MUTUAL FUND RECORD RETENTION REFERENCE GUIDE

3rd EDITION

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STRADLEY RONON
ATTORNEYS AT LAW

MUTUAL FUND RECORD RETENTION REFERENCE GUIDE

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REFERENCE GUIDE FOR MUTUAL FUND RECORD RETENTION

The following Reference Guide has been prepared to assist investment companies and their various service providers to identify the retention periods for mutual fund records maintained under the various rules affecting mutual funds. Particularly, this Guide reviews the record retention requirements, *organized based on the length of the retention period*, under the following rules and regulations:

- Investment Company Act of 1940
- Investment Advisers Act of 1940
- Securities Exchange Act of 1934 (rules applicable to fund underwriters)
- FINRA Record-Keeping Requirements
- Anti-Money Laundering Regulations
- Privacy Regulations
- Commodity Futures Trading Commission Recordkeeping Requirements

In addition, we have provided a separate discussion describing record and document retention standards in the event of litigation (or anticipated litigation).

Mutual funds and their service providers will need to work with record retention specialists, legal counsel and auditors to determine the most effective methods and formats to retain and preserve fund records.

Stradley Ronon is proud to produce this important reference work. As one of the premier investment management practices in the United States, Stradley Ronon represents investment company clients with over 1500 separate series/funds which collectively manage more than $2 trillion in assets. We also represent retail and institutional investment companies marketing shares through every distribution channel, as well as investment advisers, hedge fund sponsors, managers, administrators and underwriters/distributors. In addition, Stradley Ronon serves as independent legal counsel to investment company independent directors/trustees, and as special counsel to other law firms with regard to complex issues arising under the Investment Company Act of 1940 and the Federal securities laws.

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A word of caution: In using any reference, care must be taken to keep up with changes in applicable regulations.

Kenneth L. Greenberg, Esq.

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TABLE OF CONTENTS

Page

Page

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RECORD RETENTION AND PRESERVATION

INVESTMENT COMPANY ACT

PERMANENT RECORD

1. ***Corporate Charters***—Corporate charters, certificates of incorporation or trust agreements, and by-laws, and minute books of stockholders' and directors' or trustees' meetings; and minute books of directors' or trustees' committee and advisory board or advisory committee meetings. (first two years in an easily accessible place)

Rule 31a-1(b)(4); Rule 31a-2(a)(1)

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2. ***Journals***—Journals (or other records of original entry) containing an itemized daily record in detail of all purchases and sales of securities (including sales and redemptions of its own securities), all receipts and deliveries of securities (including certificate numbers if such detail is not recorded by custodian or transfer agent), all receipts and disbursements of cash and all other debits and credits. Such records shall show for each such transaction the name and quantity of securities, the unit and aggregate purchase or sale price, commission paid, the market on which effected, the trade date, the settlement date, and the name of the person through or from whom purchased or received or to whom sold or delivered. (first two years in an easily accessible place)

Rule 31a-1(b)(1); Rule 31a-2(a)(1)

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3. ***Money Market Fund Journals***—In the case of a money market fund, also identify the provider of any Demand Feature or Guarantee (as defined in Rule 2a-7(a)(9) or Rule 2a-7(a)(16) respectively) and give a brief description of the nature of the Demand Feature or Guarantee (e.g., unconditional demand feature, conditional demand feature, letter of credit, or bond insurance) and, in a subsidiary portfolio investment record, provide the complete legal name and accounting and other information (including sufficient information to calculate coupons, accruals, maturities, puts, and calls) necessary to identify, value, and account for each investment. (first two years in an easily accessible place)

Rule 31a-1(b)(1); Rule 31a-2(a)(1)

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4. ***General Ledgers***—General and auxiliary ledgers (or other records) reflecting all assets, liability, reserve, capital, income and expense accounts (first two years in an easily accessible place), including:

   i. Separate ledger accounts (or other records) reflecting the following:

      (a) Securities in transfer;

      (b) Securities in physical possession;

(c) Securities borrowed and securities loaned;

(d) Monies borrowed and monies loaned (together with a record of the collateral therefor and substitutions in such collateral);

(e) Dividends and interest received;

(f) Dividends receivable and interest accrued.

Instruction. (a) and (b) shall be stated in terms of securities quantities only; (c) and (d) of this subdivision shall be stated in dollar amounts and securities quantities as appropriate; (e) and (f) shall be stated in dollar amounts only.

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ii. Separate ledger accounts (or other records) for each portfolio security, showing (as of trade dates) (a) the quantity and unit and aggregate price for each purchase, sale, receipt, and delivery of securities and commodities for such accounts, and (b) all other debits and credits for such accounts. Securities positions and money balances in such ledger accounts (or other records) shall be brought forward periodically but not less frequently than at the end of fiscal quarters. Any portfolio security, the salability of which is conditioned, shall be so noted. A memorandum record shall be available setting forth, with respect to each portfolio security account, the amount and declaration, ex-dividend, and payment dates of each dividend declared thereon.

iii. Separate ledger accounts (or other records) for each broker-dealer bank or other person with or through which transactions in portfolio securities are effected, showing each purchase or sale of securities with or through such persons, including details as to the date of the purchase or sale, the quantity and unit and aggregate price of such securities, and the commissions or other compensation paid to such persons. Purchases or sales effected during the same day at the same price may be aggregated.

iv. Separate ledger accounts (or other records), which may be maintained by a transfer agent or registrar, showing for each shareholder of record of the investment company the number of shares of capital stock of the company held. In respect of share accumulation accounts (arising from periodic investment plans, dividend reinvestment plans, deposit of issued shares by the owner thereof, etc.), details shall be available as to the dates and number of shares of each accumulation, and except with respect to already issued shares deposited by the owner thereof, prices of each such accumulation.

Rule 31a-1(b)(2); Rule 31a-2(a)(1)

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5. ***Securities Ledger—***A securities record or ledger reflecting separately for each portfolio security as of trade date all “long” and “short” positions carried by the investment company for its own account and showing the location of all securities long and the off-setting position to all securities short (first two years in an easily accessible place). The record called for by this paragraph shall not be required in circumstances under which all

portfolio securities are maintained by a bank or banks or a member or members of a national securities exchange as custodian under a custody agreement or as agent for such custodian.

Rule 31a-1(b)(3); Rule 31a-2(a)(1)

NOTE: "Other Records"—The term "other records" as used in the expressions "journals (or other records of original entry)" and "ledger accounts (or other records)" shall be construed to include, where appropriate, copies of voucher checks, confirmations, or similar documents which reflect the information required by the applicable rule or rules in appropriate sequence and in permanent form, including similar records developed by the use of automatic data processing systems (the first two years in an easily accessible place).

Rule 31a-1(b)(12); Rule 31a-2(a)(2)

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6. ***Affiliated Underwriting Purchases Procedures***—Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act shall be exempt from the provisions of that section if the following conditions are met …

   (i) Shall maintain and preserve permanently in an easily accessible place a written copy of the procedures, and any modification thereto, described in paragraphs (c)(10)(i) and (c)(10)(ii) of this section.

Rule 10f-3(c)(12)(i)

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7. ***Affiliated Principal Transactions Procedures***—A purchase or sale transaction between registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers, is exempt from section 17(a) of the Act; Provided, that …

   (g) The investment company (1) maintains and preserves permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (e) of this section.

Rule 17a-7(g)(1)

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8. ***Affiliated Brokerage Transactions Procedures*—**For purposes of section 17(e)(2)(A) of the Act, a commission, fee or other remuneration shall be deemed as not exceeding the usual and customary broker's commission, if …

(d) The investment company (1) Shall maintain and preserve permanently in an easily accessible place a copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section.

Rule 17e-1(d)(1)

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9. ***Audit Charters*—**A registered management investment company or a registered face-amount certificate company is exempt from the requirement of section 32(a)(2) of the Act that the selection of the company's independent public accountant be submitted for ratification or rejection at the next succeeding annual meeting of shareholders, if …

(c) The company maintains and preserves permanently in an easily accessible place a copy of the audit committee's charter and any modification to the charter.

Rule 32a-4(c)

SIX YEARS

10. ***Money Market Fund Written Pricing Procedures*—**Written Procedures. For a period of not less than six years following the replacement of existing procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) must be maintained and preserved.

Rule 2a-7(h)(1)

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11. ***Money Market Fund Board Considerations*—**Board Considerations and Actions. For a period of not less than six years (the first two years in an easily accessible place) a written record shall be maintained and preserved of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth in this section, to be included in the minutes of the board of directors' meetings.

Rule 2a-7(h)(2)

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12. ***Reports with Respect to Stress Testing*—**For a period of not less than six years (the first two years in an easily accessible place), a written copy of the report required under paragraph (g)(8)(iii) of Rule 2a-7 must be maintained and preserved.

Rule 2a-7(h)(8)

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13. ***Affiliated Underwriting Transactions (10(f))***—Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act shall be exempt from the provisions of that section if the following conditions are met …

> (12) The investment company (ii) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (c)(10)(iii) of this section was made.

Rule 10f-3(c)(12)(ii)

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14. ***Exchange Offers***—Administrative fee means any fee, other than a sales load, deferred sales load or redemption fee, that is (i) reasonably intended to cover the costs incurred in processing exchanges of the type for which the fee is charged, Provided that: the offering company will maintain and preserve records of any determination of the costs incurred in connection with exchanges for a period of not less than six years, the first two years in an easily accessible place. The records preserved under this provision shall be subject to inspection by the Commission in accordance with section 31(b) of the Act as if such records were records required to be maintained under rules adopted under section 31(a) of the Act.

Rule 11a-3(a)(2)(i)

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15. ***Distribution Plans***—A registered open-end management investment company must preserve copies of any plan, agreement or report made pursuant to this section for a period of not less than six years from the date of such plan, agreement or report, the first two years in an easily accessible place.

Rule 12b-1(f)

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16. ***Affiliated Principal Transaction***—A purchase or sale transaction between registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers, is exempt from section 17(a) of the Act; Provided, That …

> (g) The investment company (2) maintains and preserves for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two

years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e)(3) of this section were made.

Rule 17a-7(g)(2)

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17. ***Mergers—***A Merger of a registered investment company (or a series thereof) and one or more other registered investment companies (or series thereof) or Eligible Unregistered Funds is exempt from sections 17(a)(1) and (2) of the Act if …

(5) Any Surviving Company preserves written records that describe the Merger and its terms for six years after the Merger (and for the first two years in an easily accessible place).

Rule 17a-8(a)(5)

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18. ***Affiliated Brokerage Transaction—***For purposes of section 17(e)(2)(A) of the Act, a commission, fee or other remuneration shall be deemed as not exceeding the usual and customary broker's commission, if …

(d) The investment company (2) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a record of each such transaction (other than any transaction in which the person acting as broker is a person permitted to enter into a transaction with the investment company by 270.17a-10) setting forth the amount and source of the commission, fee or other remuneration received or to be received, the identity of the person acting as broker, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

Rule 17e-1(d)(2)

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19. ***Redemption Fee—***It is unlawful for any fund issuing redeemable securities, its principal underwriter, or any dealer in such securities, to redeem a redeemable security issued by the fund within seven calendar days after the security was purchased, unless it complies with the following requirements …

(3) The fund must maintain a copy of the written agreement under paragraph (a)(2)(i) of this section that is in effect, or at any time within the past six years was in effect, in an easily accessible place.

Rule 22c-2(a)(3)

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20. ***Brokerage Orders*****—**A record of each brokerage order given by or in behalf of the investment company for, or in connection with, the purchase or sale of securities, whether executed or unexecuted. Such record shall include the name of the broker, the terms and conditions of the order and of any modification or cancellation thereof, the time of entry or cancellation, the price at which executed, and the time of receipt of report of execution. The record shall indicate the name of the person who placed the order in behalf of the investment company. (the first two years in an easily accessible place)

Rule 31a-1(b)(5); Rule 31a-2(a)(2)

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21. ***Brokerage Confirmations*****—**A record of all other portfolio purchases or sales showing details comparable to those prescribed in paragraph (b)(5) of Rule 31a-1 (the first two years in an easily accessible place).

Rule 31a-1(b)(6); Rule 31a-2(a)(2)

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22. ***Option Transactions*****—**A record of all puts, calls, spreads, straddles, and other options in which the investment company has any direct or indirect interest or which the investment company has granted or guaranteed; and a record of any contractual commitments to purchase, sell, receive or deliver securities or other property (but not including open orders placed with broker-dealers for the purchase or sale of securities, which may be cancelled by the company on notices without penalty or cost of any kind); containing, at least, an identification of the security, the number of units involved, the option price, the date of maturity, the date of issuance, and the person to whom issued (the first two years in an easily accessible place).

Rule 31a-1(b)(7); Rule 31a-2(a)(2)

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23. ***Money Balances*****—**A record of the proof of money balances in all ledger accounts (except shareholder accounts), in the form of trial balances (the first two years in an easily accessible place). Such trial balances shall be prepared currently at least once a month.

Rule 31a-1(b)(8); Rule 31a-2(a)(2)

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24. ***Brokerage Allocation*****—**A record for each fiscal quarter, which shall be completed within ten days after the end of such quarter, showing specifically the basis or bases upon which the allocation of orders for the purchase and sale of portfolio securities to named brokers or dealers and the division of brokerage commissions or other compensation on such purchase and sale orders among named persons were made during such quarter (the first two years in an easily accessible place). The record shall indicate the consideration given to (i) sales of shares of the investment company by brokers or dealers, (ii) the

supplying of services or benefits by brokers or dealers to the investment company, its investment adviser or principal underwriter or any persons affiliated therewith, and (iii) any other considerations other than the technical qualifications of the brokers and dealers as such. The record shall show the nature of the services or benefits made available, and shall describe in detail the application of any general or specific formula or other determinant used in arriving at such allocation of purchase and sale orders and such division of brokerage commissions or other compensation. The record shall also include the identities of the persons responsible for the determination of such allocation and such division of brokerage commissions or other compensation.

Rule 31a-1(b)(9); Rule 31a-2(a)(2)

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25. ***Persons Authorized to Place Brokerage Transactions***—A record in the form of an appropriate memorandum identifying the person or persons, committees, or groups authorizing the purchase or sale of portfolio securities (the first two years in an easily accessible place). Where an authorization is made by a committee or group, a record shall be kept of the names of its members who participated in the authorization. There shall be retained as part of the record required by this paragraph any memorandum, recommendation, or instruction supporting or authorizing the purchase or sale of portfolio securities. The requirements of this paragraph are applicable to the extent they are not met by compliance with the requirements of paragraph (b)(4) of Rule 31a-1.

Rule 31a-1(b)(10); Rule 31a-2(a)(2)

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26. ***Third Party Investment Research***—Files of all advisory material received from the investment adviser, any advisory board or advisory committee, or any other persons from whom the investment company accepts investment advice, other than material which is furnished solely through uniform publications distributed generally (the first two years in an easily accessible place).

Rule 31a-1(b)(11); Rule 31a-2(a)(2)

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27. ***Advertisements and Sales Material***—Preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors.

Rule 31a-2(a)(3)

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28. ***Disinterested Director Questionnaire***—Preserve for a period not less than six years, the first two years in an easily accessible place, any record of the initial determination that a

director is not an interested person of the investment company, and each subsequent determination that the director is not an interested person of the investment company. These records must include any questionnaire and any other document used to determine that a director is not an interested person of the company.

Rule 31a-2(a)(4)

29. ***Independent Legal Counsel Information—***Preserve for a period not less than six years, the first two years in an easily accessible place, any materials used by the disinterested directors of an investment company to determine that a person who is acting as legal counsel to those directors is an independent legal counsel.

Rule 31a-2(a)(5)

30. ***Investment Advisory Agreement Renewal Information—***Preserve for a period not less than six years, the first two years in an easily accessible place, any documents or other written information considered by the directors of the investment company pursuant to section 15(c) of the Act in approving the terms or renewal of a contract or agreement between the company and an investment adviser.

Rule 31a-2(a)(6)

FIVE YEARS

31. ***Code of Ethics—***Each fund … that is required to adopt a code of ethics or to which reports are required to be made by Access Persons must, at its principal place of business, maintain records in the manner and to the extent set out in this paragraph (f), and must make these records available to the Commission or any representative of the Commission at any time and from time to time for reasonable periodic, special or other examination:

(A) A copy of each code of ethics for the organization that is in effect, or at any time within the past five years was in effect, must be maintained in an easily accessible place;

(B) A record of any violation of the code of ethics, and of any action taken as a result of the violation, must be maintained in an easily accessible place for at least five years after the end of the fiscal year in which the violation occurs;

(C) A copy of each report made by an Access Person as required by this section, including information provided in lieu of the reports under paragraph (d)(2)(v) of this section, must be maintained for at least five years after the end of the fiscal year in which the report is made or the information is provided, the first two years in an easily accessible place;

(D) A record of all persons, currently or within the past five years, who are or were required to make reports under paragraph (d) of this section, or who are or were responsible for reviewing these reports, must be maintained in an easily accessible place; and

(E) A copy of each report required by paragraph (c)(2)(ii) of this section must be maintained for at least five years after the end of the fiscal year in which it is made, the first two years in an easily accessible place.

Rule 17j-1(f)(1)

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32. ***Compliance Policies and Procedures***—Each registered investment company and business development company ("fund") must …

(1) maintain a copy of the policies and procedures adopted by the fund under paragraph (a)(1) that are in effect, or at any time within the past five years were in effect, in an easily accessible place.

