***Checklists:***

Below are some of the top level/main items the SEC routinely requests. The time period covered generally goes back to the date you first become IA registered, if you have never been audited. (Which you haven’t been, correct?) Attached also in Word, in much more detail, is a sample SEC investment adviser audit request letter. However, below are the main topics:

* Financial Statements; Trail Balance, General Ledger
* Auditors report, if audited
* Brokerage Statements (they will look through these with fine toothcomb)
* Cash account statements, such as checking or money market
* Trade Blotters, if applicable (another fine toothcomb item), that reflect who made trades in what security
* Records of personal trades by employees and officers
* Client Agreements for Managed accounts, executed (They will spot check a few in the file, so make sure that all are signed)
* Client intake form, with suitability notes, or some other record in your files of client suitability
* Brokerage Agreement
* Clearing Agreement
* Any other related agreements between the IA entity and other parties, related to fees paid out to others, or received in from clients.
* Records of any client who has redeemed out, and a history of the reason and process for redemption
* Lease, to confirm no “soft dollar” arrangement
* Corporate records: Articles, Tax ID, Bylaws if any (or operating resolutions), annual and other resolutions or minutes
* List of Officers, Directors, Owners, and employees
* List of Accountants and Lawyers and contact info
* List of prime brokerage firms, or any brokerage firms used to trade the advisors securities
* Policies and Procedures manual
* Code of Ethics
* Description of how trades are allocated where demand exceeds capacity
* Allocation policy for Hot Issues/IPOs
* Error resolution documentation
* List of trades between advisor and affiliates or principals
* Documentation for any Loans to and from the Advisor
* Records of any complaints by customers and how resolved
* Copies of any correspondence from the SEC
* List of Litigation involving the Advisor
* Subscription Agreements for any Fund investors, and suitability analysis if they are not accredited investors (seems somewhat ludicrous, given the nature of your client(s), but provide what you think is applicable)
* Form D Filings for any Funds with investors in the funds
* Any 13D, G or F Filings triggered because of trades or ownership of Securities
* Website, Brochure and any other Advertisements for the advisor’s services
* Disaster Recovery Plan, including description of redundant technology
* Tax Returns (sometimes they ask for these, but have not often seen this request)

Hope you find this helpful, and not overwhelming. But knowing what I know about your diligence so far, you will dive right into it and begin the process. Note from the attached detailed list, that some items they want copies of to take back, and others they only want to have ready for access and review at your site. Still others, they only want in electronic format. Therefore, you only need to prepare yourself in similar fashion.

I am in the process of updating my compliance list, so please allow me to add a few more items to these two lists at some point. But there is plenty of material here for you to begin the process.

If anything doesn’t apply, no problem to respond “not applicable, because” \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Any questions, please email or call.

**INVESTMENT ADVISER EXAMINATION**

**LIST OF BOOKS AND RECORDS REQUESTED FOR REVIEW**

Registrant: **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**

File No. **801-[\_\_\_\_\_\_\_\_\_\_\_\_]**

**Instructions:**

Please furnish the information and number of copies indicated below for the above entity during the examination. Where necessary, furnish responses on Registrant's letterhead. Unless otherwise indicated, please provide the requested records for the time period from **[date] or [registration date] to date**. While all requested items need not be immediately furnished for review at the inception of the examination, a reasonable portion should be available and the balance promptly supplied. Copies need not be made of those records for which only access is requested. However, please have such records collected and ready for the staff's review. While certain books and records are specifically requested below, during the examination the staff may request additional books and records if it becomes necessary.

During the examination, the staff will also ask to interview persons responsible for various functions such as compliance, risk management, portfolio management, trade execution, back office and marketing. To obtain an overall view of the Registrant’s business and its internal control environment, the staff will also ask to speak with a member of senior management early in the examination process.

# Initial Request for Documents

To assist us in evaluating the effectiveness of the Registrant’s system of internal controls, please make available relevant information that documents and substantiates (1) Registrant’s overall commitment to establishing and maintaining an effective system of internal controls, and (2) the specific risk management, control and compliance processes and procedures used in performing different activities.

