

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

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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.

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