

Final Amendments to Electronic Recordkeeping Requirements



The Securities and Exchange Commission adopted amendments to the electronic recordkeeping requirements for broker-dealers, security-based swap dealers (“SBSDs”), and major security-based swap participants (“MSBSPs”) to modernize recordkeeping requirements and make the requirements adaptable to new technologies in electronic recordkeeping. The amendments will also facilitate examinations of broker-dealers, SBSDs, and MSBSPs.

Why This Matters

The amendments update the broker-dealer electronic recordkeeping rule, adopted in 1997, that required broker-dealers to preserve electronic records exclusively in a non-rewriteable, non-erasable format (also known as write once, read many format). The amendments are designed to modernize the rule given technological changes over the last two decades and to make the rule technology neutral to be able to adapt to new technologies in electronic recordkeeping.

Rules That Are Affected

- Rules 17a-4(f) and (j) under the Securities Exchange Act of 1934 (“Exchange Act”) set forth the electronic recordkeeping and prompt production of records requirements for broker-dealers. Rules 18a-6(e) and (g) under the Exchange Act set forth the electronic recordkeeping and prompt production of records requirements for SBSDs and MSBSPs.
- Rules 17a-4(i) and 18a-6(f) under the Exchange Act require that a third party that prepares or maintains the records of a broker-dealer, SBSD, or MSBSP file a written undertaking where the third party agrees to permit the examination of the firm’s records and to promptly furnish to the Commission or its designee a copy of the records.

What's Required

The amendments modify the rules to make them more technology neutral, including by:

- Adding an audit-trail alternative to the existing requirement that broker-dealers preserve electronic records exclusively in a non-rewriteable, non-erasable format;
- Requiring that, to meet the audit-trail alternative, a broker-dealer's electronic recordkeeping system must preserve electronic records in a manner that permits the recreation of an original record if it is altered, over-written, or erased;
- Requiring that nonbank SBSDs and MSBSPs preserve electronic records: (1) in a manner that meets the audit-trail requirement; or (2) exclusively in a non-rewriteable, non-erasable format;
- Requiring that broker-dealers, SBSDs, and MSBSPs produce electronic records in a reasonably usable electronic format to allow securities regulators to search and sort information on the records;
- Adding to the existing requirement in the broker-dealer recordkeeping rule that the firm hire a third party with the ability to access the firm's electronic records that undertakes to provide the records to securities regulators if the firm fails or is unable to do so with an alternative that a designated executive officer of the firm can undertake this responsibility;
- Adding a parallel third party or designated executive officer requirement to the SBSD and MSBSP electronic recordkeeping requirements rule;
- Eliminating a requirement that a broker-dealer notify its designated examining authority before employing an electronic recordkeeping system; and
- Adding an alternative approach to the undertaking that must be obtained from a third party that holds electronic records for a broker-dealer, SBSD, or MSBSP to accommodate the practice of using a recordkeeping service, including a cloud service provider, for this purpose.

Additional Information:

The final amendments will become effective 60 days after the date of publication of the adopting release in the Federal Register. The compliance dates for the new requirements will be six months after the date of publication of the adopting release in the Federal Register in the case of broker-dealers and 12 months after the date of publication of the adopting release in the Federal Register in the case of SBSDs and MSBSPs.