

Exchange Act Rule 17a-4 Amendments

Chart of Significant Changes

Rule 17a-4(f)		
	Prior Rule	Current Rule
Definitions	<p>Firms may use “electronic storage media” to maintain and preserve required records.</p> <p>Electronic storage media is defined as any digital storage medium or system that meets the conditions set forth in the rule.</p>	<p>Firms may use an “electronic recordkeeping system” to maintain and preserve required records.</p> <p>An electronic recordkeeping system is defined as a system that preserves records in a digital format in a manner that permits the records to be viewed and downloaded.</p>
Notification	<p>Firms must notify their designated examining authority (“DEA”) before employing electronic storage media (in some cases, at least 90 days in advance).</p>	<p>Firms are NOT required to notify their DEA before employing an electronic recordkeeping system.</p>
Representation	<p>Firms must provide their DEA a representation that the selected electronic storage media meets specified conditions.</p>	<p>Firms are NOT required to provide a representation to their DEA regarding whether the electronic recordkeeping system meets specified conditions.</p>
Retention Format	<p>Firms that use an electronic storage media to preserve required records must preserve such records exclusively in a non-rewriteable, non-erasable format (also known as a write once, read many (“WORM”) format) (WORM Requirement).</p>	<p>Firms that use an electronic recordkeeping system to preserve required records have the following options:</p> <p>The records may be preserved consistent with the WORM Requirement; or, alternatively</p> <p>The records may be preserved on an electronic recordkeeping system that maintains a complete time-stamped audit trail that includes: (1) all modifications to and deletions of the record or any part of it; (2) the date and time of actions that create, modify or delete the record; (3) if applicable, the identity of the individual creating, modifying or deleting the record; and (4) any other information needed to maintain an audit trail of each distinct record in a way that maintains security, signatures and data to ensure the authenticity and reliability of the record and will permit recreation of the original record (Audit-Trail Requirement).</p> <p>Note: The amended rule does not appear to prohibit firms from choosing to adopt the Audit-Trail Requirement for certain electronic records and continue to rely on the WORM Requirement for their other electronic records.</p>

Books and Records Information

	Prior Rule	Current Rule
Verification	An electronic storage media must verify automatically the quality and accuracy of the storage media recording process.	An electronic recordkeeping system must verify automatically the completeness and accuracy of the processes for storing and retaining records electronically. Note: This is designed to ensure that when an original record is added to the electronic recordkeeping system it is completely and accurately captured in the system.
Serialization	An electronic storage media must serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media.	The requirement remains unchanged. The SEC, however, clarified that this requirement only applies to electronic recordkeeping systems that use optical disks to meet the WORM Requirement.
Download and Transfer	The electronic storage media must have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under Rule 17a-4(f).	An electronic recordkeeping system must have the capacity to readily download and transfer copies of a record and its audit trail (if applicable) in <u>both a human readable format and in a reasonably usable electronic format</u> , and to readily download and transfer the information needed to locate the electronic record. Note: A reasonably usable electronic format is a format that is common and compatible with commonly used systems for accessing and reading electronic records. This will allow regulators to search and sort information on the records using a computer.
Backup System or Redundancy	Firms that use electronic storage media to preserve required records must store separately from the original, on any medium acceptable under Rule 17a-4, a duplicate copy of the record for the requisite time period. This requires firms to preserve a second copy of each record.	Firms that use an electronic recordkeeping system to preserve required records have the following options: Have a backup electronic recordkeeping system that meets the requirements of Rule 17a-4(f) and that 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 Have other redundancy capabilities that are designed to ensure access to the records (with a level of redundancy that is at least equal to the level that is achieved through using a backup electronic recordkeeping system).

Books and Records Information

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Facilities	Firms that use electronic storage media to preserve required records must have available facilities for immediate, easily readable projection or production of electronic storage media images and for producing easily readable images.	Firms that use an electronic recordkeeping system to preserve required records must have facilities for immediately producing the records preserved by means of the electronic recordkeeping system and for producing copies of those records.
Providing Records	Firms that use electronic storage media to preserve required records must provide facsimile enlargements of such records upon request.	Firms that use an electronic recordkeeping system to preserve required records must provide such records upon request.
Accessing and Locating Records	Firms that use electronic storage media to preserve required records must maintain, keep current, and provide promptly upon request all information necessary to access records and indexes stored on the electronic storage media; <u>or</u> place in escrow and keep current a copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes (Escrow Option).	Firms that use an electronic recordkeeping system to preserve required records must organize, maintain, keep current, and provide promptly upon request all information necessary to access and locate records preserved by means of the electronic recordkeeping system. The Escrow Option has been eliminated.

