

## Broker-Dealer Books and Records: New and Amended Recordkeeping Requirements Checklist

May 2003

On October 26, 2001, the SEC adopted amendments to Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 to clarify and expand record keeping requirements in connection with purchase and sale documents, customer records, associated person records, customer complaint records, and certain other matters. The amendments also require broker/dealers to maintain or promptly produce certain records at each office to which those records relate.

The following checklist helps identify the basic requirements for members under the new and amended recordkeeping requirements to the SEC broker/dealer books and records rules. Please note that this checklist is not meant to address pre-existing requirements under the SEC broker/dealer books and records rules. Using this checklist does not alter or create a safe harbor from applicable regulatory responsibilities. You are responsible for ensuring compliance with these rules.

The effective date of the amendments to the books and records rules was May 2, 2003.

### Records to be Made by Brokers and Dealers

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#### Memoranda of Brokerage Orders and Dealer Transactions

Ensure that, for each brokerage order, the order tickets:

- Show the terms and conditions of the order or instructions, and any modification or cancellation thereof;
- Identify the account for which the order is entered;
- Identify each associated person, if any, responsible for the account and any other person who entered or accepted the order on behalf of the customer, or if a customer entered the order on an electronic system, a notation of that entry;

*Note:* The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the member, broker or dealer shall produce upon request by a representative of a securities regulatory authority a separate record which identifies each other person.

- Describe whether the order was entered subject to discretionary authority;
- Include, to the extent feasible, the time of execution or cancellation; and
- Identify the time the order was received, the time of entry, and the price at which it was executed.

*Source:* Rules 17a-3(a)(6), 17a-3(a)(7)

*Record Retention:* Three years, the first two years in an easily accessible place.

**Note:** Under Rule 17a-3(a)(6), this memorandum need not be made as to a purchase, sale or redemption of a security on a subscription-way basis directly from or to the issuer if your firm maintains a copy of the customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

The SEC, in its Interpretive Release about the amendments, states that a broker/dealer that has assigned a team of associated persons to a customer's account may record the identity of the team on the order ticket, provided it creates and maintains a companion record that can be used to identify the associated person that entered that order. The companion record would be part of the firm's order ticket records and must be maintained, preserved, and available for examination in the same manner as the firm's order tickets. (See Question and Answer 7, Part A, *SEC Interpretive Release: Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934*, SEC Rel. No. 34-47910 (May 29, 2003) ("Interpretive Release")).

In the SEC's Interpretive Release concerning these requirements, it poses the following question: Under Rules 17a-3(a)(6) and (a)(7), is the broker/dealer required to record the time of receipt of an order to purchase a mutual fund, variable annuity, or direct participation plan that is effected on a basis other than subscription-way where the purchase price is determined only once daily at the close of business? In response, the SEC states that if the time of receipt is material to an order, then the broker/dealer must record the time of receipt on the order ticket. Generally, for many types of transactions, the time of receipt may be material to the price or other terms of the execution of the order. For example, recording the time of receipt would be material if an intra-day time deadline existed that determined whether the order was priced as-of the date the order was received or the price as-of the next day. If the broker/dealer does not record the time of receipt of an order, the broker/dealer must be able to demonstrate that the time of receipt is not material to that order. (See Question and Answer 1, SEC Interpretive Release).

#### Associated Person Location and Identification Number Records

Ensure that, for each associated person, there is a record containing:

- a list of every office where each associated person regularly conducts business;
- their CRD number, if any; and
- every internal identification number or code assigned to that person by the broker/dealer.

*Source:* Rule 17a-3(a)(12)(ii)

*Record Retention:* Three years after the associated person has terminated employment and all other connections with the firm.

#### Associated Person Compensation Records

Ensure that, for each associated person, there is a record containing:

- each purchase and sale of a security attributable to that associated person for compensation purposes;
- the amount of compensation attributable to each purchase or sale, if monetary, and a description of the compensation, if non-monetary; and
- all agreements pertaining to the relationship between the broker/dealer and each associated person.

*Source:* Rule 17a-3(a)(19)

*Record Retention:* Three years, the first two years in an easily accessible place.

