment adviser shall not be required to keep the following written communications:

002.07D1 Unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

002.07D2 A record of the names and addresses of the persons to whom the investment adviser sent any notice, circular or other advertisement offering any report, analysis, publication or other investment adviser service, which was sent to more than ten persons, except if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain a memorandum describing the

list and the source thereof with the copy of such notice, circular or advertisement.

002.08 A list or other record which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

002.09A A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

002.10 A copy of each written 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.

~~002.11 A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, that the investment adviser circulates or distributes, directly or indirectly, including by electronic media, to two or more persons, other than persons connected with such investment adviser and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation shall be retained. A file containing all the information required to be retained pursuant to 275 CFR 204-2(a)(11) related to advertisements.~~

002.12 A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership.

002.12A Such record shall include:

002.12A1 The title and amount of the security involved;

002.12A2 The date and nature of the transaction, such as purchase, sale or other acquisition or disposition;

002.12A3 The price at which it was effected; and

002.12A4 The name of the broker-dealer or other entity with or through whom the transaction was effected.

002.12B Such record may contain a statement declaring that the reporting or recording of any such 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.

002.12C A transaction shall be recorded within ten days after the end of the calendar quarter in which the transaction was effected.

002.12D The investment adviser need not keep records required by this subsection for the following transactions:

002.12D1 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

002.12D2 Transactions in securities which are direct obligations of the United States.

002.12E For purposes of this subsection, “advisory representative” shall mean:

002.12E1 An investment adviser as defined in the Act;

002.12E2 Any partner, officer, director or limited liability company member of the investment adviser;

002.12E3 Any employee who participates in any way in the determination of which recommendations shall be made;

002.12E4 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 such recommendations; and

002.12E5 Any person in a control relationship to the investment adviser, any affiliated person of such controlling person, and any affiliated person of such affiliated person who obtains information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations.

002.12F For purposes of this subsection and subsection 002.13, “Control” shall mean 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 shall be presumed to control such company.

002.12G An investment adviser shall not be deemed to have violated the provisions of this subsection because of its failure to record securities transactions of any advisory representative if the investment adviser establishes that adequate procedures were instituted and reasonable diligence was used to promptly obtain reports of all transactions required to be recorded.

002.13 Notwithstanding the provisions of Section 002.12, above, if 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 such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership.

002.13A Such record shall include:

002.13A1 The title and amount of the security involved;

002.13A2 The date and nature of the transaction, such as purchase, sale or other acquisition or disposition;

002.13A3 The price at which it was effected; and

002.13A4 The name of the broker-dealer or other entity with or through whom the transaction was effected.

002.13B Such record may contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

002.13C A transaction shall be recorded within ten days after the end of the calendar quarter in which the transaction was effected.

002.13D The investment adviser is not required to keep records for the following transactions:

002.13D1 Transactions effected in any account over which neither the investment adviser nor advisory representative of the investment adviser has any direct or indirect influence or control; and

002.13D2 Transactions in securities which are direct obligations of the United States.

002.13E 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 less, the investment adviser derived, on an unconsolidated basis, more than fifty percent of its total sales and revenues, and its income or loss before income taxes and extraordinary items, from such other business or businesses.

002.13F For purposes of this subsection, “advisory representative,” when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means:

002.13F1 Any partner, officer, director, member or employee of the investment adviser:

002.13F1a Who participates in any way in the determination of which recommendation shall be made; or

002.13F1b Whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of such recommendations; and

002.13F2 Any person in a control relationship to the investment adviser, any affiliated person of such controlling person and any affiliated person of such affiliated person who obtains information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations.

002.13F3 An investment adviser representative.

002.13G An investment adviser shall not be deemed to have violated the provisions of this subsection because of its failure to record securities transactions of any investment adviser representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain reports of all transactions required to be recorded.

002.14 A copy of each written statement, including supplements for each investment adviser representative, and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of 48 NAC 7.010, 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.

002.15 For each client that was obtained by the investment adviser by means of a solicitor to whom a cash fee was paid by the investment adviser:

002.15A Evidence of a written agreement to which the investment adviser is a party related to the payment of such fee;

002.15B 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,

002.15C A copy of the solicitor's written disclosure statement.

~~002.15D 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.~~

002.15DE For purposes of this subsection, the term “solicitor” shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

002.16 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 of 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 affiliated with such investment adviser.

002.16A With respect to the performance of managed accounts, the retention of all account statements, which 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 shall be deemed to satisfy the requirements of this subsection.

002.16B For purposes of this subsection, persons affiliated with an investment adviser include any officer, director, managing member, general partner, or employee of the investment adviser, and individuals registered as its investment adviser representatives.

002.17 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.

002.18 Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

002.19 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.

002.20 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 the registrant or its advisory representatives as that term is defined in Section 002.12E of this Rule, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

002.21 Copies, with original signatures of the investment adviser’s appropriate signatory and the investment adviser representative, of each initial Uniform Application for Securities Industry Registration or Transfer (Form U4) and each amendment to Disclosure Reporting Pages must be retained by the investment adviser, filing on behalf of the investment adviser representative, and must be made available for inspection upon regulatory request.

002.22 An investment adviser who inadvertently holds or obtains securities or funds of a client, and who returns such securities or funds to the client within three business days of receiving them or forwards checks drawn by clients and made payable to third parties within three business days of receipt, will not be considered as having custody but shall keep a ledger or other listing of all securities or funds held or obtained, relating to the inadvertent custody, which ledger shall include the name of the issuer of the securities; the type of security and series; the date of issue of the securities; the denomination, interest rate and maturity date of any debt instruments; the certificate number, including alphabetical prefix or suffix; the name in which the security is registered; the date given to the adviser; the date sent to client or sender; the form of delivery to client or sender, or copy of the form of delivery to client or sender; the mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return; and the date that each check was received by the adviser.