Books and Records Information

	Prior Rule	Current Rule
Undertakings	<p>Firms that preserve required records exclusively on electronic storage media must file with their DEA an undertaking by an independent third party to furnish promptly to regulators records stored on the electronic storage media upon request as well as to provide access to such records if the firm fails to do so (Third-Party Access Undertaking).</p>	<p>Firms that use an electronic recordkeeping system to preserve required records have the following options:</p> <p>File a Third-Party Access Undertaking with their DEA; <u>or alternatively</u></p> <p>File an undertaking signed by a designated executive officer representing that the officer has access to and the ability to provide records preserved on the firm’s electronic recordkeeping system (Designated Executive Officer Undertaking).</p> <p>The designated executive officer can appoint in writing up to two designated officers and three designated specialists to assist the designated executive officer in fulfilling the designated executive officer’s obligations as set forth in the undertaking.</p> <p>The designated executive officer, however, remains ultimately responsible for the obligations set forth in the undertaking.</p> <p>The language of the Third-Party Access Undertaking has also been revised (e.g., the undertaking uses the term “electronic recordkeeping system” instead of the term “electronic storage media” and adds a requirement to produce a record and its audit trail (if applicable) preserved on the electronic recordkeeping system in a human readable format or a reasonably usable electronic format).</p> <p>Note: Because the language of the Third-Party Access Undertaking has been revised, firms electing to continue using their current third-party access arrangements to comply with Rule 17a-4(f) must ensure that the third party <u>files new undertakings including the amended language</u> with the broker-dealer’s DEA. These new undertakings must be submitted to the broker-dealer’s DEA by May 3, 2023.</p>

Rule 17a-4(i)		
	Prior Rule	Current Rule
Third-Party Service Providers	<p>A third party who prepares or maintains required records for a broker-dealer (regardless of whether the records are in paper or electronic form) must file a written undertaking with the SEC signed by a duly authorized person (Traditional Recordkeeping Service Undertaking).</p> <p>The Traditional Recordkeeping Service Undertaking must state that the records are the property of the broker-dealer and will be surrendered promptly on request of the broker-dealer. The third party must also agree, among other things, to permit examination of the records by representatives or designees of the SEC as well as to promptly furnish to the SEC or its designee true, correct, complete and current hard copies of any or all or any part of such records. An agreement with the third party does not relieve the broker-dealer from the responsibility to prepare and maintain required records.</p>	<p>A third party that prepares or maintains required records for a broker-dealer has the following options:</p> <p>File a Traditional Recordkeeping Service Undertaking; or, alternatively</p> <p>If the third party prepares or maintains required records by means of an electronic recordkeeping system utilizing servers or other storage devices that are owned or operated by the third party (including an affiliate of the broker-dealer) and the broker-dealer has independent access (i.e., without the need of any intervention of the third party) to the records, the third party is permitted to file a different undertaking with the SEC (Alternative Undertaking Designed for Cloud Service Providers).</p> <p>The Alternative Undertaking Designed for Cloud Service Providers cannot be used if the required records are in a non-electronic form, such as paper.</p> <p>The third party must acknowledge that the records are the property of the broker-dealer. In addition, the third party must acknowledge that the broker-dealer has represented to the third party that the broker-dealer: (1) is subject to recordkeeping rules of the SEC; (2) has independent access to the records; and (3) consents to the third party fulfilling the obligations set forth in the undertaking.</p> <p>The third party must also undertake to facilitate within its ability, and not impede or prevent: (1) the examination, access, download or transfer of the records by a representative or designee of the SEC; or (2) a trustee appointed under the Securities Investor Protection Act to liquidate the broker-dealer in accessing, downloading or transferring the records.</p> <p>Note: If the third party previously filed with the SEC a Traditional Recordkeeping Service Undertaking, it may elect to replace that undertaking with an Alternative Undertaking Designed for Cloud Service Providers that is tailored to how it maintains records for the broker-dealer, subject to satisfying the conditions under Rule 17a-4(i).</p> <p>Note: The SEC designated a broker-dealer’s examining authority, which for most firms is FINRA, as an SEC designee for the purposes of Rule 17a-4(i).</p>

Books and Records Information

Rule 17a-4(j)		
	Prior Rule	Current Rule
Record Production	Broker-dealers are required to furnish promptly to the SEC (upon request) legible, true, complete and current copies of required records or any other record of the firm that is subject to examination.	The amended rule also requires broker-dealers to furnish a record and its audit trail (if applicable) preserved on an electronic recordkeeping system <u>in a reasonably usable electronic format</u> (if requested by the SEC).
Effective Date: January 3, 2023 . Compliance Date: May 3, 2023 .		

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