Rule 38a-1(d)(1)

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33. ***Board Approval of Compliance Procedures***—The fund must maintain copies of materials provided to the board of directors in connection with their approval under paragraph (a)(2) of Rule 38a-1, and written reports provided to the board of directors pursuant to paragraph (a)(4)(iii) of Rule 38a-1 (or, if the fund is a unit investment trust, to the fund's principal underwriter or depositor, pursuant to paragraph (b) of Rule 38a-1) for at least five years after the end of the fiscal year in which the documents were provided, the first two years in an easily accessible place.

Rule 38a-1(d)(2)

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34. ***Board Annual Review of Compliance Procedures***—The fund must maintain any records documenting the fund's annual review pursuant to paragraph (a)(3) of Rule 38a-1 for at least five years after the end of the fiscal year in which the annual review was conducted, the first two years in an easily accessible place.

Rule 38a-1(d)(3)

THREE YEARS

35. ***Money Market Fund Credit Risk Analysis***—For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record must be maintained and preserved in an easily accessible place of the determination that a portfolio security is an eligible security, including the determination

that it presents minimal credit risks at the time the fund acquires the security, or at such later times (or upon such events) that the board of directors determines that the investment adviser must reassess whether the security presents minimal credit risks.

Rule 2a-7(h)(3)

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36. ***Money Market Funds Adjustable Rate Securities Determinations***—For a period of not less than three years from the date when the assessment was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determination required by paragraph (g)(5) of Rule 2a-7 (that a Variable Rate or Floating Rate Security that is not subject to a Demand Feature and for which maturity is determined pursuant to paragraphs (i)(1), (i)(2) or (i)(4) of Rule 2a-7 can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its amortized cost).

Rule 2a-7(h)(4)

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37. ***Money Market Funds Asset-Backed Securities Determinations***—For a period of not less than three years from the date when the determination was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determinations required by paragraph (g)(6) of Rule 2a-7 (the number of Ten Percent Obligors (as that term is used in paragraph (d)(3)(ii)(D)of Rule 2a-7) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (d)(3)(ii)(D) of Rule 2a-7). The written record must include:

(A) The identities of the Ten Percent Obligors (as that term is used in paragraph (d)(3)(ii)(D) of Rule 2a-7), the percentage of the Qualifying Assets constituted by the securities of each Ten Percent Obligor and the percentage of the fund's Total Assets that are invested in securities of each Ten Percent Obligor; and

(B) Any determination that an Asset Backed Security will not have, or is unlikely to have, Ten Percent Obligors deemed to be issuers of all or a portion of that Asset Backed Security for purposes of paragraph (d)(3)(ii)(D) of Rule 2a-7.

Rule 2a-7(h)(5)

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38. ***Money Market Funds Asset-Backed Securities Not Subject to Guarantees Evaluations***—For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (g)(7) of Rule 2a-7 (regarding asset-backed securities not subject to guarantees).

Rule 2a-7(h)(6)

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39. ***Money Market Funds Demand Features/Guarantees Evaluations***—For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (g)(4) (regarding securities subject to one or more Demand Features or Guarantees) of Rule 2a-7.

Rule 2a-7(h)(7)

INVESTMENT ADVISERS ACT

PERMANENT RECORD

1. ***Organizational Documents***—Partnership articles and any amendments thereto, 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.

Rule 204-2(e)(2)

FIVE YEARS

2. ***Journals***—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 (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(1); Rule 204-2(e)(1)

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3. ***Ledgers***—General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(2); Rule 204-2(e)(1)

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4. ***Trading Memoranda***—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 concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(3); Rule 204-2(e)(1)

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5. ***Bank Records*—**All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(4); Rule 204-2(e)(1)

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6. ***Bills & Statements*—**All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(5); Rule 204-2(e)(1)

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7. ***Financial Statements & Records*—**All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(6); Rule 204-2(e)(1)

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8. ***Client Communications*—**Originals of all written communications received and copies of all written communications sent by such investment adviser relating 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, (iii) the placing or execution of any order to purchase or sell any security or (iv) the performance or rate of return of any or all managed accounts or securities recommendations (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser): Provided, however, (A) 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 (B) that 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 such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

Rule 204-2(a)(7); Rule 204-2(e)(1)

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9. ***Discretionary Authority Accounts*—** A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(8); Rule 204-2(e)(1)

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10. ***Powers of Attorney*—**All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(9); Rule 204-2(e)(1)

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11. ***Written Agreements with Clients and with Solicitors*—**All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser). Includes written agreements referenced under Rule 206(4)-3 with regard to cash payments for client solicitations.

Rule 204-2(a)(10); Rule 204-2(e)(1)

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12. ***Advertisements*—**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, to 10 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 recommends the purchase or sale of a specific security and does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor (in an easily accessible place for not less than five years 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; first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(11); Rule 204-2(e)(3)(i)

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13. ***Codes of Ethics***—(i) A copy of the investment adviser's code of ethics adopted and implemented pursuant to Rule 204A–1 that is in effect, or at any time within the past five years was in effect; (ii) A record of any violation of the code of ethics, and of any action taken as a result of the violation (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser); and (iii) A record of all written acknowledgments as required by Rule 204A–1(a)(5) for each person who is currently, or within the past five years was, a supervised person of the investment adviser.

Rule 204-2(a)(12); Rule 204-2(e)(1)

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14. ***Code of Ethics Report***—(i) A record of each report made by an access person as required by Rule 204A–1(b), including any information provided under paragraph (b)(3)(iii) of that section in lieu of such reports (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser); (ii) A record of the names of persons who are currently, or within the past five years were, access persons of the investment adviser; and (iii) A record of any decision, and the reasons supporting the decision, to approve the acquisition of securities by access persons under Rule 204A–1(c), for at least five years after the end of the fiscal year in which the approval is granted.

Rule 204-2(a)(13); Rule 204-2(e)(1)

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15. ***Form ADV Part 2 Brochure***—(i) A copy of each brochure and brochure supplement, and each amendment or revision to the brochure and brochure supplement, that satisfies the requirements of Part 2 of Form ADV; any summary of material changes that satisfies the requirements of Part 2 of Form ADV but is not contained in the brochure; and a record of the dates that each brochure and brochure supplement, each amendment or revision thereto, and each summary of material changes not contained in a brochure was given to any client or to any prospective client who subsequently becomes a client. (ii) Documentation describing the method used to compute managed assets for purposes of Item 4.E of Part 2A of Form ADV, if the method differs from the method used to compute regulatory assets under management in Item 5.F of Part 1A of Form ADV. (iii) A memorandum describing any legal or disciplinary event listed in Item 9 of Part 2A or Item 3 of Part 2B (Disciplinary Information) and presumed to be material, if the event involved the investment adviser or any of its supervised persons and is not disclosed in the brochure or brochure supplement described in paragraph (a)(14)(i) of Rule 204-2. The memorandum must explain the investment adviser's determination that the presumption of materiality is overcome, and must discuss the factors described in Item 9 of Part 2A of Form ADV or Item 3 of Part 2B of Form ADV (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(14); Rule 204-2(e)(1)

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16. ***Client Acknowledgements***—All written acknowledgments of receipt obtained from clients pursuant to Rule 206(4)–3(a)(2)(iii)(B) of this chapter and copies of the disclosure documents delivered to clients by solicitors pursuant to Rule 206(4)–3 of this chapter (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years on site in an appropriate office of the investment adviser).

Rule 204-2(a)(15); Rule 204-2(e)(1)

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17. ***Performance Calculation Documentation***—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 any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to any person (other than persons connected with such investment adviser) (in an easily accessible place for not less than five years 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, first two years in an appropriate office of 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 shall be deemed to satisfy the requirements of this paragraph.

Rule 204-2(a)(16); Rule 204-2(e)(3)(i)

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18. ***Compliance Policies and Procedures***—(i) A copy of the investment adviser's policies and procedures formulated pursuant to Rule 206(4)–7(a) of this chapter that are in effect, or at any time within the past five years were in effect (preserve in an easily accessible place while the policies and procedures are in effect and five years in an easily accessible place after a policy or procedure is no longer in effect); (ii) Any records documenting the investment adviser's annual review of those policies and procedures conducted pursuant to Rule 206(4)–7(b) of this chapter; and (iii) a copy of any internal control report obtained or received pursuant to Rule 206(4)–2(a)(6)(ii) (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(a)(17); Rule 204-2(e)(1)

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19. ***Political Contributions***—(i) Books and records that pertain to Rule 206(4)–5 containing a list or other record of: (A) The names, titles and business and residence addresses of all covered associates of the investment adviser; (B) All government entities to which the investment adviser provides or has provided investment advisory services, or which are or were investors in any covered investment pool to which the investment adviser provides or has provided investment advisory services, as applicable, in the past five years, but not prior to September 13, 2010; (C) All direct or indirect contributions made by the investment adviser or any of its covered associates to an official of a government entity, or direct or indirect payments to a political party of a State or political subdivision thereof, or to a political action committee; and (D) The name and business address of each regulated person to whom the investment adviser provides or agrees to provide, directly or indirectly, payment to solicit a government entity for investment advisory services on its behalf, in accordance with Rule 206(4)–5(a)(2).

(ii) Records relating to the contributions and payments referred to in paragraph (a)(18)(i)(C) of Rule 204-2 must be listed in chronological order and indicate: (A) The name and title of each contributor; (B) The name and title (including any city/county/State or other political subdivision) of each recipient of a contribution or payment; (C) The amount and date of each contribution or payment; and (D) Whether any such contribution was the subject of the exception for certain returned contributions pursuant to Rule 206(4)–5(b)(2).

(iii) An investment adviser is only required to make and keep current the records referred to in paragraphs (a)(18)(i)(A) and (C) of Rule 204-2 if it provides investment advisory services to a government entity or a government entity is an investor in any covered investment pool to which the investment adviser provides investment advisory services.

(iv) For purposes of Rule 204-2(a)(18), the terms “contribution,” “covered associate,” “covered investment pool,” “government entity,” “official,” “payment,” “regulated person,” and “solicit” have the same meanings as set forth in Rule 206(4)–5.

(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 an appropriate office of the investment adviser)

Rule 204-2(a)(18); Rule 204-2(e)(1)

20. ***Investment Adviser with Custody/Client Account Journals***—A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(b)(1); Rule 204-2(e)(1)

21. ***Investment Adviser with Custody/Client Account Ledgers***—A separate ledger account for each such 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 (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(b)(2); Rule 204-2(e)(1)

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22. ***Investment Adviser with Custody/Client Account Confirmations***—Copies of confirmations of all transactions effected by or for the account of any such client (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(b)(3); Rule 204-2(e)(1)

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23. ***Investment Adviser with Custody/Securities Position Records***—A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(b)(4); Rule 204-2(e)(1)

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24. ***Investment Adviser with Custody/Operational Independence***—A memorandum describing the basis upon which you have determined that the presumption that any related person is not operationally independent under Rule 206(4)–2(d)(5) has been overcome. (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 an appropriate office of the investment adviser)

Rule 204-2(b)(5); Rule 204-2(e)(1)

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25. ***Supervisory Account Records***—Every investment adviser subject to paragraph (a) of this rule 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:

(i) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale and (ii) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client. (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser).

Rule 204-2(c)(1)(i) and (ii); Rule 204-2(e)(1)

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26. ***Proxy Voting Policies and Procedures*****—**Every investment adviser subject to paragraph (a) of this section that exercises voting authority with respect to client securities shall, with respect to those clients, make and retain the following (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser):

(i) Copies of all policies and procedures required by Rule 206(4)–6.

Rule 204-2(c)(2)(i); Rule 204-2(e)(1)

(ii) A copy of each proxy statement that the investment adviser receives regarding client securities. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser's behalf, a copy of a proxy statement (provided that the adviser has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request) or may rely on obtaining a copy of a proxy statement from the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

Rule 204-2(c)(2)(ii); Rule 204-2(e)(1)

(iii) A record of each vote cast by the investment adviser on behalf of a client. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser's behalf, a record of the vote cast (provided that the adviser has obtained an undertaking from the third party to provide a copy of the record promptly upon request).

Rule 204-2(c)(2)(iii); Rule 204-2(e)(1)

(iv) A copy of any document created by the adviser that was material to making a decision how to vote proxies on behalf of a client or that memorializes the basis for that decision.

Rule 204-2(c)(2)(iv); Rule 204-2(e)(1)

(v) A copy of each written client request for information on how the adviser voted proxies on behalf of the client, and a copy of any written response by the investment adviser to any (written or oral) client request for information on how the adviser voted proxies on behalf of the requesting client.

Rule 204-2(c)(2)(v); Rule 204-2(e)(1)

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27. ***Privacy of Customer Information—***Every broker, dealer, and investment company, and every investment adviser registered with the Commission must adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information (in an easily accessible place for not less than five years from the end of the fiscal year during which the last entry was made on such record, first two years in an appropriate office of the investment adviser). These written policies and procedures must be reasonably designed to:

(1) Insure the security and confidentiality of customer records and information;

(2) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and

(3) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

Reg. S-P Rule 30(a); Rule 204-2(e)(1)

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28. ***Multi-State Investment Advisers—***[The prohibition of section 203A(a) of the Act regarding federal registration under the Act does not apply to a Multi-State Investment Adviser that:...]

(3) Maintains in an easily accessible place a record of the States in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV that includes a representation that is based on such record.

Rule 203A-2(d)(3)

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29. ***Internet Investment Advisers—***[The prohibition of section 203A(a) of the Act regarding federal registration under the Act does not apply to an Internet Investment Adviser that:...]

(ii) Maintains, in an easily accessible place, for a period of not less than five years from the filing of a Form ADV that includes a representation that the adviser is eligible to register with the Commission under paragraph (e) of this section, a record demonstrating that it provides investment advice to its clients exclusively through an interactive website in accordance with the limits in paragraph (e)(1)(i) of this section.

Rule 203A-2(e)(1)(ii)

PRINCIPAL UNDERWRITER RECORD-KEEPING REQUIREMENTS

INVESTMENT COMPANY ACT (Mutual Fund Underwriter Rules)

FIVE YEARS

1. ***Principal Underwriter's Code of Ethics***—Each [fund's] … principal underwriter that is required to adopt a code of ethics or to which reports are required to be made by Access Persons must, at its principal place of business, maintain records in the manner and to the extent set out in this paragraph (f), and must make these records available to the Commission or any representative of the Commission at any time and from time to time for reasonable periodic, special or other examination:

(A) A copy of each code of ethics for the organization that is in effect, or at any time within the past five years was in effect, must be maintained in an easily accessible place.

Rule 17j-1(f)(1)(A)

(B) A record of any violation of the code of ethics, and of any action taken as a result of the violation, must be maintained in an easily accessible place for at least five years after the end of the fiscal year in which the violation occurs.

Rule 17j-1(f)(1)(B)

(C) A copy of each report made by an Access Person as required by this section, including any information provided in lieu of the reports under paragraph (d)(2)(v) of this section, must be maintained for at least five years after the end of the fiscal year in which the report is made or the information is provided, the first two years in an easily accessible place.

Rule 17j-1(f)(1)(C)

(D) A record of all persons, currently or within the past five years, who are or were required to make reports under paragraph (d) of this section, or who are or were responsible for reviewing these reports, must be maintained in an easily accessible place.

Rule 17j-1(f)(1)(D)

(E) A copy of each report required by paragraph (c)(2)(ii) of this section must be maintained for at least five years after the end of the fiscal year in which it is made, the first two years in an easily accessible place.

Rule 17j-1(f)(1)(E)

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2. ***Principal Underwriter's Code of Ethics (Material Violations Reports)***—17j-1(c)(2)(ii) provides: No less frequently than annually, every Fund (other than a unit investment trust) and its investment advisers and principal underwriters must furnish to the Fund's board of directors, and the board of directors must consider, a written report that:

(A) Describes any issues arising under the code of ethics or procedures since the last report to the board of directors, including, but not limited to, information about material violations of the code or procedures and sanctions imposed in response to the material violations; and

(B) Certifies that the Fund, investment adviser or principal underwriter, as applicable, has adopted procedures reasonably necessary to prevent Access Persons from violating the code.

Rule 17j-1(f)(1)(E)

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3. ***Principal Underwriter's Code of Ethics (Preclearance Approvals)***—A Fund or investment adviser must maintain a record of any decision, and the reasons supporting the decision, to approve the acquisition by investment personnel of securities under paragraph (e), for at least five years after the end of the fiscal year in which the approval is granted.

Rule 17j-1(f)(2)

SECURITIES EXCHANGE ACT OF 1934 (Mutual Fund Underwriter Rules)

PERMANENT RECORD

1. ***Notice Required by Rule 17f-2(e)***—Rule 17f-2(e) under the 1934 Act requires that every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency that claims one or more of the exemptions in 17f-2(a) shall make and keep current a statement entitled "Notice Pursuant to Rule 17f-2" containing the information specified in 17f-2(e)(1).

1934 Act Rule 17a-3(a)(15); 1934 Act Rule 17a-4(e)(3)

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2. ***Net Capital***—Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the 1934 Act shall make and keep current a record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, pursuant to 1934 Act Rule 15c3-1; *Provided, however*:

(i) That such computation need not be made by any member, broker or dealer unconditionally exempt from 1934 Act Rule 15c3-1 by paragraph (b)(1) or (b)(3), thereof; and

(ii) That any member of an exchange whose members are exempt from 1934 Act Rule 15c3-1 by paragraph (b)(2) thereof shall make a record of the computation of aggregate indebtedness and net capital as of the trial balance date in accordance with the capital rules of at least one of the exchanges therein listed of which it is a member. Such trial balances and computations shall be prepared currently at least once a month.