In addition, at the commencement of the examination, please provide **copies** of the following information:

1. A list or lists of current clients featuring for each:
   * the client (account) name;
   * its custodian;
   * type of account (e.g. equity, balanced, or fixed);
   * whether or not Registrant has discretionary authority; and
   * the current balance of assets under management.

Also, provide a total of all assets managed on this list.

**Please provide this record both on a hard copy and in electronic format (preferably in Microsoft Excel format).**

* 1. A list of clients obtained during the period, their inception dates, and the identity of any third party consultant instrumental in Registrant's obtaining a particular account. **Please provide this record both on a hard copy and in electronic format (preferably in Microsoft Excel format).**
  2. A list of clients lost during the period, their effective dates of termination, and the reason for termination. **Please provide this record both on a hard copy and in electronic format (preferably in Microsoft Excel format).**
  3. A list of current or former clients which have or had wrap fee arrangements governing their compensation of Registrant, featuring for each the client's name, its custodian/sponsor broker-dealer, and the terms of the arrangement, including the terms of Registrant's compensation. **Please provide this record both on a hard copy and in electronic format (preferably in Microsoft Excel format).**
  4. A list of all clients whose contracts provide for performance based compensation to Registrant.
  5. A list of all client accounts which have instructed Registrant to direct a portion or the entirety of their brokerage to particular broker-dealers, including the name of the brokerage firm and the client's purpose for such direction, if known.
     1. A list of all client accounts which are directly or indirectly related to Registrant or any of its related persons, featuring the names of the accounts, their account number, and the party related to.
     2. If Registrant or its related persons have custody or possession of or access to any client funds or securities, a list including the names of all affected clients, the current market value of all assets in possession or to which access is available, and the locations where such assets are held or the names of the custodians holding them.
     3. A copy of Form ADV Part II currently furnished clients and/or any alternative disclosure document given in conjunction with or in lieu of Part II.
     4. A copy of each of Registrant's standard advisory contracts or agreements currently in use.
     5. A copy of powers of attorney or discretionary authority if not incorporated directly in the contracts specified in Item 10 above.
     6. A copy of Registrant's fee schedule currently in use, if not stated in the contracts specified in Item 10 above.
     7. A copy of Registrant's standard commission schedule currently in use, if not stated in the contracts specified in Item 10 above.
     8. A copy of Registrant's financial statements as of **[year ended first year of IA registration, and all years through last ended year]**.
     9. A copy of Registrant's general ledger and chart of accounts.
     10. A copy of the trial balances underlying the financial statements in Item 14 above.
     11. A copy of Registrant's organization chart, employee list, and a schedule or chart of all affiliated entities.
     12. The names and addresses of Registrant's current auditor or accountant and Registrant's legal counsel.
     13. A list of litigation to which Registrant has been a party to in the period, including a brief description of any dispute and its current status, as well as a list and brief description of any out of court settlements made during the period.
     14. A copy of written policies and procedures adopted pursuant to Section 204A of the Investment Advisers Act of 1940 and the Insider Trading and Securities Fraud Enforcement Act of 1988 and any written Chinese Wall policies and procedures.
     15. A copy of any Code of Ethics or policies governing the personal securities transactions of Registrant's employees.
     16. A list of all employees reporting personal securities transactions to Registrant pursuant to Rule 204-2(a)(12) under the Investment Advisers Act.
     17. A copy of Registrant's proxy voting policies and procedures.
     18. A copy of any securities lending procedures.
     19. A copy of brokerage allocation reports for the periods ended **[year of first registration, December 31** and **December 31, most recent year]**, featuring name of firm, amount of agency commissions, and principal values or imputed compensation for principal transactions.
     20. Any lists of approved broker-dealers currently in use by Registrant’s trading staff.
     21. Any written trading department policies and procedures, including order entry and execution allocation policies.