*Note:* New Rule 17a-3(a)(19)(i) requires each broker/dealer to create a record for each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record has to include the amount of compensation if monetary and a description of the compensation if nonmonetary. In the SEC's Interpretive Release, the SEC notes that, in order to comply with Rule 17a-3(a)(19)(i), a broker/dealer that has created a team of associated persons to handle a customer's account may create a single record that identifies each transaction attributable to a particular team for compensation purposes. In order to do this, the firm must also create and maintain as part of this record a companion record that identifies each associated person that has been a member of that team, including the dates the person joined and left the team, and the manner in which compensation is allocated among the members of the team. (See Question and Answer 7, Part B, SEC Interpretive Release.)

Rule 17a-3(a)(19)(ii) requires that a broker/dealer maintain a record of agreements pertaining to the relationship between each associated person and the broker/dealer, including a summary of each associated person's compensation arrangements such as commission and concession schedules. Some associated persons do not directly participate in securities transactions with customers. Generally, if an associated person is not directly involved with or compensated based on securities transactions with customers, the broker/dealer would not be required to create the record required pursuant to Rule 17a-3(a)(19)(ii). (For further explanation, please see Question and Answer 9, SEC Interpretive Release.)

## Associated Person Complaint Records

Ensure that, for each associated person, there is a record of each written customer complaint received by the firm concerning that associated person which includes:

- the complainant's name, address, and account number;
- the date the complaint was received;
- the name of any other associated person identified in the complaint;
- a description of the nature of the complaint; and
- the disposition of the complaint.

*Note:* Instead of the record, your firm may maintain a copy of each original complaint in a separate file by the associated person named in the complaint along with a record of the disposition of the complaint.

*Source:* Rule 17a-3(a)(18)(i)

*Record Retention:* Three years, the first two years in an easily accessible place.

## Customer Account Records

Ensure that, for each account with a natural person as a customer or owner, there is a record including:

- the customer's or owner's name;
- the customer's or owner's tax identification number;
- the customer's or owner's address;
- the customer's or owner's telephone number;
- the customer's or owner's date of birth;
- the customer's or owner's employment status (including occupation and whether the customer is an associated person of a broker/dealer);
- the customer's or owner's annual income;
- the customer's or owner's net worth (excluding value of a primary residence);
- the account's investment objectives;
- an indication of whether the record has been signed by the associated person responsible for the account, if any, and approved or accepted by a principal of the firm; and
- if the account is a discretionary account, the dated signature of each customer or owner granting the authority and the dated signature of each natural person to whom discretionary authority was granted.

*Source:* Rule 17a-3(a)(17)

*Note:* In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined.

There have been several questions about the definition of "natural person" referred to in Rule 17a-3(a)(17). The SEC's Interpretive Release notes that the account record requirement of Rule 17a-3(a)(17) does not apply to an account for which the customer or owner is not a natural person, such as the account of:

- o a corporation,
- o a partnership,
- o a limited liability company, or
- o a REIT.

(See Question and Answer 2, SEC Interpretive Release.)

The SEC's Interpretive Release states that the account record requirement does not apply to an account where the account is owned by the trustees of the trust or a trust that is a legal entity separate from the holders of its beneficial interests (which may be natural persons). (See Question and Answer 2, SEC Interpretive Release.)

The term “owner” in Rule 17a-3(a)(17) would generally apply to a Uniform Gift/Transfer to Minor Act (“UGMA” or “UTMA”) account, an IRA account and a 401k account where the beneficiary of the account is a natural person. (See Question and Answer 2, SEC Interpretive Release.)

Rule 17a-3(a)(17) does not apply to a 401k account where the employer has established an omnibus account at the broker/dealer holding the assets of all of its employees. (See Question and Answer 3, SEC Interpretive Release.)

Rule 17a-3(a)(17) does not apply to a bank trust account where the bank has established an omnibus account at the broker/dealer holding the co-mingled assets of the bank’s customers and the bank’s customers are not aware that their assets are held by the broker/dealer. (See Question and Answer 3, SEC Interpretive Release.)