1934 Act Rule 17a-3(a)(11)

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3. ***Organizational Documents***—Every member, broker and dealer subject to 1934 Act Rule 17a-3 shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD (17 CFR 249.501), all Forms BDW (17 CFR 249.501a), all amendments to these forms, all licenses or other documentation showing the registration of the member, broker or dealer with any securities regulatory authority.

1934 Act Rule 17a-4(d)

SIX YEARS

4. ***Blotters and Ledgers—***Every member, broker and dealer subject to Rule 17a-3 shall preserve for a period of not less than six years, the first two years in an easily accessible place, the following records:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

1934 Act Rule 17a-3(a)(1); 1934 Act Rule 17a-4(a)

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(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

1934 Act Rule 17a-3(a)(2); 1934 Act Rule 17a-4(a)

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(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account.

1934 Act Rule 17a-3(a)(3); 1934 Act Rule 17a-4(a)

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5. ***Records Contact—***Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the 1934 Act must make and preserve for a period of not less than six years, the first two years in an easily accessible place, and keep current a record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records.

1934 Act Rule 17a-3(a)(21); 1934 Act Rule 17a-4(a)

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6. ***Records Supervision—***Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the 1934

Act must make and keep current a record listing each principal of a member, broker or dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization of which the member, broker or dealer is a member that require acceptance or approval of a record by a principal.

1934 Act Rule 17a-3(a)(22); 1934 Act Rule 17a-4(a)

THREE YEARS

7. ***Guarantees and Powers of Attorney—***Every member, broker and dealer subject to Rule 17a–3 shall preserve all guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation. Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

1934 Act Rule 17a-4(b)(6)

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8. ***Ledgers—***Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the 1934 Act must make and keep current ledgers (or other records) reflecting:

(i) securities of transfer;

(ii) dividends and interest received;

(iii) securities borrowed and securities loaned;

(iv) moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in such collateral);

(v) securities failed to receive and failed to deliver;

(vi) all long and short securities record differences arising from examination, count, verification and comparison pursuant to Rule 17a-5, Rule 17a-12, and Rule 17a-13 (by date of examination, count, verification and comparison showing for each security the number of long or short count differences);

(vii) repurchase and reverse repurchase agreements.

Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

1934 Act Rule 17a-3(a)(4); 1934 Act Rule 17a-4(b)

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9. ***Order Memoranda—***Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the 1934 Act must make and keep current the following memoranda. Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

(i) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the member, broker or dealer shall produce upon request by a representative of a securities regulatory authority a separate record which identifies each other person. An order entered pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, shall be so designated. The term "instruction" shall include instructions between partners and employees of a member, broker or dealer. The term "time of entry" shall mean the time when the member, broker or dealer transmits the order or instruction for execution.

This memorandum need not be made as to a purchase, sale or redemption of a security on a subscription way basis directly from or to the issuer, if the member, broker or dealer maintains a copy of the customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

1934 Act Rule 17a-3(a)(6); 1934 Act Rule 17a-4(b)

(ii) A memorandum of each purchase and sale for the account of the member, broker, or dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt; the terms and conditions of the order and of any modification thereof; the account for which it was entered; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the associated person responsible for the account who may have entered the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person: in that circumstance, the member, broker or dealer shall produce upon request by a representative of a securities regulatory authority a separate record which identifies each other person. An order with a customer other than a member, broker or dealer entered pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, shall be so designated.

1934 Act Rule 17a-3(a)(7); 1934 Act Rule 17a-4(b)

10. ***Confirmations—***Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer.

1934 Act Rule 17a-3(a)(8); 1934 Act Rule 17a-4(b)

11. ***Internal Broker-Dealer Systems—***Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the 1934 Act shall make and keep current the following books and records regarding any internal broker-dealer system of which such a broker or dealer is the sponsor. Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

(A) A record of the broker's or dealer's customers that have access to an internal broker-dealer system sponsored by such broker or dealer (identifying any affiliations between such customers and the broker or dealer);

(B) Daily summaries of trading in the internal broker-dealer system, including:

(1) Securities for which transactions have been executed through use of such system; and

(2) Transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation):

(i) With respect to equity securities, stated in number of trades, number of shares, and total U.S. dollar value;

(ii) With respect to debt securities, stated in total settlement value in U.S. dollars; and

(iii) With respect to other securities, stated in number of trades, number of units of securities, and in dollar value, or other appropriate commonly used measure of value of such securities; and

(C) Time-sequenced records of each transaction effected through the internal broker-dealer system, including date and time executed, price, size, security traded, counter-party identification information, and method of execution (if internal broker-dealer system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the quotations of the broker or dealer sponsoring the system).

1934 Act Rule 17a-3(a)(16)(i); 1934 Act Rule 17a-4(b)

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12. ***Complaints—***Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the 1934 Act shall make and keep current the following books and records regarding complaints. Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place. A record:

(i) As to each associated person of each written customer complaint received by the member, broker or dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a member, broker or dealer may maintain a copy of each original complaint in a separate file by the associated person named in the complaint along with a record of the disposition of the complaint.

(ii) Indicating that each customer of the member, broker or dealer has been provided with a notice containing the address and telephone number of the department of the member, broker or dealer to which any complaints as to the account may be directed.

1934 Act Rule 17a-3(a)(18); 1934 Act Rule 17a-4(b)

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13. ***Compensation Arrangements—***Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15

of the 1934 Act shall make and keep current the following books and records regarding associated persons. Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place. A record:

(i) As to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary. In lieu of making this record, a member, broker or dealer may elect to produce the required information promptly upon request of a representative of a securities regulatory authority.

(ii) Of all agreements pertaining to the relationship between each associated person and the member, broker or dealer including a summary of each associated person's compensation arrangement or plan with the member, broker or dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined.

1934 Act Rule 17a-3(a)(19); 1934 Act Rule 17a-4(b)

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14. ***Advertisements and Sales Literature*—**Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the 1934 Act shall make and keep current a record, which need not be separate from the advertisements, sales literature, or communications, documenting that the member, broker or dealer has complied with, or adopted policies and procedures reasonably designed to establish compliance with, applicable federal requirements and rules of a self-regulatory organization of which the member, broker or dealer is a member which require that advertisements, sales literature, or any other communications with the public by a member, broker or dealer or its associated persons be approved by a principal. Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

1934 Act Rule 17a-3(a)(20); 1934 Act Rule 17a-4(b)

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15. ***Cash Records*—**Every member, broker and dealer subject to Rule 17a-3 shall preserve all check books, bank statements, cancelled checks and cash reconciliations for a period of not less than three years, the first two years in an easily accessible place.

1934 Act Rule 17a-4(b)(2)

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16. ***Bills*—**Every member, broker and dealer subject to Rule 17a-3 shall preserve all bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such

member, broker or dealer, for a period of not less than three years, the first two years in an easily accessible place.

1934 Act Rule 17a-4(b)(3)

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17. ***Communications—***Every member, broker and dealer subject to Rule 17a-3 shall preserve originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in 1934 Act Rule 17a-4(b)(4), the term communications includes sales scripts. Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

1934 Act Rule 17a-4(b)(4)

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18. ***Financial Records—***Every member, broker and dealer subject to Rule 17a-3 shall preserve all trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such member, broker or dealer, as such. Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

1934 Act Rule 17a-4(b)(5)

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19. ***Written Agreements—***Every member, broker and dealer subject to Rule 17a-3 shall preserve all written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account. Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

1934 Act Rule 17a-4(b)(7)

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20. ***Support for Annual Financial Statements—***Every member, broker and dealer subject to Rule 17a-3 shall preserve all records which contain any information specified in 1934 Act Rule 17a-4(b)(8) in support of amounts included in the report prepared as of the audit date on Form X-17A-5 (17 CFR § 249.617) Part II or Part IIA or Part IIB and in the annual financial statements required by 1934 Act Rule 17a-5(d) and Rule 17a-12(b). Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

1934 Act Rule 17a-4(b)(8)

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21. ***Internal Broker-Dealer System Notices*—**Every member, broker and dealer subject to 1934 Act Rule 17a-3 shall preserve all notices relating to an internal broker-dealer system provided to the customers of the broker or dealer that sponsors such internal broker-dealer system, as defined in paragraph (a)(16)(ii)(A) of Rule 17a-3. Notices, whether written or communicated through the internal broker-dealer trading system or other automated means, shall be preserved under Rule 17a-4(b)(11) if they are provided to all customers with access to an internal broker-dealer system, or to one or more classes of customers. Examples of notices to be preserved under Rule 17a-4(b)(11) include, but are not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, and instructions pertaining to access to the internal broker-dealer system. Such records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

1934 Act Rule 17a-4(b)(11)

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22. ***Reports Furnished to or Requested by Regulatory Authorities*—**Every member, broker and dealer subject to Rule 17a-3 shall maintain and preserve in an easily accessible place each report which a securities regulatory authority has requested or required the member, broker or dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report until three years after the date of the report.

1934 Act Rule 17a-4(e)(6)

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23. ***Compliance, Supervisory and Procedures Manuals*—**Every member, broker and dealer subject to Rule 17a-3 shall maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.

1934 Act Rule 17a-4(e)(7)

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24. ***Employment Records*—**Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the 1934 Act shall make and keep current the following records regarding the employment of associated persons. Such records must be preserved and maintained in an easily accessible place

until at least three years after the associated person's employment and any other connection with the member, broker or dealer has terminated.

(i) A questionnaire or application for employment executed by each "associated person" (as defined in 1934 Act Rule 17a-3(h)(4)) of the member, broker or dealer, which questionnaire or application shall be approved in writing by an authorized representative of the member, broker or dealer and shall contain at least the following information with respect to the associated person:

(A) The associated person's name, address, social security number, and the starting date of the associated person's employment or other association with the member, broker or dealer;

(B) The associated person's date of birth;

(C) A complete, consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(D) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(E) A record of any denial, suspension, expulsion or revocation of membership or registration of any member, broker or dealer with which the associated person was associated in any capacity when such action was taken;

(F) A record of any permanent or temporary injunction entered against the associated person or any member, broker or dealer with which the associated person was associated in any capacity at the time such injunction was entered;

(G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing.

(H) A record of any other name or names by which the associated person has been known or which the associated person has used;

provided, *however*, that if such associated person has been registered as a registered representative of such member, broker or dealer with, or his employment has been approved by, the Financial Industry Regulatory Authority, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the New York Stock Exchange, LLC., NYSE Arca, Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the National Stock Exchange, Inc. or the International Securities Exchange, LLC, then retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of this subparagraph.

(ii) A record listing every associated person of the member, broker or dealer which shows, for each associated person, every office of the member, broker or dealer where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security for the member, broker or dealer, and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the member, broker or dealer.

1934 Act Rule 17a-3(a)(12); 1934 Act Rule 17a-4(e)(1)

25. ***Fingerprint Cards—***Every member of a national securities exchange broker, dealer, registered transfer agent and registered clearing agency must maintain the processed fingerprint card or any substitute record when such card is not returned after processing, together with any information received from the Attorney General or its designee, for every person required to be fingerprinted under Section 17(f)(2) of the 1934 Act and for persons who have complied with this section pursuant to paragraph (b) or (c) of this section. Every substitute record shall state the name of the person whose fingerprint card was submitted to the Attorney General of the United States, the name of the member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency that submitted the fingerprint card, the name of the person or organization that rolled the fingerprints, the date on which the fingerprints were rolled, and the date the fingerprint card was submitted to the Attorney General of the United States. The processed fingerprint card and every other substitute record containing the information required by this paragraph, together with any information received from the Attorney General of the United States, shall be kept in an easily accessible place at the organization's principal office and shall be made available upon request to the Commission, the appropriate regulatory agency (if not the Commission) or other designated examining authority. The organization's principal office must provide to the regional, branch or satellite office actually employing the person written evidence that the person's fingerprints have been processed by the FBI, and must provide to that office a copy of any criminal history record information received from the FBI. All fingerprint cards, records and information required to be maintained under this paragraph shall be retained for a period of not less than three years after termination of that person's employment or relationship with the organization.

1934 Act Rule 17a-3(a)(13); 1934 Act Rule 17a-4(e)(2); 1934 Act Rule 17f-2(d)(1)

26. ***Form X-17F-1A—***Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and

every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to Section 15 of the 1934 Act must make and keep current copies of all Forms X-17F-1A filed pursuant to 1934 Act Rule 17f-1, all agreements between reporting institutions regarding registration or other aspects of 1934 Act Rule 17f-1, and all confirmations or other information received from the Commission or its designee as a result of inquiry. Such records must be preserved in an easily accessible place for three years.

1934 Act Rule 17a-3(a)(14); 1934 Act Rule 17a-4(e)(4)

Eighteen Months After the Date the Report was Generated

27. ***Unusual Activity in Accounts—***Every member, broker and dealer subject to Rule 17a-3 shall maintain and preserve in an easily accessible place all reports produced to review for unusual activity in customer accounts until eighteen months after the date the report was generated. In lieu of maintaining the reports, a member, broker or dealer may produce promptly the reports upon request by a representative of a securities regulatory authority. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports. If a report is generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced in any format using historical data, the member, broker or dealer shall promptly produce upon request a record of the parameters that were used to generate the report at the time specified by a representative of a securities regulatory authority, including a record of the frequency with which the reports were generated.

1934 Act Rule 17a-4(e)(8)

Three Years After the Termination of the Use of the Risk Management Controls

28. ***Risk Management Records—***All records required pursuant to Rule 17a-3(a)(23) [a record documenting the credit, market, and liquidity risk management controls established and maintained by the broker or dealer to assist it in analyzing and managing the risks associated with its business activities, Provided, that the records required by this paragraph (a)(23) need only be made if the broker or dealer has more than: (i) $1,000,000 in aggregate credit items as computed under Rule 15c3-3a; or (ii) $20,000,000 in capital, which includes debt subordinated in accordance with Rule 15c3-1d until three years after the termination of the use of the risk management controls documented therein.

1934 Act Rule 17a-4(e)(9)

TRANSFER AGENT RECORD-KEEPING REQUIREMENTS

PERMANENT RECORD

1. ***Notice Required by Rule 17f-2(e)*—**Every registered transfer agent must maintain in an easily accessible place a statement entitled "Notice Pursuant to Rule 17f-2" containing the information specified in 17f-2(e)(1).

1934 Act Rule 17Ad-7(e)(2); 1934 Act Rule 17f-2(e)(2)

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2. ***Standards and Procedures*—**Every registered transfer agent must maintain in an easily accessible place a copy of the standards and procedures specified in Rule 17Ad-15(c), regarding the acceptance or rejection of guarantees of securities transfers from eligible guarantor institutions, and must make available a copy of these standards and procedures to any person requesting a copy of such standards and procedures, and shall respond to any request for such procedures within 3 days.

1934 Act Rule 17Ad-15(c); 1934 Act Rule 17Ad-15(e)(1) and (2)

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3. ***Documentation of Authority to Act as Transfer Agent*—**Every registered transfer agent must make and keep current any document, resolution, contract, appointment or other writing, any supporting document, concerning the appointment and the termination of such appointment of such registered transfer agent to act in any capacity for any issue on behalf of the issuer, on behalf of itself as the issuer or on behalf of any person who was engaged by the issuer to act on behalf of the issuer. Such records must be maintained in an easily accessible place during the continuance of the transfer agency and must be maintained for one year after termination of the transfer agency.

1934 Act Rule 17Ad-6(a)(8); 1934 Act Rule 17Ad-7(c)

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4. ***Transfer Restrictions*—**Every registered transfer agent must make and keep current any record of an active (i.e., unreleased) stop order, notice of adverse claim or any other restriction on transfer. Such records must be maintained in an easily accessible place during the continuance of the transfer agency and must be maintained for one year after termination of the transfer agency.

1934 Act Rule 17Ad-6(a)(9); 1934 Act Rule 17Ad-7(c)

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5. ***Journals*—**Every registered transfer agent must make and keep current a copy of any transfer journal and registrar journal prepared by such registered transfer agent. Such records must be maintained in an easily accessible place during the continuance of the transfer agency and must be maintained for one year after termination of the transfer agency.

1934 Act Rule 17Ad-6(a)(10); 1934 Act Rule 17Ad-7(c)

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6. ***Share Documentation***—Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue or which acts as a registrar for an issue shall, with respect to such issue, obtain from the issuer or its transfer agent and retain documentation setting forth the total number of shares or principal amount of debt securities or total number of units if relating to any other kind of security authorized and the total issued and outstanding pursuant to issuer authorization. Such records must be maintained in an easily accessible place during the continuance of the transfer agency and must be maintained for one year after termination of the transfer agency.

1934 Act Rule 17Ad-6(b); 1934 Act Rule 17Ad-7(c)

SIX YEARS

7. ***Cancelled Securities/Certificates***—Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue shall, with respect to such issue, retain each cancelled registered bond, debenture, share, warrant or right, other registered evidence of indebtedness, or other certificate of ownership and all accompanying documentation, except legal papers returned to the presentor. Such records shall be maintained for a period of not less than six years, the first six months in an easily accessible place.

1934 Act Rule 17Ad-6(c); 1934 Act Rule 17Ad-7(d)

THREE YEARS

8. ***Fingerprinting Records***—Every registered transfer agent shall maintain the processed fingerprint card or any substitute record when such card is not returned after processing, together with any information received from the Attorney General or its designee, for every person required to be fingerprinted under Section 17(f)(2) of the 1934 Act and for persons who have complied with this section pursuant to Rule 17f-2(b) or (c) under the 1934 Act. Every substitute record shall state the name of the person whose fingerprint card was submitted to the Attorney General of the United States, the name of the member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency that submitted the fingerprint card, the name of the person or organization that rolled the fingerprints, the date on which the fingerprints were rolled, and the date the fingerprint card was submitted to the Attorney General of the United States. The processed fingerprint card and every other substitute record containing the information required by this paragraph, together with any information received from the Attorney General of the United States, shall be kept in an easily accessible place at the organization's principal office and shall be made available upon request to the Commission, the appropriate regulatory agency (if not the Commission) or other designated examining authority. The organization's principal office must provide to the regional, branch or satellite office actually employing

the person written evidence that the person's fingerprints have been processed by the FBI, and must provide to that office a copy of any criminal history record information received from the FBI. All fingerprint cards, records and information required to be maintained under this paragraph shall be retained for a period of not less than three years after termination of that person's employment or relationship with the organization.