002.23 If an investment adviser obtains 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 48 NAC 7.012.02B, the adviser shall keep the following records;

002.23A A record showing the issuer or current transfer agent's name, address, telephone number and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

002.23B A copy of any legend, shareholder agreement or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

002.24 A copy of the following:

002.24A The investment adviser's Physical Security and Cybersecurity Policies and Procedures and Privacy Policy pursuant to 48 NAC 07.18. In addition to the investment adviser's recordkeeping requirements pursuant to ~~sSections (e) and (g) 003.06 and 003.07, below, of this rule,~~ the investment adviser must maintain a current copy of these policies and procedures either in hard copy in a separate location or stored on electronic storage media that is separate from and not dependent upon access to the investment adviser's computers or a network;

002.24B All records documenting the investment adviser's compliance with 48 NAC 07.18 including, but not limited to, evidence of the annual review of the policies and procedures;

002.24C A record of any violation of 48 NAC 07.18, and of any action taken as a result of the violation.

003 RECORDKEEPING BY INVESTMENT ADVISERS WITH CUSTODY OF CLIENT SECURITIES OR FUNDS. In addition to the records required by Section 002, above, an investment adviser which has custody or possession of securities or funds of any client as

that term is defined in 48 NAC 7.012.04B shall be required to make and keep the following records:

003.01 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.

003.02 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.

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

003.04 Copies of confirmations of all transactions effected by or for the account of any such client.

003.05 A record for each security in which any client has an interest, showing the name of each client having any interest in that security, the amount or interest of each client, and the location of that security.

003.06 A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the investment adviser also generates a statement that is delivered to the client, the investment adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

003.07 If applicable to the investment adviser's 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.

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

003.09 If applicable, evidence of the client's designation of an independent representative.

003.10 If an investment adviser has custody because it advises a pooled investment vehicle, as defined in 48 NAC 7.012.04B1c, the investment adviser shall also keep the following records:

003.10A True, accurate and current account statements;

003.10B Where the adviser complies with 48 NAC 7.012.02D the records required to be made and kept shall include:

003.10B1 The date(s) of the audit;

003.10B2 A copy of the audited financial statements; and

003.10B3 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.

004 RECORDKEEPING BY INVESTMENT ADVISERS WHICH RENDER INVESTMENT SUPERVISORY OR MANAGEMENT SERVICES. In addition to the records required by Section 002, above, an investment adviser which renders any investment supervisory or management service to any client shall, to the extent the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current the following records with respect to each portfolio being supervised or managed:

004.01 Separate records for each client showing the securities purchased and sold, and the date, amount and price of each such purchase and sale; and

004.02 For each security in which any client has a current position, records from which the investment adviser can promptly furnish the name of the client, and the current amount or interest of the client.

004.03 For purposes of this subsection, “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 power” shall 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.

005 CLIENT IDENTITY. Any books or records required by this Rule 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 is indicated by numerical or alphabetical code or some similar designation.

006 RETENTION.

006.01 All books and records required by this Rule, except for books and records required by the provisions of subsections 002.11 and 002.16, 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 such record, the first two years in the principal office of the investment adviser.

006.02 Partnership articles and any amendments, articles of incorporation, and 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.

006.03 Books and records required by subsections 002.11 and 002.16, above, shall be maintained and preserved in an easily accessible location for a 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.

006.04 Books and records required to be made under the provisions of subsections 002.17 to 002.22, above, inclusive, 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 registered or required to be registered in the state, if less.

006.05 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) the records required to be preserved under ~~Sections-Subsections~~ 002.03, 002.07 through 002.10, 002.14, 002.15, and 002.17 through 002.19. and ~~Sections-Subsections~~ 003 and 004 ~~inclusive, above, and (B) the records or copies required under the provision of SectionsSubsections~~ 002.11 and 002.16, above, 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 location's physical address, mailing address, electronic mailing address, or telephone number. The records shall be maintained for the period described in this subsection.

007 PERSERVATION OF BOOKS AND RECORDS. Before ceasing to conduct business as an investment adviser, an investment adviser shall arrange for and be responsible for preserving the books and records required to be maintained and preserved under this Rule for the remainder of the period specified therein and shall notify the Director in writing of the exact address where such books and records will be maintained during such period.

008 PRODUCTION OF BOOKS AND RECORDS. The records required to be maintained and preserved pursuant to this Rule shall be immediately produced or reproduced by an investment adviser.

008.01 Such records may be maintained and preserved for the required time by an investment adviser on:

008.01A Paper or hard copy form, as those records are kept in their original form; or

008.01B Micrographic media, including microfilm, microfiche, or any similar medium; or

008.01C Electronic storage media, including any digital storage medium or system that meets the terms of this section.

008.02 The investment adviser must:

008.02A Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

008.02B Provide promptly any of the following that the Director, including his or her examiners or other representatives, may request:

008.02B1 A legible, true, and complete copy of the record in the medium and format in which it is stored;

008.02B2 A legible, true, and complete printout of the record; and

008.02B3 Means to access, view, and print the records; and

008.02C 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.

008.03 In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

008.03A To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

008.03B To limit access to the records to properly authorized personnel and the Director, including his or her examiners and other representatives; and

008.03C To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

008.04 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 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 Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

009 **EXCEPTIONS.** The provisions of this Rule shall not apply to any investment adviser whose principal place of business is not located in this state provided:

009.01 Such investment adviser is registered in the state in which its principal place of business is located; and

009.02 Such investment adviser is in compliance with the recordkeeping requirements established by the state in which its principal place of business is located.

009.03 For purposes of this Section, principal place of business shall mean the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.