### ***Furnishing the Account Record***

Ensure that, for each account with a natural person as a customer or owner, there is a record indicating that:

- The firm has furnished each customer that opens an account on or after May 2, 2003 with a copy of the account record that includes the information required by paragraph (a)(17)(i)(A) of Rule 17a-3 (or an alternate document containing that information) within 30 days of the opening of the account, and at least every thirty-six months thereafter.
- The firm has obtained account record information for each customer or owner of every account in existence before May 2, 2003, and furnished the customer with a copy of the account record that includes the information required by paragraph (a)(17)(i)(A) of Rule 17a-3 (or an alternate document containing that information) within three years of May 2, 2003.
- The firm has included with the account record or alternative document provided to each customer or owner an explanation of any terms regarding investment objectives.
- The firm has included with the account record or alternate document prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the firm, and that the customer or owner should notify the firm of any future changes to information contained in the account record.
- The firm has furnished the customer or each joint owner, and the associated person, if any, responsible for that account, with notification of any change in the account record to the name or address of the customer or owner on or before the 30th day after the date the firm received notice of the change. If it is an address change, the notifications should be sent to that customer’s old address.
- For each change in an account’s investment objectives, the firm has furnished each customer or owner and the associated person, if any, responsible for that account with a copy of the updated customer account record that includes the information required by paragraph (a)(17)(i)(B) of Rule 17a-3 (or an alternate document containing that information), on or before the 30th day after the date the firm received notice of the change (or, if the account was updated for some reason other than the firm receiving notice of a change, after the date the account record was updated).

- Each customer has been provided a copy of each written agreement entered into on or after May 2, 2003 pertaining to the account and, if requested by the customer, he or she was furnished with a fully executed copy of each agreement.

*Note:* The SEC explained in its Interpretive Release that “written agreements” include customer account agreements, margin agreements, options agreements, or securities lending agreements. (See Question and Answer 6, SEC Interpretive Release.) An instruction received by the broker/dealer from the customer would not constitute a written agreement for purposes of this rule. However, a written instruction sent by the customer to the broker/dealer would constitute a communication received by the broker/dealer relating to its business as such, and should be maintained in accordance with paragraph 17a-4(b)(4). *Id.*

- Each customer has been provided with a notice containing the address and telephone number of the department of the firm to which any complaints as to the account may be directed.

*Source:* Rules 17a-3(a)(17), 17a-3(a)(18)

*Record Retention:* Six years after the closing of the account or the date on which the information was replaced or updated, whichever is earlier.

*Note:* A firm may choose to exclude the customer’s tax identification number and date of birth from the information provided to the customer.

According to the SEC’s Interpretive Release, the account record information should, in the case of a trust, be sent to the same person that receives account statements for that account. (See Question and Answer 4, SEC Interpretive Release.)

The SEC posed the following question and answer regarding multiple accounts: If one customer has a personal account, a separate IRA account, and a trust account for his child at the same broker/dealer, and has agreed in writing to receive account-related documentation, such as account statements, on a combined basis, may the firm meet its requirements under Rule 17a-3(a)(17) by combining in one mailing the account record information for all three accounts? Would the answer be different if spouses living at the same address each had a personal account and agreed to receive account documents on a combined basis for their personal accounts?

In response, the SEC stated that if the customer has agreed in writing to receive account-related documentation on a combined basis for multiple accounts at the same address, the broker/dealer may send account record information regarding each of those accounts to the customer in a combined mailing. However, the account record information should be separated by account so the customer can easily identify the account record information that relates to each account. If spouses living at the same address have agreed to receive account documents on a combined basis for their personal accounts, the broker/dealer may send account record information regarding each of those accounts to the customer in a combined mailing. (See Question and Answer 5, SEC Interpretive Release.)

### **Exemption from the Account Record Information and Furnishing Requirements**

The account record and furnishing requirements of Rule 17a-3(a)(17) will only apply to accounts for which a firm is, or has within the past 36 months been, required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which it is a member. (See, e.g., NASD Rules 2310 and 2860(b)(16)(B), NYSE Rule 723, Chicago Board Options Exchange Rule 9.9 and MSRB Rule G-19.)

