



The Hedge Fund Transparency Act of 2009

Books and Records to Be Maintained by Hedge Funds

- a. Every hedge fund adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books and records relating to its business:
1. A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.
 2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
 3. A memorandum of each order given or made by the fund adviser for the purchase or sale of any security, of any instruction received by the hedge fund 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 hedge fund 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.
 4. All check books, bank statements, cancelled checks and cash reconciliations of the hedge fund adviser.
 5. All bills or statements (or copies thereof), paid or unpaid, relating to the business of the hedge fund adviser as such.
 6. All trial balances, financial statements, and internal audit working papers relating to the business of such hedge fund adviser.
 7. Originals of all written communications received and copies of all written communications sent by such hedge fund 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, or (iii) the placing or execution of any order to purchase or sell any security: *Provided, however, (a) That the hedge fund 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 hedge fund adviser, and (b) that if the hedge fund adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the hedge fund 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 hedge fund adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.*



8. A list or other record of all accounts in which the hedge fund adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.
9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the hedge fund adviser, or copies thereof.
10. All written agreements (or copies thereof) entered into by the hedge fund adviser with any client or otherwise relating to the business of such hedge fund adviser as such.
11. A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the hedge fund adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such hedge fund 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 hedge fund adviser indicating the reasons therefor.
12.
 - i. A copy of the hedge fund 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; 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 hedge fund adviser.
13.
 - 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 rule in lieu of such reports;
 - ii. A record of the names of persons who are currently, or within the past five years were, access persons of the hedge fund 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.
 - iv. An hedge fund adviser shall not be deemed to have violated the provisions of this paragraph (a)(13) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.
14. A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such hedge fund adviser in accordance



with the provisions of **Rule 204-3** under the Act, and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. All written acknowledgments of receipt obtained from clients pursuant to **Rule 206(4)-3(a)(2)(iii)(B)** and copies of the disclosure documents delivered to clients by solicitors pursuant to Rule 206(4)-3.
16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the hedge fund adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such hedge fund 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.
17.
 - i. A copy of the hedge fund 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, and
 - ii. Any records documenting the hedge fund adviser's annual review of those policies and procedures conducted pursuant to **Rule 206(4)-7(b)** of this chapter.
- b. If an hedge fund adviser subject to paragraph (a) of this section has custody or possession of securities or funds of any client, the records required to be made and kept under paragraph (a) of this section shall include:
 1. 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.
 2. A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.
 3. Copies of confirmations of all transactions effected by or for the account of any such client.



4. 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 such security, the amount or interest of each such client, and the location of each such security.
- c.
1. Every hedge fund adviser subject to paragraph (a) of this section 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 hedge fund 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.
 - ii. For each security in which any such client has a current position, information from which the hedge fund adviser can promptly furnish the name of each such client, and the current amount or interest of such client.
 2. Every hedge fund 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:
 - i. Copies of all policies and procedures required by [Rule 206\(4\)-6](#).
 - ii. A copy of each proxy statement that the hedge fund adviser receives regarding client securities. An hedge fund adviser may satisfy this requirement by relying on a third party to make and retain, on the hedge fund 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.
 - iii. A record of each vote cast by the hedge fund adviser on behalf of a client. An hedge fund adviser may satisfy this requirement by relying on a third party to make and retain, on the hedge fund 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).
 - 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.
 - 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 hedge fund adviser to any (written or oral) client request for information on how the adviser voted proxies on behalf of the requesting client.
- d. Any books or records required by this section may be maintained by the hedge fund adviser in such manner that the identity of any client to whom such hedge fund adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.



- e.
1. All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this rule (except for books and records required to be made under the provisions of paragraphs (a)(11), (a)(12)(i), (a)(12)(iii), (a)(13)(ii), (a)(13)(iii), (a)(16), and (a)(17)(i) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the hedge fund adviser.
 2. Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the hedge fund adviser and of any predecessor, shall be maintained in the principal office of the hedge fund adviser and preserved until at least three years after termination of the enterprise.
 - 3.
 - iv. Books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the hedge fund adviser, from the end of the fiscal year during which the hedge fund adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication.
 - v. *Transition rule.* If you are an hedge fund adviser to a private fund as that term is defined in [Rule 203\(b\)\(3\)-1](#), and you were exempt from registration under section [203\(b\)\(3\)](#) of the Act prior to February 10, 2005, paragraph (e)(3)(i) of this section does not require you to maintain or preserve books and records that would otherwise be required to be maintained or preserved under the provisions of paragraph (a)(16) of this section to the extent those books and records pertain to the performance or rate of return of such private fund or other account you advise for any period ended prior to February 10, 2005, provided that you were not registered with the Commission as an hedge fund adviser during such period, and provided further that you continue to preserve any books and records in your possession that pertain to the performance or rate of return of such private fund or other account for such period.

An hedge fund adviser subject to paragraph (a) of this section, before ceasing to conduct or discontinuing business as an hedge fund adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing, at its principal office, Washington, D.C. 20549, of the exact address where such books and records will be maintained during such period.

Micrographic and electronic storage permitted.