1934 Act Rule 17Ad-7(e)(1); 1934 Act Rule 17f-2(d)

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9. ***Rejected Transfers—***Every registered transfer agent shall maintain, for a period of three years following the date of the rejection, a record of transfers rejected, including the reason for the rejection, who the guarantor was and whether the guarantor failed to meet the transfer agent's guarantee standards.

1934 Act Rule 17Ad-15(e)(3)

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10. ***Lost Shareholders—***Every recordkeeping transfer agent must maintain records to demonstrate compliance with the requirements set forth in 1934 Act Rule 17Ad-17, regarding searches for lost shareholders, which shall include written procedures that describe the transfer agent's methodology for complying with this section. Such records must be maintained for a period not less than three years, the first year in an easily accessible place.

1934 Act Rule 17Ad-17(d); 1934 Act Rule 17Ad-7(i)

TWO YEARS

11. ***Routine and Non-Routine Items—***Every registered transfer agent must make and keep current the following:

(i) A receipt, ticket, schedule, log or other record showing the business day each routine item and each non-routine item is: (1) received from the presentor and, if applicable, from the outside registrar; and (2) made available to the presentor and, if applicable, to the outside registrar. Such records must be maintained for a period of not less than two years, the first six months in an easily accessible place; and

1934 Act Rule 17Ad-6(a)(1); 1934 Act Rule 17Ad-7(a)

(ii) A log, tally, journal, schedule or other record showing for each month: (1) the number of routine items received; (2) the number of routine items received during the month that were turned around within three business days of receipt; (3) the number of routine items received during the month that were not turned around within three business days of receipt; (4) the number of non-routine items received during the month; (5) the number of non-routine items received during the month that were turned around; (6) the number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agent's possession for more than four business days, aged in increments of one business day (beginning on the fifth business day); and (7) the number of non-routine items in such registered transfer agent's possession as of the close of business on the last business day of each month. Such records must be maintained for a period of not less than two years, the first year in an easily accessible place.

1934 Act Rule 17Ad-6(a)(2); 1934 Act Rule 17Ad-7(b)

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12. ***Outside Registrar Activities***—With respect to items for which a registered transfer agent acts as an outside registrar, every registered transfer agent must make and keep current the following:

(i) A receipt, ticket, schedule, log or other record showing the date and time:

(A) Each item is (1) received from the presenting transfer agent and (2) made available to the presenting transfer agent;

(B) Each written or oral notice of refusal to perform the registrar function is made available to the presenting transfer agent (and the substance of the notice).

Such records must be maintained for a period of not less than two years, the first six months in an easily accessible place.

1934 Act Rule 17Ad-6(a)(3)(i); 1934 Act Rule 17Ad-7(a)

(ii) A log, tally, journal, schedule or other record showing for each month:

(A) The number of items received;

(B) The number of items processed within the time required by 1934 Act Rule 17Ad-2(b); and

(C) The number of items not processed within the time required by 1934 Act Rule 17Ad-2(b).

Such records must be maintained for a period of not less than two years, the first year in an easily accessible place.

1934 Act Rule 17Ad-6(a)(3)(ii); 1934 Act Rule 17Ad-7(b)

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13. ***Written Inquiries and Requests***—Every registered transfer agent must make and keep current any written inquiry or request, including those not subject to 1934 Act Rule 17Ad-5, concerning an item, showing date received; a copy of any written response to an inquiry or request, showing date dispatched or mailed to the presentor; if no response to an inquiry or request was made, the date the certificate involved was made available to the

presentor; or, in the case of an inquiry or request under 1934 Act Rule 17Ad-5(a) responded to by telephone, a telephone log or memorandum showing the date and substance of any telephone response to the inquiry. Such records must be maintained for a period of not less than two years, the first six months in an easily accessible place.

1934 Act Rule 17Ad-6(a)(6); 1934 Act Rule 17Ad-7(a)

14. ***Non-Routine Item Documentation—***Every registered transfer agent shall make and keep current any document upon which the transfer agent bases its determination that an item received for transfer was received in connection with a reorganization, tender offer, exchange, redemption, liquidation, conversion or the sale of securities registered pursuant to Securities Act of 1933 and, accordingly, was not routine under 1934 Act Rule 17Ad-1(i)(5) or (8). Such records must be maintained for a period not less than two years, the first six months in an easily accessible place.

1934 Act Rule 17Ad-6(a)(11); 1934 Act Rule 17Ad-7(a)

15. ***Turnaround, Processing and Forwarding of Items—***Every registered transfer agent shall make and keep current a record of calculations demonstrating the registered transfer agent's monitoring of its performance under 1934 Act Rule 17Ad-2(a) and (b), regarding the turnaround, processing and forwarding of items. Such records must be maintained for a period of not less than two years, the first year in an easily accessible place.

1934 Act Rule 17Ad-6(a)(4); 1934 Act Rule 17Ad-7(b)

16. ***Notices Filed Pursuant to Rule 17Ad-2—***Every registered transfer agent shall make and keep current a copy of any written notice filed pursuant to 1934 Act Rule 17Ad-2. Such records must be maintained for a period of not less than two years, the first year in an easily accessible place.

1934 Act Rule 17Ad-6(a)(5); 1934 Act Rule 17Ad-7(b)

17. ***Written Inquiries and Requests—***Every registered transfer agent shall make and keep current a log, journal, schedule or other record showing the number of inquiries subject to 1934 Act Rule 17Ad-5(a), (b), (c) and (d) received during each month but not responded to within the required time frames and the number of such inquiries pending as of the close of business on the last business day of each month. Such records must be maintained for a period of not less than two years, the first year in an easily accessible place.

1934 Act Rule 17Ad-6(a)(7); 1934 Act Rule 17Ad-7(b)

FINRA RECORD-KEEPING REQUIREMENTS

General Requirements for the Preservation of Books and Records—(a) Members shall make and preserve books and records as required under the FINRA Rules, the 1934 Act and the applicable 1934 Act Rules.

(b) Members shall preserve for a period of at least six years those FINRA books and records for which there is no specified period under the FINRA Rules or applicable 1934 Act Rules.

(c) All books and records required to be made pursuant to the FINRA Rules shall be preserved in a format and media that complies with 1934 Act Rule 17a-4.

FINRA Rule 4511

PERMANENT RECORD

1. ***Form U-4***—As part of the member's recordkeeping requirements, it shall retain a person's manually signed Form U4 or amendments to the disclosure information on Form U-4 in accordance with 1934 Act Rule 17a-4(e)(1) and make them available promptly upon regulatory request. An applicant for membership also shall retain in accordance with 1934 Act Rule 17a-4(e)(1) every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

FINRA Rule 1010(c)(1)

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2. ***Business Continuity Plan***—Each member must create and maintain a written business continuity plan identifying procedures relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable the member to meet its existing obligations to customers. In addition, such procedures must address the member's existing relationships with other broker-dealers and counter-parties. The business continuity plan must be made available promptly upon request to FINRA staff.

FINRA Rule 4370(a)

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3. ***FINRA Manual***—Members shall make available a current copy of the FINRA Manual for examination by customers upon request. Members may comply with this Rule by maintaining electronic access to the FINRA Manual and providing customers with such access upon request.

FINRA Rule 8110

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4. ***Customer Account Information—***(a) Each member shall maintain the following information:

(1) for each account: (A) customer's name and residence; (B) whether customer is of legal age; (C) name(s) of the associated person(s), if any, responsible for the account, and if multiple individuals are assigned responsibility for the account, a record indicating the scope of their responsibilities with respect to the account, provided, however, that this requirement shall not apply to an institutional account; (D) signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member's policies and procedures for acceptance of accounts; (E) if the customer is a corporation, partnership or other legal entity, the names of any persons authorized to transact business on behalf of the entity and (F) subject to Supplementary Material 0.6, name of and contact information for a trusted contact person age 18 or older who may be contacted about the customer's account, provided, however, that this requirement shall not apply to an institutional account;

(2) for each account other than an institutional account, and accounts in which investments are limited to transactions in open-end investment company shares that are not recommended by the member or its associated persons, each member shall also make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account: (A) customer's tax identification or Social Security number; (B) occupation of customer and name and address of employer; and (C) whether customer is an associated person of another member; and

(3) for discretionary accounts, in addition to compliance with subparagraph (1) and, to the extent applicable, subparagraph (2) above, and NASD Rule 2510(b), the member shall maintain a record of the dated, manual signature of each named, natural person authorized to exercise discretion in the account. This recordkeeping requirement shall not apply to investment discretion granted by a customer as to the price at which or the time to execute an order given by a customer for the purchase or sale of a definite dollar amount or quantity of a specified security. Nothing in this Rule shall be construed as allowing members to maintain discretionary accounts or exercise discretion in such accounts except to the extent permitted under the federal securities laws.

(b) A member need not meet the requirements of this Rule with respect to any account that was opened pursuant to a prior FINRA rule until such time as the member updates the information for the account either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.

(c) For purposes of this Rule, the term "institutional account" shall mean the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

For purposes of this Rule, members shall preserve a record of any customer account information that subsequently is updated for at least six years after the date that such information is updated. Members shall preserve a record of the last update to any customer account information, or the original account information if there are no updates to the account information, for at least six years after the date the account is closed.

FINRA Rule 4512 and Supplementary Material 0.1

5. ***Assignment of Responsibility for General Ledger Accounts and Identification of Suspense Accounts***—(a) Each member shall designate an associated person who shall be responsible for each general ledger bookkeeping account and account of like function used by the member and such associated person shall control and oversee entries into each such account and shall determine that the account is current and accurate as necessary to comply with all applicable FINRA rules and federal securities laws governing books and records and financial responsibility requirements. A supervisor shall, as frequently as is necessary considering the function of the account but, in any event, at least monthly, review each account to determine that it is current and accurate and that any items that become aged or uncertain as to resolution are promptly identified for research and possible transfer to a suspense account(s).

(b) Each carrying or clearing member shall maintain a record of the names of the associated persons assigned primary and supervisory responsibility for each account as required by paragraph (a) of this Rule. All records made pursuant to this paragraph (b) shall be preserved for a period of not less than six years.

(c) Each member must record, in an account that shall be clearly identified as a suspense account, money charges or credits and receipts or deliveries of securities whose ultimate disposition is pending determination. A record must be maintained of all information known with respect to each item so recorded. Such suspense accounts include, but are not limited to, DK fails, unidentified fails, unallocable securities receipts versus payment, returned deliveries, and any other receivable or payable (money or securities) "suspended" because of doubtful ownership, collectability or deliverability. To the extent that suspense items can be distinguished by type, separate accounts may be used provided that the word "suspense" is made a prominent part of the account title. All records made pursuant to this paragraph shall be preserved for a period of not less than six years.

FINRA Rule 4523

PERIOD UNSPECIFIED (Six Years When No Period Specified)

6. 4511. ***General Requirements***

(a) Members shall make and preserve books and records as required under the FINRA rules, the 1934 Act and the applicable 1934 Act rules.

(b) Members shall preserve for a period of at least six years those FINRA books and records for which there is no specified period under the FINRA rules or applicable Exchange Act rules.

(c) All books and records required to be made pursuant to the FINRA rules shall be preserved in a format and media that complies with 1934 Act Rule 17a-4.

FINRA Rule 4511

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7. ***Restrictions on Non-Cash Compensation***—A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by FINRA Rule 5110(d)(2)(C)-(E). The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with FINRA Rule 5110(h(2)(C)-(E).

FINRA Rule 5110(h)(2)

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8. ***Non-Cash Compensation (Direct Participation Programs)***—A member must maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by FINRA Rule 2310(c)(2)(C)–(E). The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with FINRA Rule 2310(c)(2)(C)-(E).

FINRA Rule 2310(c)(2)

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9. ***Variable Contracts Compensation***—In connection with the sale and distribution of variable contracts, except for items as described in FINRA Rule 2320(g)(4)(A) and (B), a member must maintain records of all compensation received by the member or its associated persons from offerors. The records must include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.

FINRA Rule 2320(g)(3)

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10. ***Investment Company—Member Compensation***—In connection with the sale and distribution of investment company securities, except for items described in FINRA

Rule 2341(l)(5)(A) and (B), a member shall maintain records of all compensation received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.

NASD Rule 2341(l)(3)

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11. ***Influencing or Rewarding Employees of Others***—A separate record of all payments or gratuities in any amount known to the member, the employment agreement referred to in FINRA Rule 3220(b) and any employment compensation paid as a result thereof shall be retained by the member for the period specified by 1934 Act Rule 17a-4.

FINRA Rule 3220(c)

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12. ***Supervisory Procedures***. Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

FINRA Rule 3110(b)

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13. ***Anti-Money Laundering Compliance Program***—Each member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq*.), and the implementing regulations promulgated thereunder by the Department of the Treasury.

Each member's anti-money laundering program must be approved, in writing, by a member of senior management. The anti-money laundering programs required by this Rule shall, at a minimum,

(a) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(b) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(c) Provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or by a qualified outside party, unless the member does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading or conducts business only with other broker-dealers), in which case such "independent testing" is required every two years (on a calendar-year basis);

(d) Designate and identify to FINRA (by name, title, mailing address, e-mail address, telephone number, and facsimile number) an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program (such individual or individuals must be an associated person of the member) and provide prompt notification to FINRA regarding any change in such designation(s);

(e) Provide ongoing training for appropriate personnel; and

(f) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of paragraph (f)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in 31 CFR 1010.230(e)).

FINRA Rule 3310

FIVE YEARS

14. ***Maintenance of Do-Not-Call Lists***—A member making outbound telephone calls must maintain a record of a caller's request not to receive further calls.

FINRA Rule 3230(d)(6)

FOUR YEARS

15. ***Records of Written Customer Complaints***—(a) Each member shall keep and preserve in each office of supervisory jurisdiction either a separate file of all written customer complaints that relate to that office (including complaints that relate to activities supervised from that office) and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files in that office containing the correspondence connected with such complaints. Rather than keep and preserve the customer complaint records required under FINRA Rule 4513 at the office of the supervisory jurisdiction, the member may choose to make them promptly available at that office, upon request of FINRA. Customer complaint records shall be preserved for a period of at least four years.

(b) For purposes of FINRA Rule 4513, "customer complaint" means any grievance by a customer or any person authorized to act on behalf of the customer involving the activities of the member or a person associated with the member in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

FINRA Rule 4513

THREE YEARS

16. ***Communications—***(A) Members must maintain all retail communications and institutional communications for the retention period by 1934 Act Rule 17a-4(b) and in a format and media that comply with 1934 Act Rule 17a-4. The records must include:

(i) a copy of the communication and the dates of first and (if applicable) last use of such communication;

(ii) the name of the registered principal who approved the communication and the date that approval was given, and

(iii) in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;

(iv) information concerning the source of any statistical table, chart, graph or other illustration used in the communication;

(v) for any retail communication for which principal approval is not required pursuant to paragraph (b)(1)(C), the name of the member that filed the retail communication with the Department, and a copy of the corresponding review letter from the Department; and

(vi) for any retail communication that includes or incorporates a performance ranking or performance comparison of a registered investment company, a copy of the ranking or performance used in the retail communication.

(B) Members must maintain all correspondence in accordance with the recordkeeping requirements of Rules 3110.09 and 4511.

FINRA Rule 2210(b)(4)

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17. ***Correspondence and Internal Communications.*** The supervisory procedures required by this paragraph (b) shall include procedures for the review of incoming and outgoing written (including electronic) correspondence and internal communications relating to the member's investment banking or securities business. The supervisory procedures must be appropriate for the member's business, size, structure, and customers. The supervisory pro-

cedures must require the member's review of: (A) incoming and outgoing written (including electronic) correspondence to properly identify and handle in accordance with firm procedures, customer complaints, instructions, funds and securities, and communications that are of a subject matter that require review under FINRA rules and federal securities laws. (B) internal communications to properly identify those communications that are of a subject matter that require review under FINRA rules and federal securities laws. Reviews of correspondence and internal communications must be conducted by a registered principal and must be evidenced in writing, either electronically or on paper.

.09 Retention of Correspondence and Internal Communications. Each member shall retain the internal communications and correspondence of associated persons relating to the member's investment banking or securities business for the period of time and accessibility specified in 1934 Act Rule 17a-4(b) (*i.e.*, not less than three years, the first two years in an easily accessible place). The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records, and the retained records shall be readily available to FINRA, upon request.

FINRA Rule 3110(b)(4) and 1934 Act Rule 17a-4(b)

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18. ***Supervisory Personnel.*** A record, of the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective, preserved by the member for a period of not less than three years, the first two years in an easily accessible place.

FINRA Rule 3110(b)(6)(B)

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19. ***Tape Recording***, All tape recordings made pursuant to the requirements of FINRA Rule 3170 shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each taping firm must catalog the retained tapes by registered person and date.

FINRA Rule 3170

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20. ***Order Records***—(1) With respect to each order, that is received or executed at its trading department, each Reporting Member shall record an identification of: (A) each registered person who receives the order directly from a customer; (B) each registered person who executes the order; and (C) the department that originated the order if the order is originated by the member and transmitted manually to another department.