     22. A copy of Registrant’s IPO allocation policy, if not already incorporated in Item 27.
     23. Any regulatory compliance manual.
     24. A list of any seminars attended by Registrant’s employees that are conducted by research providers during the period.
     25. A list of pricing services, quotation services, and externally acquired portfolio accounting systems utilized by Registrant including a description of whether such items were paid for with hard or soft dollars or combination.
     26. A list of all proprietary trading or investment accounts of Registrant.
     27. A list of affiliated broker-dealers featuring their affiliation and a description of their clearing arrangements.
     28. A list of securities which Registrant or any affiliate underwrote or with respect to which it participated in such securities' underwriting as underwriting manager or member of a purchase group (syndicate) or selling group during the period which were purchased by any client portfolios and the approximate date of such underwritings.
     29. A list of the securities in which Registrant or an affiliate was a market maker during the period.
     30. A list of trading errors (e.g. bought rather than sold, entered limit order at wrong price, entered for wrong account, etc.) that occurred in client or proprietary accounts during the period featuring the transaction date, the security, the account and broker-dealer involved, and a summary of the error and its ultimate disposition, including the conditions of any financial settlement.
     31. A list of cross transactions which took place during the period between client and/or proprietary or affiliated accounts.
     32. A list of all trades where Registrant had the executing broker "step-out" all or a portion of the entire transaction to another broker for settlement and confirmation, including the trade date, security, executing broker and confirming broker identities, the total number of shares filled by the executing broker and the number of shares stepped out by broker.
     33. A list of all over-the-counter derivative or synthetic products purchased or sold (written) by any clients during the period.
     34. A list of any swap agreements any client accounts are currently a party to.
     35. A list of all securities of a public offering that were invested in by client or proprietary accounts at that offering or in the aftermarket which traded at a premium over the public offering price whenever their secondary markets began ("hot issues"). Please provide this record both on hard copy and in electronic format for the period. This record should include the security name, ticker symbol, CUSIP number, and first day of trading/offering.
     36. A list of all broker-dealers, affiliated or unaffiliated, that, to Registrant's knowledge, received order flow payments or rebates related to executing transactions for client portfolios.
     37. A copy of any promotional brochures, pamphlets, or other materials routinely furnished prospective clients.
     38. A copy of any composite or representative performance reports, data, or graphs currently disseminated to clients or prospective clients.
     39. A list of all performance composites maintained by Registrant with their inception dates. Please also provide copies of the composites.
     40. A statement of the account inclusion/exclusion criteria Registrant employs in the construction of any composite performance included in the records described in Item 44 above.
     41. A copy of any advertisements (e.g. newspaper or magazine ads, hardcopy of website, radio scripts, etc.) used to inform or solicit clients during the period.
     42. A copy of any newspaper or magazine article reprints disseminated to clients or prospective clients during the period.
     43. A list of all third party consultants for whom Registrant completed questionnaires or otherwise corresponded with during the period.
     44. A copy of the most recently completed full questionnaire for a third party consultant.
     45. A list of all parties to whom cash referral fees were paid during the period.
     46. A copy of a prospectus and a statement of additional information for each mutual fund managed during the period.
     47. A list of each investment partnership, trust, and any other pooled investment vehicle formulated or offered by Registrant or its officers, directors, or employees to clients or prospective clients. On the list please indicate the following:
         + the general partners, trustees, or others as applicable;
         + whether the instruments are registered with the Commission and if not, the exemption relied upon;
         + names and addresses of clients invested in each partnership, trust or other pooled investment vehicle and the number of shares or units owned and the amount of money invested.

