

SEC Brings Broker-Dealer Electronic Recordkeeping Rules Out of Deep Freeze

February 16, 2023

More than 25 years have elapsed since the SEC adopted Exchange Act Rule 17a-4(f) governing electronic recordkeeping by broker-dealers. In an effort to update the rule to reflect "technology neutral" concepts, the SEC adopted amendments to the rule that became effective on January 3, 2023.

Since its adoption in 1997, the rule has reflected the predominant "electronic storage media" of that time—optical platters, CD-ROMs, or DVDs. The amended rule replaces the concept of "electronic storage media" with a concept of "electronic recordkeeping system," which means a system of preserving records in "a digital format in a manner that permits the records to be viewed and downloaded." The amended rule, however, also retains the concept of "micrographic media," including microfiche and microfilm.

In addition to making the rule more technology neutral, the amendments modernize the rule by:

- Eliminating a requirement that a broker-dealer notify its "designated examining authority" before employing an electronic recordkeeping system;
- Adding a time-stamped "audit-trail" alternative to the "write once, read many" (WORM)
 requirement. Under the audit-trail alternative, a broker-dealer's electronic recordkeeping system
 must be able to maintain and preserve electronic records in a manner that permits the recreation
 of an original record if it is modified or deleted;
- Modifying certain required undertakings to make them more technology neutral and to provide certain alternatives for who must make those undertakings and the substance thereof, subject to specified conditions; and

• Expanding alternatives for the current requirement to retain a duplicate set of records to include: (a) a backup electronic recordkeeping system that meets the other requirements of the rule and retains the records in a manner that will serve as a redundant set of records if the original electronic recordkeeping system is temporarily or permanently inaccessible; or (b) other redundancy capabilities that are designed to ensure access to the required records.

The SEC release adopting amendments to Rule 17a-4(f) also adopted similar changes to Exchange Act Rule 18a-6 governing electronic recordkeeping for records preserved by security-based swap dealers and major security-based swap participants.

As a result of the modernized rule, broker-dealers have until May 3, 2023, to evaluate their current electronic recordkeeping policies and procedures and revise their electronic recordkeeping systems as needed.

Authored By



Ann Began Furman

Related Practices

Financial Services Regulatory
Life, Annuity, and Retirement Solutions
Digital and E-Commerce Engagement and Innovation

Related Industries

Life, Annuity, and Retirement Solutions Life, Annuity, and Retirement Solutions Securities & Investment Companies

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site

may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.