(2) ***Maintaining and Preserving Records***

(A) Each Reporting Member shall maintain and preserve records of the information required to be recorded under FINRA Rule 7440 for the period of time and accessibility specified in 1934 Act Rule 17a-4(b) (*i.e.*, not less than three years, the first two years in an easily accessible place).

(B) The records required to be maintained and preserved under FINRA Rule 7440 may be immediately produced or reproduced on "micrographic media" as defined in 1934 Act Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in 1934 Act Rule 17a-4(f)(1)(ii) that meet the conditions set forth in 1934 Act Rule 17a-4(f) and be maintained and preserved for the required time in that form.

FINRA Rule 7440(a) (effective 12/5/11) & 1934 Act Rule 17a-4(b)

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21. ***Documentation of Changes in Account Name or Designation***—Before any customer order is executed, there must be placed upon the order form or other similar record of the member for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a qualified and registered principal designated by the member. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for the period of time and accessibility specified in 1934 Act Rule 17a-4(b) (*i.e.*, not less than three years, the first two years in an easily accessible place). With respect to any change that takes place prior to execution of the trade, the required approval and documentation must take place prior to execution.

FINRA Rule 4515

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22. ***Recording of Order Information***

(a) ***Procedures***

(1) Subject to the terms and conditions contained in FINRA Rules 7420 through 7460, each Reporting Member shall:

(A) immediately following receipt or origination of an order, record each item of information described in FINRA Rule 7440(b) that applies to such order, and record any additional information described in FINRA Rule 7440(b) that applies to such order immediately after such information is received or becomes available; and

(B) immediately following the transmission of an order to another member, or from one department to another within the same member, record each item of information described in FINRA Rule 7440(c) that applies with respect to such transmission; and

(C) immediately following the modification, cancellation, or execution of an order, record each item of information described in FINRA Rule 7440(d) that applies with respect to such modification, cancellation, or execution.

(2) Each required record of the time of an event shall be expressed in terms of hours, minutes, and seconds; provided that the time of an event shall be expressed in hours, minutes, seconds and milliseconds if the member's system captures time in milliseconds.

(3) Each Reporting Member shall, by the end of each business day, record each item of information required to be recorded under this Rule in such electronic form as is prescribed by FINRA from time to time.

(4) With respect to each order that is received at its trading department, each Reporting Member shall record an identification of:

(A) each registered person who receives the order directly from a customer;

(B) each registered person who executes the order; and

(C) the department that originated the order if the order is originated by the member and transmitted manually to another department.

(5) ***Maintaining and Preserving Records***

(A) Each reporting member shall maintain and preserve records of the information required to be recorded under FINRA Rule 7440 for the period of time and accessibility specified in 1934 Act Rule 17a-4(b) (*i.e.*, not less than three years, the first two years in an easily accessible place).

(B) The records required to be maintained and preserved under FINRA Rule 7440 may be immediately produced or reproduced on "micrographic media" as defined in 1934 Act Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in 1934 Act Rule 17a-4(f)(1)(ii) that meet the conditions set forth in 1934 Act Rule 17a-4(f) and be maintained and preserved for the required time in that form.

(b) ***Order Origination and Receipt***—Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

(1) an order identifier meeting such parameters as may be prescribed by FINRA assigned to the order by the Reporting Member that uniquely identifies the order for the date it was received;

(2) the identification symbol assigned by FINRA to the security to which the order applies;

(3) the market participant symbol assigned by FINRA to the Reporting Member;

(4) the identification of any department or the identification number of any terminal where an order is received directly from a customer;

(5) where the order is originated by a Reporting Member, the identification of the department of the member that originates the order;

(6) where the Reporting Member is a party to an agreement described in FINRA Rule 7450(c), the identification of the Reporting Agent;

(7) the number of shares to which the order applies;

(8) the designation of the order as a buy or sell order;

(9) the designation of the order as a short sale or a short sale exempt order;

(10) the designation of the order as a market order, limit order, stop order or stop limit order;

(11) any limit or stop price prescribed in the order;

(12) the date on which the order expires, and, if the time in force is less than one day, the time when the order expires;

(13) the time limit during which the order is in force;

(14) any request by a customer that a limit order not be displayed, or that a block size order be displayed, pursuant to applicable rules;

(15) special handling requests, specified by FINRA for purposes of this Rule;

(16) the date and time the order is originated or received by a Reporting Member;

(17) an identification of the order as related to a Program Trade or an Index Arbitrage Trade; and

(18) the type of account, i.e., retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.

(19) when the Reporting Member receives an order from a U.S.-registered broker-dealer that is not a member, or from a non-U.S.-registered broker-dealer that is not a member but has received an SRO-assigned identifier for purposes of accessing a FINRA facility pursuant to Rule 7220A or 7320, identification of such broker-dealer by providing an SRO-assigned identifier assigned to the broker-dealer or the number assigned to the broker-dealer in the Central Registration Depository system;

(20) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated; and

(21) if a Reporting Member operates a Trading Center for purposes of Rule 6191, the information required by paragraph (b)(2)(A)(ii) of Rule 6191.

(c) ***Order Transmittal***—Order information required to be recorded under this Rule when an order is transmitted includes the following:

(1) When a Reporting Member transmits an order to a department within the member, the Reporting Member shall record:

(A) the order identifier assigned to the order by the Reporting Member,

(B) the market participant symbol assigned by FINRA to the Reporting Member,

(C) the date the order was first originated or received by the Reporting Member,

(D) an identification of the department and nature of the department to which the order was transmitted,

(E) the date and time the order was received by that department,

(F) the number of shares to which the transmission applies,

(G) any special handling requests, and

(H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.

(2) When a member electronically transmits an order to another member, other than an order transmitted electronically for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) the order identifier assigned to the order by the Reporting Member and the routed order identifier, if different, which the transmitting Reporting Member also must provide to the receiving Reporting Member,

(ii) the market participant symbol assigned by FINRA to the Reporting Member,

(iii) the market participant symbol assigned by FINRA to the member to which the order is transmitted,

(iv) the date the order was first originated or received by the Reporting Member,

(v) the date and time the order is transmitted,

(vi) the number of shares to which the transmission applies,

(vii) whether the order is an intermarket sweep order,

(viii) the price at which the order is transmitted, and

(ix) the designation of the order as short exempt, if applicable; and

(B) the receiving Reporting Member shall record, in addition to all other information items in FINRA Rule 7440(b) that apply with respect to such order:

(i) the routed order identifier assigned to the order by the member that transmits the order and

(ii) the market participant symbol assigned by FINRA to the member that transmits the order.

(3) When a member electronically transmits an order for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member must record:

(i) the fact that the order was transmitted to an Electronic Communications Network,

(ii) the order identifier assigned to the order by the Reporting Member and the routed order identifier, if different, which the transmitting Reporting Member also must provide to the receiving Reporting Member,

(iii) the market participant symbol assigned by FINRA to the Reporting Member,

(iv) the market participant symbol assigned by FINRA to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies,

(viii) whether the order is an intermarket sweep order,

(ix) the price at which the order is transmitted, and

(x) the designation of the order as short exempt, if applicable; and

(B) the receiving Reporting Member operating the Electronic Communications Network shall record:

(i) the fact that the order was received by an Electronic Communications Network,

(ii) the routed order identifier assigned to the order by the member that transmits the order,

(iii) the market participant symbol assigned by FINRA to the transmitting Reporting Member, and

(iv) other information items in FINRA Rule 7440(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(4) When a member manually transmits an order to another member, other than to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) the fact that the order was transmitted manually,

(ii) the order identifier assigned to the order by FINRA to the Reporting Member,

(iii) the market participant symbol assigned by FINRA to the Reporting Member,

(iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies,

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member,

(ix) whether the order is an intermarket sweep order,

(x) the price at which the order is transmitted, and

(xi) the designation of the order as short exempt, if applicable; and

(B) the receiving Reporting Member must record, in addition to all other information items in FINRA Rule 7440(b) that apply with respect to such order:

(i) the fact that the order was received manually and

(ii) the market participant symbol assigned by FINRA to the member that transmits the order.

(5) When a member manually transmits an order to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) the fact that the order was transmitted manually,

(ii) the order identifier assigned to the order by the Reporting Member,

(iii) the market participant symbol assigned by FINRA to the Reporting Member,

(iv) the market participant symbol assigned by FINRA to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies,

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member,

(ix) whether the order is an intermarket sweep order,

(x) the price at which the order is transmitted, and

(xi) the designation of the order as short exempt, if applicable; and

(B) the receiving Reporting Member shall record:

(i) the fact that the order was received manually,

(ii) the market participant symbol assigned by FINRA to the transmitting Reporting Member, and

(iii) other information items in FINRA Rule 7440(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(6) When a member transmits an order to a non-member, including but not limited to a national securities exchange, the Reporting Member shall record:

(A) the fact that the order was transmitted to a non-member,

(B) the order identifier assigned to the order by the Reporting Member,

(C) the market participant symbol assigned by FINRA to the Reporting Member,

(D) the date the order was first originated or received by the Reporting Member,

(E) the date and time the order is transmitted,

(F) the number of shares to which the transmission applies,

(G) for each manual order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member,

(H) the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable,

(I) identification of the non-member where the trade was transmitted,

(J) whether the order is an intermarket sweep order,

(K) the price at which the order is transmitted, and

(L) the designation of the order as short exempt, if applicable.

(d) ***Order Modifications, Cancellations, and Executions—***Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

(1) When a Reporting Member modifies or receives a modification to the terms of the order, the Reporting Member shall record, in addition to all other applicable information items (including a new order identifier) that would apply as if the modified order were originated or received at the time of the modification:

(A) the order identifier assigned to the order by the Reporting Member prior to the modification,

(B) the date and time the modification was originated or received, and

(C) the date the order was first originated or received by the Reporting Member.

(2) When the Reporting Member cancels or receives a cancellation of an order, in whole or part, the Reporting Member shall record:

(A) the order identifier assigned to the order by the Reporting Member,

(B) the market participant symbol assigned by FINRA to the Reporting member,

(C) the date the order was first originated or received by the Reporting Member,

(D) the date and time the cancellation was originated or received,

(E) if the open balance of an order is canceled after a partial execution, the number of shares canceled, and

(F) whether the order was canceled on the instruction of a customer or the Reporting Member.

(3) When a Reporting Member executes an order, in whole or in part, the Reporting Member shall record:

(A) the order identifier assigned to the order by the Reporting Member,

(B) the market participant symbol assigned by FINRA to the Reporting Member,

(C) the date the order was first originated or received by the Reporting Member,

(D) the Reporting Member's number assigned for purposes of identifying transaction data in the Nasdaq Market Center, ADF, Trade Reporting Facility or other system or service as may be designated by FINRA,

(E) the designation of the order as fully or partially executed,

(F) the number of shares to which a partial execution applies and the number of unexecuted shares remaining,

(G) the identification number of the terminal where the order was executed,

(H) the date and time of execution;

(I) the execution price,

(J) the capacity in which the member executed the transaction (e.g., agency, principal or riskless principal), and

(K) the national securities exchange or facility operated by a registered securities association where the trade was reported.

(4) If a Reporting Member operates a Trading Center for purposes of Rule 6191, the information required by paragraph (b)(2)(A)(iv) of Rule 6191.

FINRA Rule 7440 & 1934 Act Rule 17a-4(b)

23. ***Form U-5***—As part of the member's recordkeeping requirements, it shall retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with SEA Rule 17a-4, and make such records available promptly upon regulatory request.

FINRA Rule 1010

MUTUAL FUNDS' ANTI-MONEY LAUNDERING RECORD-KEEPING REQUIREMENTS

PERMANENT RECORD

1. ***Anti-Money Laundering Program for Mutual Funds*****—**Each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury. Each mutual fund anti-money laundering program must be approved in writing by its board of directors or trustees. Each mutual fund shall make its anti-money laundering program available for inspection by the Commission. The anti-money laundering program shall at a minimum:

- Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;
- Provide for independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party;
- Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program;
- Provide ongoing training for appropriate persons; and
- Implement appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:
  - Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
  - Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers.

31 CFR Part 1024, Rule 210

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2. ***Customer Identification Program ("CIP")*****—**A mutual fund must implement a written Customer Identification Program ("CIP") appropriate for its size and type of business as a part of the mutual fund anti-money laundering program required under the regulations implementing 31 U.S.C. § 5318(h). The CIP must contain procedures for verifying the

identity of the customer using the information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the mutual fund will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (a)(2)(ii). At a minimum, the CIP must include:

- *Identity Verification Procedures*. Risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the mutual fund's assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund's customer base;
- *Recordkeeping*. Procedures for making and maintaining a record of all information obtained pursuant to 31 CFR Part 1024, Rule 220(a). The mutual fund must retain the information required by 31 CFR Part 1024, Rule 220(a)(3)(i)(A) for five years after the date the account is closed. The mutual fund must retain the information required by 31 CFR Part 1024, Rule 220(a)(3)(i)(B), (C), and (D) for five years after the record is made;
- *Comparison with government lists*. Procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by the Department of the Treasury in consultation with the Federal functional regulators. The procedures must require the mutual fund to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the mutual fund to follow all Federal directives issued in connection with such lists; and
- *Customer notice*. Procedures for providing mutual fund customers with adequate notice that the mutual fund is requesting information to verify their identities.
    - *Adequate Notice*. Notice is adequate if the mutual fund generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending on the manner in which the account is opened, a mutual fund may post a notice on its Web site, include the notice on its account applications, or use any other form of written or oral notice.

- *Sample Notice*. If appropriate, a mutual fund may use the following sample language to provide notice to its customers:

  Important Information About Procedures for Opening a New Account

  To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

  What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Reliance on other financial institutions. The CIP may include procedures specifying when a mutual fund will rely on the performance by another financial institution (including an affiliate) of any procedures of the mutual fund's CIP, with respect to any customer of the mutual fund that is opening, or has opened, an account or has established a similar formal business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

- Such reliance is reasonable under the circumstances;
- The other financial institution is subject to a rule implementing 31 U.S.C. § 5318(h) and is regulated by a Federal functional regulator; and
- The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its anti-money laundering program, or that it (or its agent) will perform the specific requirements of the mutual fund's CIP.

31 CFR Part 1024, Rule 220(a)(1)-(6)

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3. ***Recordkeeping***. The CIP must include procedures for making and maintaining a record of all information obtained under Rule 220(a) and at a minimum, the records must include:

- All identifying information about a customer obtained under Rule 220(a)(2)(i) ***[Customer Information Required]***;
- A description of any document that was relied on under Rule 220(a)(2)(ii)(A) of this section ***[Verification through documents]*** noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;
- A description of the methods and the results of any measures undertaken to verify the identity of the customer Rule (a)(2)(ii)(B) or (C) ***[Verification through non-documentary methods and Additional verification for certain customers]***; and

- A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

31 CFR Part 1024, Rule 220(a)(3)(i)

4. ***CIP Failures to Identify*****—**The CIP must include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

- When the mutual fund should not open an account;
- The terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity;
- When the mutual fund should file a Suspicious Activity Report in accordance with applicable law and regulation; and
- When the mutual fund should close an account, after attempts to verify a customer's identity have failed.

31 CFR Part 1024, Rule 202(a)(2)(iii)

5. ***Correspondent Accounts for Foreign Financial Institutions-Due Diligence Program*****—**A covered financial institution shall establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the covered financial institution to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed by such covered financial institution in the United States for a foreign financial institution. The due diligence program shall be part of the anti-money laundering program. Such policies, procedures, and controls shall include:

- Determining whether any such correspondent account is subject to enhanced due diligence;
- Assessing the money laundering risk presented by such correspondent account, based on a consideration of all relevant factors, which shall include, as appropriate:
  - The nature of the foreign financial institution's business and the markets it serves;
  - The type, purpose, and anticipated activity of such correspondent account;
  - The nature and duration of the covered financial institution's relationship with the foreign financial institution (and any of its affiliates);

- The anti-money laundering and supervisory regime of the jurisdiction that issued the charter or license to the foreign financial institution, and, to the extent that information regarding such jurisdiction is reasonably available, of the jurisdiction in which any company that is an owner of the foreign financial institution is incorporated or chartered; and
- Information known or reasonably available to the covered financial institution about the foreign financial institution's anti-money laundering record; and

- Applying risk-based procedures and controls to each such correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

31 CFR Part 1010, Rule 610(a)

6. ***Correspondent Accounts for Foreign Banks-Due Diligence Program—***In the case of a correspondent account established, maintained, administered, or managed in the United States for a foreign bank that operates under:

- An offshore banking license;
- A banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs; or
- A banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns.

The due diligence program shall include enhanced due diligence procedures designed to ensure that the covered financial institution, at a minimum, takes reasonable steps to:

- Conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions in accordance with applicable law and regulation. This enhanced scrutiny shall reflect the risk assessment of the account and shall include, as appropriate:
    - Obtaining and considering information relating to the foreign bank's anti-money laundering program to assess the risk of money laundering presented by the foreign bank's correspondent account;
    - Monitoring transactions to, from, or through the correspondent account in a manner reasonably designed to detect money laundering and suspicious activity; and

- Obtaining information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.
  - For purposes of the above paragraph, a payable-through account means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usually in connection with the business of banking in the United States.

- Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the mutual fund or broker-dealer and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks.

- Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.
  - For purposes of the above paragraph:
    - Owner means any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities of a foreign bank. For purposes of this paragraph:
      - Members of the same family shall be considered to be one person; and
      - Same family has the meaning provided in § 1010.605(j)(2)(ii).