0. *General.* The records required to be maintained and preserved pursuant to this part may be maintained and preserved for the required time by an hedge fund adviser on:
 - i. Micrographic media, including microfilm, microfiche, or any similar medium; or
 - ii. Electronic storage media, including any digital storage medium or system that meets the terms of this section.



1. *General requirements.* The hedge fund adviser must:
 - i. Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;
 - ii. Provide promptly any of the following that the Commission (by its examiners or other representatives) may request:
 - A. A legible, true, and complete copy of the record in the medium and format in which it is stored;
 - B. A legible, true, and complete printout of the record; and
 - C. Means to access, view, and print the records; and
 - iii. Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.
2. *Special requirements for electronic storage media.* In the case of records on electronic storage media, the hedge fund adviser must establish and maintain procedures:
 - i. To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;
 - ii. To limit access to the records to properly authorized personnel and the Commission (including its examiners and other representatives); and
 - iii. To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.
0. Any book or other record made, kept, maintained and preserved in compliance with [Rule 17a-3](#) and [Rule 17a-4](#) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall be deemed to be made, kept maintained and preserved in compliance with this section.
1. A record made and kept pursuant to any provision of paragraph (a) of this section, which contains all the information required under any other provision of paragraph (a) of this section, need not be maintained in duplicate in order to meet the requirements of the other provision of paragraph (a) of this section.

As used in this section the term "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the hedge fund adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

0. Except as provided in paragraph (j)(3) of this section, each non-resident hedge fund adviser registered or applying for registration pursuant to [section 203](#) of the Act shall keep, maintain and preserve, at a place within the United States designated in a notice from him as provided in paragraph (j)(2) of this section true,



correct, complete and current copies of books and records which he is required to make, keep current, maintain or preserve pursuant to any provisions of any rule or regulation of the Commission adopted under the Act.

1. Except as provided in paragraph (j)(3) of this section, each nonresident hedge fund adviser subject to this paragraph (j) shall furnish to the Commission a written notice specifying the address of the place within the United States where the copies of the books and records required to be kept and preserved by him pursuant to paragraph (j)(1) of this section are located. Each non-resident hedge fund adviser registered or applying for registration when this paragraph becomes effective shall file such notice within 30 days after such rule becomes effective. Each non-resident hedge fund adviser who files an application for registration after this paragraph becomes effective shall file such notice with such application for registration.
2. Notwithstanding the provisions of paragraphs (j)(1) and (2) of this section, a non-resident hedge fund adviser need not keep or preserve within the United States copies of the books and records referred to in said paragraphs (j)(1) and (2), if:
 - i. Such non-resident hedge fund adviser files with the Commission, at the time or within the period provided by paragraph (j)(2) of this section, a written undertaking, in form acceptable to the Commission and signed by a duly authorized person, to furnish to the Commission, upon demand, at its principal office in Washington, D.C., or at any Regional Office of the Commission designated in such demand, true, correct, complete and current copies of any or all of the books and records which he is required to make, keep current, maintain or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in such demand. Such undertaking shall be in substantially the following form:

The undersigned hereby undertakes to furnish at its own expense to the Securities and Exchange Commission at its principal office in Washington, D.C. or at any Regional Office of said Commission specified in a demand for copies of books and records made by or on behalf of said Commission, true, correct, complete and current copies of any or all, or any part, of the books and records which the undersigned is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Securities and Exchange Commission under the Hedge fund advisers Act of 1940. This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all of said books and records at a place within the United States in compliance with Rule 204-2(j) under the Hedge fund advisers Act of 1940. This undertaking shall be binding upon the undersigned and the heirs, successors and assigns of the undersigned, and the written irrevocable consents and powers of attorney of the undersigned, its general partners and managing agents filed with the Securities and Exchange Commission shall extend to and cover any action to enforce same.

and

- ii. Such non-resident hedge fund adviser furnishes to the Commission, at his own expense 14 days after written demand therefor forwarded to him by



registered mail at his last address of record filed with the Commission and signed by the Secretary of the Commission or such person as the Commission may authorize to act in its behalf, true, correct, complete and current copies of any or all books and records which such hedge fund adviser is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in said written demand. Such copies shall be furnished to the Commission at its principal office in Washington, D.C., or at any Regional Office of the Commission which may be specified in said written demand.

3. For purposes of this rule the term *non-resident hedge fund adviser* shall have the meaning set out in Rule 0-2(d)(3) under the Act. [Editor's note: There is no paragraph (d) to Rule 0-2. The term *non-resident* is defined in [Rule 0-2\(b\)\(2\)](#).]

Every hedge fund adviser that registers under [section 203](#) of the Act after July 8, 1997 shall be required to preserve in accordance with this section the books and records the hedge fund adviser had been required to maintain by the State in which the hedge fund adviser had its principal office and place of business prior to registering with the Commission.

(l) *Records of private funds.* If an hedge fund adviser subject to paragraph (a) of this section advises a private fund (as defined in [Rule 203\(b\)\(3\)-1](#),) and the adviser or any related person (as defined in Form ADV (17 CFR 279.1)) of the adviser acts as the private fund's general partner, managing member, or in a comparable capacity, the books and records of the private fund are records of the adviser for purposes of section 204 of the Act.