In addition, please provide copies of Form D filed with the Commission (if applicable).

1. A list of all employees or their relatives who are principals or registered representatives of a broker-dealer.
2. A list of all client trusts in which any of Registrant’s employees serve as the trustee or co-trustee.
3. A list of publicly traded companies of which officers of Registrant, or affiliates of Registrant, serve as officers or directors.
4. Copies of any clearing agreements that affiliated broker-dealers are party to.
5. Copy of Registrant's contingency plan and/or disaster recovery plan.
6. Written policies and procedures, or other documentation, governing Registrant’s compliance with Regulation S-P.
7. Copy of each form of privacy notice sent to consumers and customers.
8. A list of any complaints or inquiries received regarding privacy or information security issues.

# Records to Prepare For Examiner Access During Examination

* 1. **Records to Be Furnished At Examination Inception**

1. A cross reference, stock record, or securities position record of all client securities holdings as of **the most recent date**. **Please provide this record in electronic format (preferably in Microsoft Excel format).**
   1. A record of all securities held in client portfolios (aggregate position totals for all securities) as of **the most recent date**. **Please provide this record in electronic format (preferably in Microsoft Excel format).**
   2. Registrant's trading blotter or purchase and sales journal **for the period from registration date to Date**, preferably formatted as indicated in Exhibit 1 (attached).
   3. Form 13F filings made for the period. This record may be provided in electronic format.
   4. **Records to Be Furnished At Examiners'** **Request**
2. Access to a record of client securities holdings by client as of **the most recent date**.
3. Access to all order memoranda or trade tickets.
4. Access to all brokerage account statements and transaction confirmations for all proprietary trading or investment accounts.
5. Access to all records of employee personal securities transactions during the period kept pursuant to Rule 204-2(a)(12) under the Investment Advisers Act.
6. Access to any investment committee meeting minutes made during the period.
7. Access to any written agreements concerning soft dollar arrangements.
8. Access to any separate ledgers and journals recording trading in client accounts to satisfy soft dollar commitments.
9. Access to any sub-advisory agreements or other contracts with wrap fee program sponsoring broker-dealers.
10. Access to Schedule 13G or 13D filings made for the period.
11. Access to the general ledgers and any subsidiary ledgers which form the basis of the financial statements specified in Section I, Item 14 above.
12. Access to the general, cash receipts, cash disbursements and any other journals which form the basis of the ledgers specified in Section II, Part B, Item 10 above.
13. Access to all bank statements, canceled checks, deposit slips, and check registers for all bank accounts open during the period.
14. Access to all loan agreements and notes payable.
15. Access to all notes receivable.
16. Access to all bills and statements, paid or unpaid, presented to or issued by Registrant.
17. Access to any Currency Transaction Reports filed with the Internal Revenue Service during the period.
18. Access to any correspondence with the staff of the Commission, particularly any no-action interpretations granted to Registrant by the Commission.
19. Access to any correspondence with any other regulatory agencies or self-regulatory organizations.
20. Access to any correspondence with or reports from public accounting firms during the period.
21. Access to files of client complaints during the period.
22. Access to Board of Directors meeting minutes, Articles of Incorporation, Corporate Bylaws, and stock transfer records or partnership agreements, as applicable.
23. Access to any newsletters sent to clients during the period.
24. Access to records and workpapers supporting the performance data described above in Section I, Item 44 above.
25. Access to any agreements executed with any third party solicitors, any correspondence with such solicitors, and any separate disclosure documents disseminated by such solicitors.
26. Access to any correspondence with and questionnaires completed for any third party consultants during the period.
27. Access to any N-SAR-A, N-SAR-B, AR/S, and N-30D filings made during the period by mutual funds managed.
28. For the limited partnerships, trusts and other vehicles listed in Part I, Item 53 above, access to copies of all offering memoranda, financial statements, and partnership & trust agreements, as applicable. Also, access to reports sent to limited partners.
29. During the examination the examiners will review Registrant's records pertaining to certain clients. Be prepared to furnish the following records for review for each client indicated:

* Contracts;
* Correspondence;
* Documentation of annual offers pursuant to Rule 204-3 under the Investment Advisers Act;
* New account information forms;
* Account statements internally generated, from client custodians, and from broker-dealers as well as any written reconciliation between such;
* Performance appraisals;
* Trade confirmations;
* Fee invoices;
* Custodial or trust agreements.

1. **Notices**

Any notice, request, consent or communication permitted or required to given in writing under this Agreement will be deemed delivered when received, and may be sent by:

* Email, with receipt acknowledged (either by reply by the other Party, or by receipt acknowledgement, or otherwise),
* Overnight courier,
* Messenger, or
* Fax with confirmed receipt acknowledged.

