

United States: As the Worm Turns: SEC Provides Alternative Recordkeeping Requirements for Brokers

Article By:

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On October 12, 2022, the SEC voted to adopt [new electronic recordkeeping requirements](#) for broker-dealers in an effort to modernize recordkeeping requirements and to allow broker-dealers to use new technologies to satisfy their obligations. The new recordkeeping requirements will amend the Securities Exchange Act of 1934 (“**Exchange Act**”) Rule 17a-4 (“**Rule 17a-4**”) for broker-dealers and Exchange Act Rule 18a-6 (“**Rule 18a-6**”) for Security-Based Swap Dealers, and Major Security-Based Swap Participants.

Significant to broker-dealers is that they will no longer be required to preserve electronic records in a non-rewritable, non-erasable or read once, write many (“**WORM**”) format. The new rule is technology neutral, allowing broker-dealers to adopt new technologies. The amended rule will eliminate references to outdated technology such as “micrographic media,” “microfilm or microfiche,” and “optical disk technology (including CD-ROM),” in their heyday when the rule was adopted in 1997.

The SEC adopted an audit-trail alternative to the WORM requirement, under which a broker-dealer may use an electronic recordkeeping system that maintains and preserves records in a manner that permits the recreation of an original record if it is modified or deleted.

Currently, under Rule 17a-4, broker-dealers are required to engage a third party service provider who has access to and the ability to download information from the broker-dealer’s electronic storage media. The third party must execute an undertaking that it will provide access to the broker-dealer’s electronic records to the SEC and other securities regulators upon request. The amended rule provides an alternative allowing a broker-dealer to designate an executive officer to execute the undertaking if the officer has access to and the ability to provide records maintained on the electronic recordkeeping system. The amended rule adds an alternative approach to the undertaking that can be provided by cloud service providers, in recognition of the limited access they may have to broker-dealer records. Additionally, the amended rule eliminates the requirement that a broker-dealer notify its designated examining authority before employing an electronic recordkeeping system.

The compliance date for the new requirements for broker-dealers will occur six months after publication in the Federal Register.

Chloe Vargas and Raymond Jensen also contributed to this article.

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