- Publicly traded means shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

The due diligence program required shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence or enhanced due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

31 CFR Part 1010, Rule 610(b)-(d)

7. ***Private Banking Accounts-Due Diligence Program*****—**A covered financial institution shall maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States by such financial institution. The due diligence program shall be a part of the required anti-money laundering program and shall be designed to ensure, at a minimum, that the mutual fund or broker-dealer takes reasonable steps to:

- Ascertain the identity of all nominal or beneficial owners of a private banking account;
- Ascertain whether any nominal or beneficial owner is a senior foreign political figure;
- Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and
- Review the activity of the account to ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report, in accordance with applicable law and regulation, any known or suspected money laundering or suspicious activity conducted to, from, or through a private banking account.

In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program required shall include enhanced scrutiny of such account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

31 CFR Part 1010, Rule 620(a)-(c)

FIVE YEARS AFTER THE ACCOUNT IS CLOSED

8. ***Customer Information*****—**Each mutual fund and broker-dealer must obtain, at a minimum, the following information about a customer prior to opening an account, and must retain the information for five years after the account is closed:

- Name;
- Date of birth, for an individual;
- Address, which shall be:
  - For an individual, a residential or business street address;
  - For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the

residential or business street address of next of kin or of another contact individual; or

    - For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office or other physical location; and

- Identification number, which shall be:
    - For a U.S. person, a taxpayer identification number; or
    - For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.
        - *Note*: When opening an account for a foreign business or enterprise that does not have an identification number, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.
    - *Exception for persons applying for a taxpayer identification number*. Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a person that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

31 CFR Part 1024, Rule 220(a)(2)(i); Rule 220(a)(3)(i)(A); Rule 220(a)(3)(ii)

FIVE YEARS AFTER THE RECORD IS MADE

9. ***Verification & Methodology Documentation***—Each mutual fund and broker-dealer must retain a description of any document that was used to verify a customer's identity, noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date.

Verification through documents—For a mutual fund relying on documents to verify customer identity, the CIP must contain procedures that set forth the documents that the mutual fund will use. These documents may include:

- For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

- For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

31 CFR Part 1024, Rule 220(a)(2)(ii)(A); Rule 220(a)(3)(i)(B); Rule 220(a)(3)(ii)

Each mutual fund and broker-dealer must retain a description of the methods and results of any measures undertaken to verify the identity of the customer through non-documentary methods.

10. ***Verification through Non-documentary Methods***—For a mutual fund relying on non-documentary methods to verify customer identity, the CIP must contain procedures that describe the non-documentary methods the mutual fund will use.

- These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.
- The mutual fund's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the mutual fund is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person; and where the mutual fund is otherwise presented with circumstances that increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.

31 CFR Part 1024, Rule 220(a)(2)(ii)(B); Rule 220(a)(3)(i)(C); Rule 220(a)(3)(ii)

Each mutual fund and broker-dealer must retain a description of the methods and results of any measures undertaken to verify the identity of the customer when the mutual fund or broker-dealer has determined that it cannot verify the true identity of a customer using documentary or non-documentary methods.

11. ***Additional Verification for certain customers—Risk assessment procedures***—The CIP must address situations where, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund will obtain information about individuals with authority or control over such account, including persons authorized to effect transactions in the shareholder of record's account, in order to verify

the customer's identity. This verification method applies only when the mutual fund cannot verify the customer's true identity using the verification methods described in (a)(2)(ii)(A) and (B).

31 CFR Part 1024, Rule 220(a)(2)(ii)(C); Rule 220(a)(3)(i)(C); Rule 220(a)(3)(ii)

Each mutual fund and broker-dealer must retain a description of any substantive discrepancy discovered when verifying the identifying information obtained regarding a customer.

31 CFR Part 1024, Rule 220(a)(3)(1)(D); Rule 220(a)(3)(ii)

12. ***Suspicious Activity Report—***A mutual fund shall maintain a copy of any Form SAR filed by the fund or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any Form SAR that it files (or is filed on its behalf), for a period of five years from the date of filing the Form SAR. Supporting documentation shall be identified as such and maintained by the mutual fund, and shall be deemed to have been filed with the Form SAR. The mutual fund shall make any supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act, upon request.

31 CFR Part 1024, Rule 320(c)

REGULATION S-P RECORD-KEEPING REQUIREMENTS

PERMANENT RECORD

1. Every broker, dealer, and investment company, and every investment adviser registered with the Commission must adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

- Insure the security and confidentiality of customer records and information;
- Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and
- Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

Reg. S-P, Rule 30(a)

PRESERVE UNTIL THE CUSTOMER REVOKES HIS DIRECTION TO OPT OUT OF DISCLOSURE

2. Every broker, dealer, and investment company, and every investment adviser registered with the Commission (including every foreign broker, dealer, investment company, and investment adviser registered with the Commission) may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

- You have provided to the consumer an initial notice as required under Rule 4;
- You have provided to the consumer an opt out notice as required in Rule 7;
- You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and
- The consumer does not opt out.

A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

Reg. S-P, Rule 10(a)(1); Rule 7(g)(2)

COMMODITY FUTURES TRADING COMMISSION (CFTC) RECORDKEEPING REQUIREMENTS

In 2012, the CFTC adopted amendments to its rules that brought the registered fund industry into the CFTC's commodity pool operator and commodity trading advisor regulatory scheme. This change together with related developments ushered in a new age of dual regulation for mutual funds and their advisers, subjecting such entities to extensive regulation by the CFTC, in addition to their primary regulator—the SEC.

Set forth below is an overview of CFTC recordkeeping requirements, selected in an effort to highlight only those requirements with particular relevance to mutual funds and their advisers and sub-advisers. Please note that additional recordkeeping requirements apply more generally to all commodity interest trading market participants, and those additional requirements may not be reflected herein. In addition, the National Futures Association Compliance Rule 2-10 (Recordkeeping) requires commodity pool operators and commodity trading advisors to maintain records necessary and appropriate to the conduct of their business, and such requirements are not reflected herein.

COMMODITY POOL AND COMMODITY POOL OPERATOR RECORDKEEPING

Each commodity pool operator registered or required to be registered under the Commodity Exchange Act ("CEA") must make and keep the following books and records in an accurate, current and orderly manner. Books and records that are not maintained at the pool operator's main business office can be maintained by any third party recordkeeper, as further described below. All books and records shall be maintained in accordance with CFTC Rule 1.31 (addressed below).

All books and records required by CFTC Rule 4.23 as described in this section—except those required by CFTC Rule 4.23(a)(3), (a)(4), (b)(1), (b)(2) and (b)(3)—must be made available to participants for inspection and copying during normal business hours. Notwithstanding the foregoing, the inspection and copying requirements described in this paragraph do not apply with respect to registered investment companies for which a commodity pool operator is relying on substituted compliance pursuant to CFTC Rule 4.12(c)(3). Upon request, copies must be sent by mail to any participant within five business days if reasonable reproduction and distribution costs are paid by the pool participant.

If the books and records are maintained at the commodity pool operator's main business office that is located outside the United States, its territories or possessions, then upon the request of a CFTC representative, the pool operator must provide such books and records as requested at the place in the United States, its territories or possessions designated by the representative within 72 hours after the pool operator receives the request.

CFTC Rule 4.23

FIVE YEARS GENERALLY from the date of creation except certain records of oral communications (must be kept not less than one year from the date of such communication), paper records (must be readily accessible for no less than two years), and swap or related cash or forward records (must be kept from the date of creation until termination, maturity, expiration, transfer, assignment or novation date of the transaction, plus five years after such date (except in the case of pre-execution information concerning the transaction, for which the retention period is five years from creation))

***Duration of retention*—**Unless specified elsewhere in the CEA or CFTC regulations:

1. A records entity (as defined below) shall keep regulatory records (as defined below) of any swap or related cash or forward transaction (as defined in CFTC Rule 23.200(i)), other than regulatory records required by CFTC Rule 23.202(a)(1) and (b)(1)-(3), from the date the regulatory record was created until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and for a period of not less than five years after such date.

2. A records entity that is required to retain oral communications, shall keep regulatory records of oral communications for a period of not less than one year from the date of such communication.

3. A records entity shall keep each regulatory record other than the records described in CFTC Rule 1.31(b)(1) or (b)(2) for a period of not less than five years from the date on which the record was created.

4. A records entity shall keep regulatory records exclusively created and maintained on paper readily accessible for no less than two years. A records entity shall keep electronic regulatory records readily accessible for the duration of the required record keeping period.

CFTC Rule 1.31(b)

Records Concerning Each Commodity Pool (not applicable for pools operated pursuant to CFTC Rule 4.5):

1. ***Itemized Record of Each Commodity Interest Transaction*—**An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying commodity, swap type and counterparty, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized.

CFTC Rule 4.23(a)(1); Rule 1.31(b)

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2. ***Journals***—A journal of original entry or other equivalent record showing all receipts and disbursements of money, securities and other property.

CFTC Rule 4.23(a)(2); Rule 1.31(b)

3. ***Disclosure Document Acknowledgement***—The acknowledgement specified by CFTC Rule 4.21(b) for each participant in the pool.*

* *The CFTC rescinded the signed acknowledgement requirement under CFTC Regulation 4.21(b) for all commodity pool operators upon publication of the Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators, 78 Fed. Reg. 52308 (Aug. 22, 2013).*

CFTC Rule 4.23(a)(3); Rule 1.31(b)

4. ***Subsidiary Ledger***—A subsidiary ledger or other equivalent record for each participant in the pool showing the participant's name and address and all funds, securities and other property that the pool received from or distributed to the participant. This requirement may be satisfied through a transfer agent's maintenance of records or through a list of relevant intermediaries where shares are held in an omnibus account or through intermediaries.

CFTC Rule 4.23(a)(4); Rule 1.31(b)

5. ***Adjusting Entries***—Adjusting entries and any other records of original entry or their equivalent forming the basis of entries in any ledger.

CFTC Rule 4.23(a)(5); Rule 1.31(b)

6. ***General Ledger***—A general ledger or other equivalent record containing details of all asset, liability, capital, income and expense accounts.

CFTC Rule 4.23(a)(6); Rule 1.31(b)

7. ***Confirmations or Acknowledgements***—Copies of each confirmation or acknowledgment of a commodity interest transaction of the pool, and each purchase and sale statement and each monthly statement for the pool received from a futures commission merchant, retail foreign exchange dealer or swap dealer.

CFTC Rule 4.23(a)(7); Rule 1.31(b)

8. ***Other Records***—Cancelled checks, bank statements, journals, ledgers, invoices, computer generated records, and all other records, data and memoranda prepared or received in connection with the operation of the pool.

CFTC Rule 4.23(a)(8); Rule 1.31(b)

9. ***Communications***—The original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be distributed by the commodity pool operator to any existing or prospective pool participant or received by the pool operator from any commodity trading advisor of the pool, showing the first date of distribution or receipt if not otherwise shown on the document.

CFTC Rule 4.23(a)(9); Rule 1.31(b)

10. ***Statement of Financial Condition***—A Statement of Financial Condition as of the close of (i) each regular monthly period if the pool had net assets of $500,000 or more at the beginning of the pool's fiscal year, or (ii) each regular quarterly period for all other pools. The Statement must be completed within 30 days after the end of that period.

CFTC Rule 4.23(a)(10); Rule 1.31(b)

11. ***Statement of Income (Loss)***—A Statement of Income (Loss) for the period between (i) the later of: (A) the date of the most recent Statement of Financial Condition furnished to the CFTC pursuant to CFTC Rule 4.22(c), (B) April 1, 1979 or (C) the formation of the pool, and (ii) the date of the Statement of Financial Condition required by CFTC Rule 4.23(a)(10). The Statement must be completed within 30 days after the end of that period.

CFTC Rule 4.23(a)(11); Rule 1.31(b)

12. ***Account Statements and Annual Reports***—A manually signed copy of each Account Statement and Annual Report provided pursuant to CFTC Rule 4.22, 4.7(b) or 4.12(b), and records of the key financial balances submitted to the National Futures Association for each commodity pool Annual Report, which records must clearly demonstrate how the key financial balances were compiled from the Annual Report.

CFTC Rule 4.23(a)(12); Rule 1.31(b)

Records Concerning a Commodity Pool Operator:

1. ***Itemized Record of Each Commodity Interest Transaction***—An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying commodity, swap type and counterparty, the futures commission merchant or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized; Provided, however, that if the pool operator is a counterparty to a swap, it must comply with the swap data recordkeeping and reporting requirements of part 45 of CFTC regulations, as applicable.

CFTC Rule 4.23(b)(1); Rule 1.31(b)

2. ***Confirmations***—Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant or retail foreign exchange dealer to:

i. The commodity pool operator relating to a personal account of the pool operator; and

ii. Each principal of the pool operator relating to a personal account of such principal.

CFTC Rule 4.23(b)(2); Rule 1.31(b)

3. ***Records of Other Activities***—Books and records of all other transactions in all other activities in which the pool operator engages. Those books and records must include cancelled checks, bank statements, journals, ledgers, invoices, computer generated records and all other records, data and memoranda which have been prepared in the course of engaging in those activities.

CFTC Rule 4.23(b)(3); Rule 1.31(b)

Records Not Maintained at the Commodity Pool Operator's Main Business Office May be Maintained With a Third Party Recordkeeper:

Pursuant to CFTC Exemption Letter 14-114 (Sept. 8, 2014), a commodity pool operator is authorized to maintain its books and records with any third party recordkeeper, rather than at its main business office or with certain specified recordkeepers, provided that the pool operator shall:

1. At the time it registers with the CFTC or delegates its recordkeeping obligations, whichever is later, file a statement that:

i. Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records in lieu of the pool operator;

ii. Sets forth the name and telephone number of a contact for each person who will be keeping required books and records in lieu of the pool operator;

iii. Specifies, by reference to the respective paragraph of Rule 4.23, the books and records that such person will be keeping; and

iv. Contains representations from the pool operator that:

A. It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by this section changes, by identifying in such amendment the new location and any other information that has changed;

B. It remains responsible for ensuring that all books and records required by this section are kept in accordance with CFTC Rule 1.31 (addressed below);

C. Within 48 hours after a request by a representative of the CFTC, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the pool operator's main business office; Provided, however, that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the pool operator will obtain and provide such original books and records for inspection at the pool operator's main business office within 72 hours of such a request; and

D. It will disclose in the pool's Disclosure Document the location of its books and records that are required under this section.

CFTC Rule 4.23(c)(1)

The pool operator shall also file electronically with the National Futures Association a statement from each person who will be keeping required books and records in lieu of the pool operator wherein such person:

i. Acknowledges that the pool operator intends that the person keep and maintain required pool books and records;

ii. Agrees to keep and maintain such records required in accordance with CFTC Rule 1.31 (addressed below); and

iii. Agrees to keep such required books and records open to inspection by any representative of the CFTC or the United States Department of Justice in accordance with CFTC Rule 1.31 (addressed below) and to make such required books and records available to pool participants in accordance with this section.

CFTC Rule 4.23(c)(2)

Recordkeeping Relief for Certain Pools Offered Only to Qualified Eligible Persons:

Upon filing the notice required by CFTC Rule 4.7(d), and subject to compliance with the conditions specified in the rule, a registered commodity pool operator who offers or sells participations in a pool solely to qualified eligible persons (as that term is defined in CFTC Rule 4.7(a)) in an offering which qualifies for exemption from the registration requirements of the Securities Act of 1933 pursuant to section 4(2) of that Act or pursuant to Regulation S, and any bank registered as a commodity pool operator in connection with a pool that is a collective trust fund whose securities are exempt from registration under the Securities Act of 1933 pursuant to section 3(a)(2) of that Act and are offered or sold, without marketing to the public, solely to qualified eligible persons, may claim an exemption from the specific requirements of CFTC Rule 4.23; ... *Provided, that* the commodity pool operator must maintain the reports referred to in CFTC Rule 4.7(b)(2) and (b)(3) and all books and records prepared in connection with his activities as the pool operator of the exempt pool (including, without limitation, records relating to the qualifications of qualified eligible persons and substantiating any performance representations). Books and records that are not maintained at the pool operator's main business office can be maintained by any third party recordkeeper, as further described below. Such books and records must be made available to any representative of the CFTC, the National Futures Association and the United States Department of Justice in accordance with the provisions of CFTC Rule 1.31.

CFTC Rule 4.7(b) and (b)(4); CFTC Rule 1.31

4.7 Records Not Maintained at the Commodity Pool Operator's Main Business Office May be Maintained With a Third Party Recordkeeper:

Pursuant to CFTC Exemption Letter 14-114 (Sept. 8, 2014), a commodity pool operator that relies on CFTC Rule 4.7(d) is authorized to maintain its books and records with any third party recordkeeper, rather than at its main business office or with certain specified recordkeepers, provided that the pool operator shall:

i. At the time it registers with the CFTC or delegates its recordkeeping obligations, whichever is later, file a statement that:

A. Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records in lieu of the pool operator;

B. Sets forth the name and telephone number of a contact for each person who will be keeping required books and records in lieu of the pool operator;

C. Specifies, by reference to the respective paragraph of this section, the books and records that such person will be keeping; and

D. Contains representations from the pool operator that:

1. It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by this section changes, by identifying in such amendment the new location and any other information that has changed;

2. It remains responsible for ensuring that all books and records required by this section are kept in accordance with CFTC Rule 1.31;

3. Within 48 hours after a request by a representative of the CFTC, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the pool operator's main business office; Provided, however, that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the pool operator will obtain and provide such original books and records for inspection at the pool operator's main business office within 72 hours of such a request; and

4. It will disclose in the pool's Disclosure Document the location of its books and records that are required under this section.

ii. The pool operator shall also file electronically with the National Futures Association a statement from each person who will be keeping required books and records in lieu of the pool operator wherein such person:

A. Acknowledges that the pool operator intends that the person keep and maintain required pool books and records;

B. Agrees to keep and maintain such records required in accordance with CFTC Rule 1.31; and

C. Agrees to keep such required books and records open to inspection by any representative of the CFTC, the National Futures Association, or the United States Department of Justice in accordance with CFTC Rule 1.31.