#### **Communications Supervision Records**

Ensure that there is a record (which need not be separate from the advertisements, sales literature, or communications) documenting that the firm has complied with, or adopted policies and procedures reasonably designed to establish compliance with, applicable federal and SRO requirements, of which the firm is a member, requiring principal approval of advertisements, sales literature or other communications with the public by the firm or its associated persons.

*Source:* Rule 17a-3(a)(20)

*Record Retention:* Three years, the first two years in an easily accessible place.

#### **Contact Person Records**

Ensure that there is a record for each office listing all individuals by name or title at that office who, without delay, can explain the types of records maintained at that office and the information therein.

*Source:* Rule 17a-3(a)(21)

*Record Retention:* Six years, the first two years in an easily accessible place.

#### **Responsible Principal Records**

Ensure that there is a record listing each principal responsible for establishing policies and procedures reasonably designed to ensure compliance with any applicable federal requirements or rules of an SRO of which the firm is a member, requiring principal acceptance or approval of records.

*Source:* Rule 17a-3(a)(22)

*Record Retention:* Six years, the first two years in an easily accessible place.

#### **Office Records**

Ensure that the firm makes and keeps current, as to each office, certain books and records that reflect the activities of the office. (This includes: blotters, order tickets, customer account records, records with respect to associated persons, customer complaints, records evidencing compliance with SRO rules with regard to communications with the public, records of persons who can explain the information in the broker/dealer's records, and records of each principal responsible for establishing recordkeeping compliance procedures.)

*Note:* The term “office” means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

*Source:* Rules 17a-3(g), 17a-3(h), 17a-4(k).

*Record Retention:* For the most recent two year period.

## Records to be Preserved by Brokers and Dealers

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### Communications with the Public

Ensure that there are originals of all communications received and copies of all communications sent (and any approvals thereof) by the firm (including inter-office memoranda and communications) relating to the firm’s business as such, including all communications which are subject to SRO rules of which the firm is a member regarding communications with the public.

*Source:* Rule 17a-4(b)(4)

*Record Retention:* Three years, the first two years in an easily accessible place.

### Organizational Documents

Ensure that the firm has all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD and BDW, including all amendments thereto, and all licenses or other documentation showing registrations with any securities regulatory authority.

*Source:* Rule 17a-4(d)

*Record Retention:* Life of the enterprise and of any successor enterprise.

### Special Reports

Ensure that the firm has each report which a securities regulatory authority has requested or required a broker/dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report.

*Source:* Rule 17a-4(e)(6)

*Record Retention:* Three years after the date of the report.

*Note:* The SEC stated in its Interpretive release that Rule 17a-4(e)(6) does not require a broker/dealer to preserve documents or other materials delivered to the Commission in response to a subpoena. However, if those documents are otherwise required to be created and maintained pursuant to Rules 17a-3 and 17a-4, the broker/dealer must preserve them in compliance with those provisions. In addition, the SEC notes that a broker/dealer, under other applicable laws or rules, may have an obligation to preserve such reports, documents or other materials. (See Question and Answer 10, SEC Interpretive Release.)



## Compliance, Supervisory & Procedures Manuals

Ensure that the firm has each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the broker/dealer with respect to compliance with applicable laws and rules, and supervision of the activities of associated persons.

*Source:* Rule 17a-4(e)(7)

*Record Retention:* Three years after the termination of use of manual.

## Exception Reports

Ensure that the firm has all reports produced to review for unusual activity in customer accounts.

*Source:* Rule 17a-4(e)(8)

*Record Retention:* Eighteen months after the date the report was generated.

For additional information about the amendments to the SEC books and records rules, please go to FINRA's books and records Web page at: [www.finra.org/Industry/Issues/BooksRecords/index.htm](http://www.finra.org/Industry/Issues/BooksRecords/index.htm).

Please also view the SEC's Adopting Release concerning the amendments at: [www.finra.org/web/idcplg?IdcService=SS\\_GET\\_PAGE&ssDocName=p006388](http://www.finra.org/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=p006388) and Interpretive Release at: [www.sec.gov/rules/interp/34-47910.htm](http://www.sec.gov/rules/interp/34-47910.htm).