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SEC Modernizes Its Recordkeeping Requirements for Certain Registrants

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On October 12, the Securities and Exchange Commission (SEC) voted to adopt new electronic recordkeeping requirements for broker-dealers, security-based swap dealers (SBSDs), and major security-based swap participants (MSBSPs) — allowing the use of new technology, such as cloud-based storage, to satisfy obligations.

These new recordkeeping requirements, proposed in November 2021 will amend Rules 17a-4 (broker-dealers) and 18a-6 (for SBSDs and MSBSPs) of the Securities Exchange Act of 1934.

Under these amendments, broker-dealers, SBSDs, and MSBSPs will no longer be required to preserve electronic records in a non-rewritable, non-erasable, or read once, write many (WORM) format. Instead, the new amendments will add an audit-trail alternative designed to provide broker-dealers, SBSDs, and MSBSPs with “greater flexibility in configuring their electronic recordkeeping systems,” as they will allow for record maintenance and preservation that permits the recreation of original records that have been modified or deleted.

Importantly, these amendments will provide brokerage firms with the opportunity to use modern technology like cloud-based storage as an alternative to more limiting options like CDs and hard drives.

The amendments will also permit firms to designate an executive officer to access firm records and provide them to regulators. This change provides broker-dealers with greater flexibility compared to the previous requirements, which mandated firms to hire third parties to undertake this responsibility.

The SEC has advised that the purpose of these amendments is to “modernize recordkeeping requirements given technological changes over the last two decades and to make the rule adaptable to new technologies in electronic recordkeeping.” Additionally, these new amendments will likely significantly lessen compliance costs. As SEC Chair Gary Gensler stated

“[F]irms that already use audit-trail technology for their day-to-day records may now use that technology to comply with this rule, rather than feel on the ‘hook’ to keep separate, WORM-compliant records.”

Broker-dealers will have six months from the time the requirements are published in the *Federal Register* to comply. SBSDs and MSBSPs will have 12 months from publication within which they are required to be compliant. Members of the Troutman Pepper team are available to assist with compliance efforts, as well as on any and all other SEC developments.

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