CFTC Rule 4.7(b)(5)

COMMODITY TRADING ADVISOR RECORDKEEPING

Each commodity trading advisor registered or required to be registered under the CEA must make and keep the following books and records in an accurate, current and orderly manner and in accordance with CFTC Rule 1.31. Books and records that are not maintained at the commodity trading advisor's main business office can be maintained by any third party recordkeeper, as further described below. If the commodity trading advisor's main business office is located outside the United States, its territories or possessions, then upon the request of a CFTC representative the trading advisor must provide such books and records as requested at the place designated by the representative in the United States, its territories or possessions within 72 hours after receipt of the request.

CFTC Rule 4.33; Rule 1.31(b)

FIVE YEARS GENERALLY from the date of creation except certain records of oral communications (must be kept not less than one year from the date of such communication),

paper records (must be readily accessible for no less than two years), and swap or related cash or forward records (must be kept from the date of creation until termination, maturity, expiration, transfer, assignment or novation date of the transaction, plus five years after such date (except in the case of pre-execution information concerning the transaction, for which the retention period is five years from creation))

Duration of retention—Unless specified elsewhere in the CEA or CFTC regulations:

1. A records entity (as defined below) shall keep regulatory records (as defined below) of any swap or related cash or forward transaction (as defined in CFTC Rule 23.200(i)), other than regulatory records required by CFTC Rule 23.202(a)(1) and (b)(1)-(3), from the date the regulatory record was created until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and for a period of not less than five years after such date.

2. A records entity that is required to retain oral communications, shall keep regulatory records of oral communications for a period of not less than one year from the date of such communication.

3. A records entity shall keep each regulatory record other than the records described in CFTC Rule 1.31(b)(1) or (b)(2) for a period of not less than five years from the date on which the record was created.

4. A records entity shall keep regulatory records exclusively created and maintained on paper readily accessible for no less than two years. A records entity shall keep electronic regulatory records readily accessible for the duration of the required record keeping period.

Records Concerning the Clients and Subscribers of the Commodity Trading Advisor:

1. ***Name and Address***—The name and address of each client and each subscriber.

CFTC Rule 4.33(a)(1); Rule 1.31(b)

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2. ***Disclosure Document Acknowledgement***—The acknowledgement specified in CFTC Rule 4.31(b), namely an acknowledgment signed and dated by a prospective client stating that the client received a disclosure document for the trading program pursuant to which the trading advisor will direct his account or guide his trading.

CFTC Rule 4.33(a)(2); Rule 1.31(b)

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3. ***Powers of Attorney***—All powers of attorney and other documents, or copies thereof, authorizing the commodity trading advisor to direct the commodity interest account of a client or subscriber.

CFTC Rule 4.33(a)(3); Rule 1.31(b)

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4. ***Other Written Agreements***—All other written agreements, or copies thereof, entered into by the commodity trading advisor with any client or subscriber.

CFTC Rule 4.33(a)(4); Rule 1.31(b)

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5. ***Records of Other Client Accounts***—A list or other record of all commodity interest accounts of clients directed by the commodity trading advisor and of all transactions effected therefor.

CFTC Rule 4.33(a)(5); Rule 1.31(b)

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6. ***Confirmations or Acknowledgements***—Copies of each confirmation or acknowledgment of a commodity interest transaction, and each purchase and sale statement and each monthly statement received from a futures commission merchant, a retail foreign exchange dealer or a swap dealer.

CFTC Rule 4.33(a)(6); Rule 1.31(b)

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7. ***Communications***—The original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be distributed by the commodity trading advisor to any existing or prospective client or subscriber, showing the first date of distribution if not otherwise shown on the document.

CFTC Rule 4.33(a)(7); Rule 1.31(b)

Records Concerning the Commodity Trading Advisor:

1. ***Itemized Record of Each Commodity Interest Transaction***—An itemized daily record of each commodity interest transaction of the commodity trading advisor, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying commodity, swap type and counterparty, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized; Provided, however, that if the trading advisor is a counterparty to a swap, it must comply with the swap data recordkeeping and reporting requirements of part 45 of CFTC regulations, as applicable.

CFTC Rule 4.33(b)(1); Rule 1.31(b)

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2. ***Confirmations*—**Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant or retail foreign exchange dealer to:

i. The commodity trading advisor relating to a personal account of the trading advisor; and

ii. Each principal of the trading advisor relating to a personal account of such principal.

CFTC Rule 4.33(b)(2); Rule 1.31(b)

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3. ***Records of Other Activities*—**Books and records of all other transactions in all other business dealings in trading commodity interests and of all cash market transactions in which the commodity trading advisor and each principal thereof engages. Those books and records must include, as applicable, books and records of the type specified in CFTC Rule 4.33(a)(1) through (a)(7) and in CFTC Rule 4.23(a)(1) through (a)(8).

CFTC Rule 4.33(b)(3); Rule 1.31(b)

Records Not Maintained at the Commodity Trading Advisor's Main Business Office May be Maintained With a Third Party Recordkeeper:

Pursuant to CFTC Exemption Letter 17-24 (April 20, 2017), a commodity trading advisor is authorized to maintain its books and records with any third party recordkeeper, rather than at its main business office, provided that the adviser shall:

1. At the time it registers with the CFTC, delegates its recordkeeping obligations, or June 30, 2017, whichever is later, file a notice with the Division of Swap Dealer and Intermediary Oversight via email, using the email address dsionoaction@cftc.gov, with the subject line "CTA Third-Party Recordkeeping Relief" that:

i. Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records in lieu of the adviser;

ii. Sets forth the name and telephone number of a contact for each person who will be keeping required books and records in lieu of the adviser;

iii. Specifies, by reference to the respective paragraph of CFTC Rules 4.33 and 4.7(c)(2), the books and records that such third-party recordkeeper will be keeping; and

iv. Be signed by the adviser, and contain representations from the adviser that:

A. It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by CFTC Rules 4.33 and 4.7(c)(2) changes, by identifying in such amendment the new location and any other information that has changed;

B. It remains responsible for ensuring that all books and records required to be maintained by CFTC Rules 4.33 and 4.7(c)(2) are kept in accordance with CFTC Rule 1.31;

C. Within 48 hours after a request by a representative of the CFTC, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the adviser's main business office; *Provided, however*, that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the adviser will obtain and provide such original books and records for inspection at the adviser's main business office within 72 hours of such a request; and

D. It will disclose in its Disclosure Document, if any, the location of its books and records that are required under CFTC Rules 4.33 and 4.7(c)(2).

CFTC Rule 4.33 and 4.7(c)(2)

Recordkeeping Relief for Certain Clients Who Are Qualified Eligible Persons:

Upon filing the notice required by CFTC Rule 4.7(d), and subject to compliance with the conditions specified in the rule, a registered commodity trading advisor who anticipates directing or guiding the commodity interest accounts of qualified eligible persons (as that term is defined in CFTC Rule 4.7(a)) may claim, with respect to the accounts of qualified eligible persons who have given due consent to their account being an exempt account under CFTC Rule 4.7, an exemption from the specific requirements of CFTC Rule 4.33; *Provided, that* the commodity trading advisor must maintain all books and records prepared in connection with his activities as the commodity trading advisor of qualified eligible persons (including, without limitation, records relating to the qualifications of such qualified eligible persons and substantiating any performance representations). Books and records that are not maintained at the commodity trading advisor's main business office can be maintained by any third party recordkeeper, as further described below. The commodity trading advisor must also make such books and records available to any representative of the CFTC, the National Futures Association and the United States Department of Justice in accordance with the provisions of CFTC Rule 1.31.

CFTC Rule 4.7(c) and (c)(2); CFTC Rule 1.31

4.7 Records Not Maintained at the Commodity Trading Advisor's Main Business Office May be Maintained With a Third Party Recordkeeper:

See above section relating to CFTC Exemption Letter 17-24, whereby the CFTC provided exemptive relief from the main business office requirement of CFTC Rules 4.33 and

4.7(c)(2) to allow a commodity trading advisor to use any third-party recordkeeper to maintain such records, provided that the requisite requirements are satisfied.

CFTC Rule 4.33 and 4.7(c)(2)

RECORDS OF COMMODITY INTEREST AND RELATED CASH OR FORWARD TRANSACTIONS

***Registered Members of Designated Contract Markets or Swap Execution Facilities*—**Each member of a designated contract market or swap execution facility, which may include an investment adviser to a mutual fund, that is registered or required to be registered with the CFTC as a floor trader, commodity pool operator, commodity trading advisor, swap dealer, or major swap participant, shall keep:

i. All transaction records; and

ii. All written pre-trade communications.

These records with the exception of pretrade communications shall be kept in a form and manner that allows for the identification of a particular transaction.

CFTC Rule 1.35(a)(2) and (a)(5); Rule 1.31(b)

Unregistered Members of Designated Contract Markets or Swap Execution Facilities. Each member of a designated contract market or swap execution facility that is not registered or required to be registered with the CFTC in any capacity, shall keep all transaction records; provided that such records need not include transmissions by short message service (SMS) or multimedia messaging service (MMS).

CFTC Rule 1.35(a)(6); Rule 1.31(b)

Transaction Records include: all orders (filled, unfilled, or canceled); trading cards; signature cards; street books; journals; ledgers; canceled checks; copies of confirmations; copies of statements of purchase and sale; all other records, which have been prepared in the course of its business of dealing in commodity interests and related cash or forward transactions, including records of transmissions by short message service (SMS) or multimedia messaging service (MMS); and all documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or regulations of either the CFTC, a designated contract market or a swap execution facility.

CFTC Rule 1.35(a)(1)(i) and (ii)

Written Pre-Trade Communications include all written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest and any related cash or forward transactions, whether transmitted by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media (including SMS or MMS), provided that such communications were transmitted in writing rather than transmitted orally.

CFTC Rule 1.35(a)(1)(iii)

Related Cash or Forward Transaction means a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a commodity interest transaction where the commodity interest transaction and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another.

CFTC Rule 1.35(a)(7)

Form and Manner Requirements—All records required to be kept by this section must be kept in accordance with the requirements of CFTC Rule 1.31. Record holders must produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by an authorized representative of the CFTC or the United States Department of Justice.

CFTC Rule 1.35(a)(8)

Alternative Compliance Schedule—

i. The CFTC may in its discretion establish an alternative compliance schedule for the requirement to record oral communications under CFTC Rule 1.35(a)(1) or (4) that is found to be technologically or economically impracticable for an affected entity that seeks, in good faith, to comply with the requirement to record oral communications under CFTC Rule 1.35(a)(1) or (4) within a reasonable time period beyond the date on which compliance by such affected entity is otherwise required.

ii. A request for an alternative compliance schedule under CFTC Rule 1.35(a)(9)(i) shall be acted upon within 30 days from the time such a request is received, or it shall be deemed approved.

iii. The CFTC has delegated to the Director of the Division of Swap Dealer and Intermediary Oversight or such other employee or employees as the Director may designate from time to time, the authority to exercise the discretion. Notwithstanding such delegation, in any case in which a CFTC employee delegated authority under this paragraph believes it appropriate, he or she may submit to the CFTC for its consideration the question of whether an alternative compliance schedule should be established. The delegation of authority in this paragraph shall not prohibit the CFTC, at its election, from exercising the authority set forth in CFTC Rule 1.35(a)(9)(i).

iv. Relief granted under section (i) above shall not cause an affected entity to be out of compliance or deemed in violation of any recordkeeping requirements.

CFTC Rule 1.35(a)(9)

Post-Execution Allocation of Bunched Orders—Specific customer account identifiers for accounts included in bunched orders executed on designated contract markets or swap execution facilities need not be recorded at time of order placement or upon report of execution if the requirements of paragraphs (i) through (v) below are met. Specific customer account identifiers for accounts included in bunched orders involving swaps need not be included in confirmations or acknowledgments provided by swap dealers or major swap participants pursuant to CFTC Rule 23.501(a) if the requirements of paragraphs (i) through (v) below are met.

i. ***Eligible account managers for orders executed on designated contract markets or swap execution facilities***. The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers for trades executed on designated contract markets or swap execution facilities:

A. A commodity trading advisor registered with the CFTC pursuant to the CEA or excluded or exempt from registration under the CEA or the CFTC's rules, except for entities exempt under CFTC Rule 4.14(a)(3);

B. An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law or rule;

C. A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation;

D. A foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in CFTC Rule 4.7(a)(1)(iv);

E. A futures commission merchant registered with the CFTC pursuant to the CEA; or

F. An introducing broker registered with the CFTC pursuant to the CEA.

ii. ***Eligible account managers for orders executed bilaterally***. The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers for trades executed bilaterally:

A. A commodity trading advisor registered with the CFTC pursuant to the CEA or excluded or exempt from registration under the CEA or the CFTC's rules, except for entities exempt under CFTC Rule 4.14(a)(3);

B. A futures commission merchant registered with the CFTC pursuant to the CEA; or

C. An introducing broker registered with the CFTC pursuant to the CEA.

iii. ***Information***. Eligible account managers shall make the following information available to customers upon request:

A. The general nature of the allocation methodology the account manager will use;

B. Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation; and

C. Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable and consistent with CFTC Rules 155.3(a)(1) and 155.4(a)(1), any account in which the account manager has an interest.

iv. ***Allocation***. Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

A. Allocations must be made as soon as practicable after the entire transaction is executed, but in any event no later than the following times: For cleared trades, account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade. For uncleared trades, account managers must provide allocation information to the counterparty no later than the end of the calendar day that the swap was executed.

B. Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

C. The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

v. ***Records***.

A. Eligible account managers shall keep and must make available upon request of any representative of the CFTC, the United States Department of Justice, or other appropriate regulatory agency, the information specified in paragraph (iii) above.

B. Eligible account managers shall keep and must make available upon request of any representative of the CFTC, the United States Department of Justice, or other appropriate regulatory agency, records sufficient to demonstrate that all allocations meet the standards of paragraph (iv) above and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.

C. Futures commission merchants, introducing brokers, or commodity trading advisors that execute orders or that carry accounts eligible for post-execution allocation, and members of designated contract markets or swap execution facilities that execute such orders, must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.

D. In addition to any other remedies that may be available under the CEA or otherwise, if the CFTC has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (A) or (B) above, the CFTC may inform in writing any designated contract market, swap execution facility, swap dealer, or major swap participant, and that designated contract market, swap execution facility, swap dealer, or major swap participant shall prohibit the account manager from submitting orders for execution except for liquidation of open positions and no futures commission merchant shall accept orders for execution on any designated contract market, swap execution facility, or bilaterally from the account manager except for liquidation of open positions.

E. Any account manager that believes he or she is or may be adversely affected or aggrieved by action taken by the CFTC under paragraph (D) above shall have the opportunity for a prompt hearing in accordance with the provisions of CFTC Rule 21.03(g).

CFTC Rule 1.35(b)(5)

BOOKS AND RECORDS; KEEPING AND INSPECTION (FORM AND MANNER REQUIREMENTS)

Definitions—For purposes of this section:

1. ***Electronic regulatory records*** means all regulatory records other than regulatory records exclusively created and maintained by a records entity on paper.

2. ***Records entity*** means any person required by the CEA or CFTC regulations in this chapter to keep regulatory records.

3. ***Regulatory records*** means all books and records required to be kept by the CEA or CFTC regulations in this chapter, including any record of any correction or other amendment to such books and records, provided that, with respect to such books and records stored electronically, regulatory records shall also include:

i. Any data necessary to access, search, or display any such books and records; and

ii. All data produced and stored electronically describing how and when such books and records were created, formatted, or modified.

CFTC Rule 1.31(a)

***Duration of retention*—**Unless specified elsewhere in the CEA or CFTC regulations:

1. A records entity shall keep regulatory records of any swap or related cash or forward transaction (as defined in CFTC Rule 23.200(i)), other than regulatory records required by CFTC Rule 23.202(a)(1) and (b)(1)-(3), from the date the regulatory record was created until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and for a period of not less than five years after such date.

2. A records entity that is required to retain oral communications, shall keep regulatory records of oral communications for a period of not less than one year from the date of such communication.

3. A records entity shall keep each regulatory record other than the records described in CFTC Rule 1.31(b)(1) or (b)(2) for a period of not less than five years from the date on which the record was created.

4. A records entity shall keep regulatory records exclusively created and maintained on paper readily accessible for no less than two years. A records entity shall keep electronic regulatory records readily accessible for the duration of the required record keeping period.

CFTC Rule 1.31(b)

***Form and Manner of Retention*—**Unless specified elsewhere in the CEA or CFTC regulations in this chapter, all regulatory records must be created and retained by a records entity in accordance with the following requirements:

1. ***Generally.*** Each records entity shall retain regulatory records in a form and manner that ensures the authenticity and reliability of such regulatory records in accordance with the CEA and CFTC regulations in this chapter.

2. ***Electronic regulatory records.*** Each records entity maintaining electronic regulatory records shall establish appropriate systems and controls that ensure the authenticity and reliability of electronic regulatory records, including, without limitation:

   i. Systems that maintain the security, signature, and data as necessary to ensure the authenticity of the information contained in electronic regulatory records and to monitor compliance with the CEA and CFTC regulations in this chapter;

   ii. Systems that ensure the records entity is able to produce electronic regulatory records in accordance with this section, and ensure the availability of such regulatory records in the event of an emergency or other disruption of the records entity's electronic record retention systems; and

   iii. The creation and maintenance of an up-to-date inventory that identifies and describes each system that maintains information necessary for accessing or producing electronic regulatory records.