The following contact information will be used for notices or communication, and the Parties will notify each other in writing with change of contact information:

|  |
| --- |
| **If to [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]:** |
| Name: |
| Address: |
| City, State: |
| Phone: |
| Fax: |
| Email: |

|  |
| --- |
| **Fund Manager Capital Management, LLC** |
| c/o XYZ |
| Address:  City, Illinois |
| Phone: |
| Fax: |
| Email: |

|  |
| --- |
| **Counsel for Fund Manager:** |
| Nancy Fallon-Houle  Attorney at Law  Nancy Fallon-Houle, P.C.  5449 Bending Oaks Place  Downers Grove, Illinois 60515-4456  nfallon@nfhlaw.com  Phone: 630-963-0439 x 22  Fax: 630-963-0489 |
|  |

|  |
| --- |
| **Tax Professional for Fund Manager:** |
| Name: |
| Address: |
| Chicago, Illinois 60606 |
| Phone: |
| Fax: |
| Email: |
|  |
| **To any Member representing itself:** |
| The email address or address contained in Fund Manager’s LLC transfer records |

# Execution

This Agreement is effective as of February \_\_\_, 2005. The Parties have signed this Agreement in their own names, or an authorized representative has signed on their behalf. Each Member will further evidence its assent to this Agreement by executing any other documents deemed necessary or appropriate by the Managing Members or their counsel, including a Subscription Agreement.

|  |
| --- |
| Fund Manager Capital Management, LLC |
|  |
| By: |
| Name: XYZ |
| Title: Managing Member |
| Or |
| By: |
| Name: ABC |
| Title: Managing Member |
|  |
|  |
|  |
| Or |
| By: |
| Name: DEF |
| Title: Managing Member |

**Exhibit 1**

## Layout For Securities Trading Blotter/Purchase and Sales Journal

In conjunction with the scheduled examination, the Pacific Regional Office requests records for all purchases and sales of securities for portfolios of advisory clients and proprietary accounts being advised by Registrant. **Please provide this record in Microsoft Excel format on one of the following forms: 3.5-inch diskettes or Compact Disc.** This record should include the fields of information listed below in a similar format. Exclude, if possible, any transactions in cash or cash equivalents, maturities, calls, pay-downs, expirations, or reinvestments of mutual fund dividends or capital gains distributions. In addition, please separate fixed-income trades from equity trades.

Examples:

A. Sample Trading Blotter for Equity Securities

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Client Name/# | Trade Date | Settle Date | Buy/  Sell | CUSIP | Security Symbol | Security  Description | Quantity | Unit Price | Principal/  Proceeds | Total Commission | Fees | Net Proceeds | Broker |
| 155 | 1/1/00 | 1/3/00 | B | 1234567 | MSFT | Microsoft Corp | 100 | $100.00 | $10,000 | $10.00 |  | $9,990 | BEST |
| 123 | 1/2/00 | 1/5/00 | S | 89101112 | IBM | IBM Corp. | 500 | $100.00 | $50,000 | $50.00 | $1.67 | $49,948.33 | HRZG |

B. Sample Trading Blotter for Fixed-Income Securities

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Client Name/# | Trade Date | Settle-ment | Buy/Sell | CUSIP | Security Description  1 (Issuer) | Security Description 2 (Coupon Maturity, etc) | Quantity | Unit Price | Accrued Interest | Principal Value/  Proceeds | Total Commis-  sion | Net Proceeds | Broker |
| 155 | 4/2/98 | 4/6/98 | B | 802586AG2 | SANTA ROSA CA PKG FACS DIST | 4.60%  07-02-2004 | 50,000 | 100 | $95.83 | $50,000 | $0 | $50,095.83 | Salomon |
| 123 | 1/2/99 | 1/5/99 | S | 908640105 | UNION TEXAS PETRO HOLDINGS INC | 4.75%  9-15-2004 | 20 | 102 | $304.60 | $20,400 | $39.95 | $20,664.65 | Schwab |
| 6578 | 1/3/00 | 1/6/00 | B | 912795CJ8 | UNITED STATES TREASURY BILLS | DUE 6/18/00 | 100,000 | 97.781 | $0 | $97,781 | $0 | $97,781 | Auction |