CFTC Rule 1.31(c)

Inspection and Production of Regulatory Records—Unless specified elsewhere in the CEA or CFTC regulations in this chapter, a records entity, at its own expense, must produce or make accessible for inspection all regulatory records in accordance with the following requirements:

1. ***Inspection***. All regulatory records shall be open to inspection by any representative of the CFTC or the United States Department of Justice.

2. ***Production of paper regulatory records***. A records entity must produce regulatory records exclusively created and maintained on paper promptly upon request of a CFTC representative.

3. ***Production of electronic regulatory records***.

   i. A request from a CFTC representative for electronic regulatory records will specify a reasonable form and medium in which a records entity must produce such regulatory records.

   ii. A records entity must produce such regulatory records in the form and medium requested promptly, upon request, unless otherwise directed by the CFTC representative.

4. ***Production of original regulatory records***. A records entity may provide an original regulatory record for reproduction, which a CFTC representative may temporarily remove from such entity's premises for this purpose. Upon request of the records entity, the CFTC representative shall issue a receipt for any original regulatory record received. At the request of a CFTC representative, a records entity shall, upon the return thereof, issue a receipt for the original regulatory record returned by such representative.

CFTC Rule 1.31(d)

RECORD RETENTION IN ANTICIPATION OF LITIGATION

Record retention in anticipation of litigation is an extremely important issue. With a good record retention policy in place, a company will be able, among other things, to reduce the cost of litigation and minimize the risk of court sanctions.[1] There are potentially three different phases one must consider with regard to record retention: everyday record retention, pre-litigation record retention, and record retention during litigation.

1. *Everyday Record Retention*

If litigation ever arises, a company with a good everyday record retention policy in place will be able to handle the litigation in the most efficient and effective manner. The first step to

[1] Kathryn S. Baltes, *Records Retention: The Need for a Good Corporate Policy,* Findlaw, May 28, 2003, http://library.findlaw.com/2003/May/28/132774.html.

building an effective everyday retention policy is to establish guidelines that all personnel are aware of and can follow. Establishing a record retention policy that is easy to follow can not only prevent mistaken destruction but also may prevent excessive retention. Although excessive retention may not seem like a "problem," if a company does not have an efficient record retention, preservation *and* destruction policy, the company may waste valuable time and energy reviewing duplicative material if and when litigation does arise.

2. *Pre-litigation Record Retention*

a. *When does "anticipation of litigation" begin?*

Beyond having a solid retention policy in place on a daily basis, a company must also take reasonable steps once litigation is anticipated to ensure that record retention is handled appropriately. Michael Arkfeld, an expert in the area of document retention in anticipation of litigation states:

> Oftentimes, attorneys are under the impression that the duty to preserve arises when they receive a preservation letter from the opposing party, a preservation order from the court or a discovery request from the opposing party. This is simply not the case . "[a] preservation obligation may arise from many sources, including common law, statutes, regulations, or a court order in a case."[2]

Depending on jurisdiction, the duty to preserve arises when litigation is "reasonably anticipated,"[3] "pending, imminent, reasonably foreseeable,"[4] or "pending or impending."[5] Litigation is reasonably foreseeable or imminent based on "when the party had 'notice"' of the litigation.[6] However, the "court's decision must be guided by the facts of each case."[7]

The standards for preservation *in anticipation* of litigation are fact specific, so it is not always easy for a company to know the exact actions that it should take and when. However, once a company does reasonably anticipate litigation, a party "must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of

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2 Michael R. Arkfeld, *Arkfeld on Electronic Discovery and Evidence*, 6-32 (Law Partner Publishing, LLC 4th ed.) (2017) (quoting Fed. R. Civ. P. 37; Advisory Committee Note of 2006).

3 Zubulake v. UBS Warburg, LLC, 220 F.R.D. 212, 217 (S.D.N.Y. 2003); see also Silvestri v. GMC, 271 F.3d 583, 591 (4th Cir. 2001) (pending or reasonably foreseeable).

4 Shamis v, Ambassador Factors Corp., 34 F. Supp. 2d 879, 888-89 (S.D.N.Y. 1999).

5 Danis v., USN Commc'ns Inc., 53 Fed. R. Serv. 3d 828, 828 (N.D. Ill. Oct. 23, 2000).

6 Arkfeld, supra note 3, at 7-404.

7 Id. (quoting Cache La Poudre Feeds, LLC v. Land O'Lakes Farmland Feed, LLC, 244 F.R.D. 614, 621 (D. Colo. 2007)).

relevant documents."[8] To ensure preservation before any formal discovery begins a party must analyze, for purposes of disclosure, the records "including a description by category and location of documents and data compilations."[9] The requirements for record retention will often depend on applicable regulations, the jurisdiction, the facts of the case, and "the specificity of document requests."[10] By determining the applicable regulations in place regarding record retention, a company will be able to efficiently move from exercising its everyday record retention to implementing an effective "in anticipation of litigation" record retention policy.

b. *Once "Pre-litigation" Begins*

One of the first actions a company should take when anticipating litigation is to draft a preservation memorandum and send it to "personnel who may have any information relevant to the lawsuit as well as to the recordkeeper advising them that an actual or potential claim has been made."[11] The preservation of potentially important documents in anticipation of litigation may involve many different people in a number of different fields. For example, "[d]epending on the type of data, the preservation memorandum may go to the adviser's custodian(s) of email servers, internet service providers, digital printers, and/or voicemail, as well as other personnel that have information relevant to the lawsuit."[12]

As pre-litigation begins, a company must consider that discovery of both paper documents and electronic documents requires the attention of many different people. By encouraging technical personnel, legal personnel, and advisers to attend to the preservation of documents and work together, a company can ensure that the preservation process is efficient and effective.

Beyond knowing "what" actions should be taken in the event of litigation, a company might also consider "who" should be taking these actions.[13] It is important for a company to use a diverse group of people in the record retention process.[14] Diversity in this aspect is important for a number of reasons. Lawyers, IT personnel, and email server administrators will all have different

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8 Id. at 7-423 (quoting Thompson v. HUD, 219 F.R.D. 93, 100 (D. Md. 2003)).

9 Virginia R. Llewellyn and E. Pennock Gheen, *Effective Electronic Discovery: Implementing a Response Plan,* For the Defense, June 2004, at 21, *available at* http://www.lexisnexis.com/applieddiscovery/newsevents/pdfs/200406_dri.pdf

10 Id. at 22 (citing Wiginton v. CB Richard Ellis, No. 02C6832. WL 22439865, 4 (N.D. Ill. 2003)).

11 Investment Company Institute, Electronic Recordkeeping & Communications: Guidance for Investment Companies & Investment Advisers, 22 (2006).

12 Id. at 16.

13 Llewellyn and Gheen, supra note 10, at 21.

14 Id. at 22.

concerns with regard to the significance of what records need to be retained.[15] Additionally, a company may want to consider the possibility that "sometimes employees become too close to a given situation to objectively respond to a request to produce documents and might, consequently, tend to either over- or under-preserve documents."[16] With this possibility in mind, it is prudent throughout pre-litigation and litigation to have "various personnel throughout the organization" involved in the preservation process.[17]

Depending on the situation, pre-litigation may be an extremely drawn out process. The potentially extended timeline will require the personnel involved in the retention and preservation process to reevaluate their retention policy. The company "may want to consider re-issuing a preservation memorandum to educate new employees and to remind all other employees of the need to preserve records."[18] Further, ensuring personnel are continuously reminded of retention and preservation is not just important during pre-litigation, but is also an important factor for everyday record retention effectiveness.

3. *Litigation Record Retention*

a. *Generally*

Once litigation has formally commenced, a company should adhere to the following best practices. First, the party may "seek a formal court preservation order for electronic data early in the litigation."[19] A stipulated preservation order is beneficial in that the order clearly outlines what must be preserved and the party gets "judicial approval of what may be destroyed."[20] A party may also get a judicial order against the opposing party in order to preserve "evidence without first consulting the party that may be producing the evidence."[21] In issuing the order, the court should consider:

> 1) the level of concern the court has for the continuing existence and maintenance of the integrity of the evidence in question in the absence of an order directing preservation of the evidence; 2) any irreparable harm likely to result to the party seeking the preservation of evidence absent an order directing preservation; and 3) the capability of an individual, entity, or party to maintain the evidence sought to be preserved.[22]

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[15] Randolph A. Kahn, *The Risk-Cost Retention Model: A New Approach to Records Retention,* Info. Mgmt. J. 1 (May/June 2006), *available at* https://www.yumpu.com/en/document/view/40579207/the-risk-cost-retention-model.

[16] Investment Company Institute, supra note 12, at 16.

[17] Id. at 31.

[18] Id. at 16.

[19] Id. at 22.

[20] Id.

[21] Id.

[22] Capricorn Power Co. v. Siemens Westinghouse Power Corp., 220 F.R.D. 429, 433 (W.D. Pa. 2004).

A court order issued against the opposing side may prevent serious problems further along in the litigation arising from lack of information that could have been discovered had the opposing side been forced to retain their documents.

A company must also consider spoliation. "Spoliation is the negligent or intentional destruction, mutilation, alteration, or concealment of evidence."[23] A company must avoid spoliation or it could face harsh sanctions by the court. Spoliation can also be the "basis of an independent tort action or obstruction-of-justice charge."[24] Although "[d]ocuments can be legally destroyed pursuant to a reasonable and consistent records-retention policy if no litigation threat is pending and documents are not destroyed in contemplation of a government investigation," spoliation issues are easily avoided by having a solid retention policy in place.[25]

b. *The Discovery of Electronically Stored Information*

The discovery of Electronically Stored Information ("ESI") is another relevant concern. "ESI currently includes email messages, word-processing files, webpages, and databases that are created and stored on computers, magnetic disks..., optical disks..., and flash memory."[26] In 2015, Federal Rules of Civil Procedure 26 and 37 were amended. Significantly, these rules now use the term "electronically stored information" and define it as "a distinct category of information that, along with "documents" and "tangible things," is subject to discovery rights and obligations."[27]

Rule 26(f) of the Federal Rules of Civil Procedure requires that a conference between the parties take place to allow for the discussion of issues relating to the disclosure and discovery of ESI and other materials, among other topics.[28] This conference can be extremely beneficial to both parties because it forces parties at an early stage to designate the depth of discovery, allowing each party to better tailor their record retention and preservation. Often times, parties do not take this requirement seriously.[29] However, with electronic discovery, it is important for the parties to meet and confer to discuss the electronic discovery process. For this process to be effective, "attorneys must be familiar with how their clients use computers on a daily basis and

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23 INVESTMENT COMPANY INSTITUTE, supra note 12, at 23.

24 Baltes, supra note 2.

25 Id.

26 Barbara J. Rothstein, Ronald J. Hedges, and Elizabeth C. Wiggins, Federal Judicial Center, *Managing Discovery of Electronic Information: A Pocket Guide for Judges* 3d edition, (2017), *available at* https://www.fjc.gov/sites/default/files/2017/Managing_Discovery_of_Electronic_Information_3d_ed.pdf.

27 Id.

28 FED R. CIV. P. 26(f).

29 Rothstein, Hedges, and Wiggins, supra note 28, at 9.

understand what information is available, how routine computer operations may change it, and what is entailed in producing it."[30]

The 2015 amendment to Rule 37 of the Federal Rules of Civil Procedure refers to failures in disclosing or cooperating in discovery. Rule 37(e) now states that:

> [i]f electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court: (1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or (2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may: (A) presume that the lost information was unfavorable to the party; (B) instruct the jury that it may or must presume the information was unfavorable to the party; or (C) dismiss the action or enter a default judgment.[31]

Significantly, the Advisory Committee's Notes acknowledge that documents may be altered or deleted for reasons unrelated to litigation and clarifies that this rule does not apply to documents destroyed before a duty to preserve arises.[32] Applying this understanding, it seems that if a company has an effective record retention, preservation and destruction policy, a court will not issue sanctions when documents are deleted prior to when a duty to preserve arises and where the company took reasonable steps to preserve the documents. The Advisory Committee Notes make clear that:

> [d]ue to the ever-increasing volume of electronically stored information and the multitude of devices that generate such information, perfection in preserving all relevant electronically stored information is often impossible. [T]he routine, good-faith operation of an electronic information system would be a relevant factor for the court to consider in evaluating whether a party failed to take reasonable steps to preserve lost information, although the prospect of litigation may call for reasonable steps to preserve information by intervening in that routine operation. This rule recognizes that "reasonable steps" to preserve suffice; it does not call for perfection. The court should be sensitive to the party's sophistication with regard to litigation in evaluating preservation efforts; some litigants, particularly individual litigants, may be less familiar with preservation obligations than others who have considerable experience in litigation.[33]

Therefore, although record preservation becomes important once litigation is anticipated or has begun, a good every day record retention policy is invaluable.

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30 Id. at 13.
31 Fed. R. Civ. P. 37(e).
32 Fed. R. Civ. P. 37 Advisory Committee's Notes.
33 Id.

4. *Conclusion*

Carrying out an effective retention policy daily, in anticipation of litigation, and during the litigation process are some of the most important things a company can do. Importantly, if "document retention policies are consistent with federal, state and local legislation and regulations, organizations are free to develop retention policies that are reasonably tailored to their own needs."[34] With an effective retention policy in place, a company will be able to retain records that are necessary and pertinent while eliminating the bulk of unnecessary and repetitive documents. Further, "penalties for illegal document destruction or alteration are severe, and the risk of destroying important documents is high if a company does not have or follow a well-reasoned document-retention plan."[35] Thus, the benefits of implementing a solid retention policy are considerable: a company can save time, money and aggravation.

Based on the foregoing, a company should take the following steps[36] in anticipation of litigation:

Preserve Data:

- Preservation requirements will depend on jurisdiction, facts, and specificity of documents requested.[37]
- Electronic document preservation needs to be considered since issues often arise as "full-blown disputes."[38]
- "Most important is the ability to demonstrate to the court a reasonable, legally defensible plan for managing electronic discovery that has been coordinated between in-house and outside counsel and the necessary technical personnel."[39]

Gather Responsive Data:

- Put together a team of both legal and technical personnel to assess and plan "for efficient data gathering."[40]
- In preparing a data gathering plan, think about where the documents and data are stored.[41]
    - "Where is backup data stored?"

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34 Arkfeld, supra note 3, at 7-423.
35 Baltes, supra note 2.
36 The following steps were adapted from Llewellyn and Gheen, supra note 10.
37 Llewellyn and Gheen, supra note 10, at 22.
38 Rothstein, Hedges, and Wiggins, supra note 28, at 2.
39 Llewellyn and Gheen, supra note 10, at 22.
40 Id.
41 Id.

    - "Where are documents saved on the network?" "Where are email messages kept?"
    - "What are the options for local storage on hard drives and removable media?"
- In preparing a data gathering plan, think about who is best equipped to efficiently provide the data needed and what data is specifically required by law.[42]
    - "Who are the custodians of interest?"
        - "Based on specific document requests?"
        - "Based on involvement in specific activities?"
        - "Based on geography?"
        - "Based on department or job function?"
        - "Based on dates of employment?"
    - "What are the dates of interest?"
    - "Must deleted files be recovered and produced?"
    - "Are backup tapes within the scope of the request?"
        - "If so, what is the time period for which tapes must be restored?"
        - "If so, are monthly, quarterly, or yearly snapshots acceptable?"
    - "In what form must the data be produced (and how does that impact data collection?)"
    - "Can current in-house IT staff handle the workload, or does it make sense to contract data-gathering consultants to help?"[43]

Process Data for Attorney Review:

- "In paper discovery, documents are "processed" by making working copies, stamping Bates numbers, storing boxed documents in a central repository and, in some cases, scanning and coding the document so images of the paper can be stored in a database."[44]
- "There are opportunities for significant cost savings during the data processing stage. Duplicate documents can be eliminated, avoiding the need for repetitive review. Keyword searches and other "culling" mechanisms can also be employed at this stage to reduce the original set of document to a more manageable size."[45]

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42 Id. at 23.
43 Id.
44 Id.
45 Id.

Review Data for Privileges and Responsiveness:

- "[I]t is important to establish a review protocol early in" litigation.[46]
- "Defining parameters for privilege assessment, assigning the documents of particular custodians to individual members of the review team, and establishing a pre-approved set of search words or terms can all contribute to efficient, effective document review.[47]

Produce Documents in an Efficient and Cost-Effective Manner:

- Both the legal personnel and technical personnel must work together to carry out production.[48]
- Courts in different jurisdictions have varying requirements for the production of discoverable information. Therefore, it is important to carefully note the specific production requirements of the relevant jurisdiction.[49]
- "In resolving disputes over the form of production, considerations for the court include the following:
  - What alternatives are available? What are their benefits and drawbacks for the requesting and responding parties?
  - How difficult will it be for the responding party to preserve, collect, review, and produce ESI in the form requested?
  - If the responding party is not producing ESI in the form in which it is ordinarily maintained, is the party producing it in a form that is reasonably usable by the requesting party?
  - If the requesting party disputes that the proposed form of production is reasonably usable, what limits its use? Has the responding party stripped features, such as searchability, metadata, or embedded data that may be important? If so, what is the justification?"[50]
- "The appropriate form of production in a given case is another fact-specific matter that must be discussed early in litigation."[51]

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46 Id.
47 Id.
48 Id. at 2.
49 Id.
50 Rothstein, Hedges, and Wiggins, supra note 28, at 14.
51 Llewellyn and Gheen, supra note 10, at 24.

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