



**Marcia E. Asquith**  
Executive Vice President,  
Board and External Relations



December 20, 2021

Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Proposed Amendments to the Electronic Recordkeeping Requirements for  
Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based  
Swap Participants, File No. S7-19-21

Dear Ms. Countryman:

This letter is submitted on behalf of the Financial Industry Regulatory Authority, Inc. (FINRA)<sup>1</sup> with respect to the Commission's proposed amendments to the electronic recordkeeping requirements under the Securities Exchange Act of 1934 (Exchange Act) for broker-dealers (the Proposal).<sup>2</sup> FINRA applauds the efforts of the Commission and its staff to update and modernize the electronic recordkeeping requirements and to better clarify the obligations of broker-dealers. As discussed below, we write to request that the Commission clarify that the designated examining authority (DEA) for a member, broker or dealer is a designee of the Commission for purposes of Exchange Act Rule 17a-4(i) or, alternatively, amend Exchange Act Rule 17a-4(i) to expressly include the DEA of the member, broker or dealer. This would enable the DEA to obtain required records of a member, broker or dealer directly from the third-party recordkeeping service in those circumstances where the member, broker or dealer, or the designated senior officer of the member, broker or dealer under the Proposal, refuses to produce them in the normal course.

### **Exchange Act Rule 17a-4(f)(3)(vii)**

Currently, Rule 17a-4(f)(3)(vii) provides that, for a member, broker or dealer exclusively using electronic storage media to preserve some or all of its required records, at least one independent third party, that has access to and the ability to download information from the

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<sup>1</sup> FINRA is a not-for-profit self-regulatory organization (SRO) authorized by federal law to help protect investors and ensure the fair and honest operation of securities markets. Under the oversight of the Securities and Exchange Commission (Commission or SEC), FINRA regulates the activities of U.S. broker-dealers and performs market regulation pursuant to its own statutory responsibility and under contract for certain exchanges. The comments set forth in this letter reflect the views of FINRA staff and have not been approved by FINRA's Board of Governors.

<sup>2</sup> See Exchange Act Release No. 93614 (File No. S7-19-21) (November 18, 2021), 86 FR 68300 (December 1, 2021) (Proposing Release).

electronic storage media to any acceptable medium under Exchange Act Rule 17a-4, must file with the DEA for the member, broker or dealer specified undertakings with respect to such records. Among other things, the independent third party undertakes to provide access to information contained on the electronic storage media to the DEA, which allows the DEA to obtain required records directly from the independent third party in those circumstances where the member, broker or dealer refuses to produce them in the normal course.

The Commission is proposing to amend Rule 17a-4(f)(3)(vii) to replace the third-party undertakings and access requirements with a requirement that a designated senior officer of the member, broker or dealer provide the undertakings and access. The Commission asks whether switching to a designated senior officer provides the Commission and other securities regulators with adequate means to obtain required records if the member, broker or dealer refuses to produce them in the normal course.<sup>3</sup>

### **Impact on FINRA**

FINRA is the DEA for most registered broker-dealers.<sup>4</sup> As part of an examination or investigation of a member, including a common member, FINRA may need to review required records of the member exclusively maintained on an electronic storage media.<sup>5</sup> Currently, if the member, or the associated person who has custody of the records on behalf of the member, refuses to provide such records in the course of the examination or investigation, FINRA has the ability to obtain the records directly from the independent third party that has access to the records consistent with Exchange Act Rule 17a-4(f)(3)(vii). Thus, in response to the SEC's question whether the Proposal provides adequate access to broker-dealer records, FINRA notes that, by removing the third-party requirement and replacing an independent third party with a designated senior officer of the member, the proposed amendment would prevent FINRA from obtaining required records from a third party if the member or designated senior officer (as proposed) refuses to provide the records.

### **Exchange Act Rule 17a-4(i)**

Rule 17a-4(i) serves a similar purpose to Rule 17a-4(f)(3)(vii). Specifically, Rule 17a-4(i) provides that if required records of a member, broker or dealer are prepared or maintained by a third party on behalf of the member, broker or dealer, the third party must

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<sup>3</sup> See Question 15 under the Proposal.

<sup>4</sup> FINRA is the DEA for its member firms. See Section 19(g)(1) of the Exchange Act. In addition, Exchange Act Rule 17d-1 authorizes the Commission to name a single SRO as the DEA to examine broker-dealers that maintain memberships in more than one SRO (common members) for compliance with the financial responsibility requirements imposed by the Exchange Act, or by Commission or SRO rules.

<sup>5</sup> See FINRA Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books) (setting forth FINRA's authority to request books, records and accounts relating to an investigation, complaint, examination or proceeding). FINRA imposes severe sanctions on members and associated persons that refuse to provide information requested pursuant to Rule 8210. See FINRA's Sanction Guidelines, available at [https://www.finra.org/sites/default/files/Sanctions\\_Guidelines.pdf](https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf).

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undertake to, among other things, promptly furnish to the Commission or its designee a copy of such records. The third party must file the undertakings with the Commission.

To help reduce the impact of the proposed amendment to Rule 17a-4(f)(3)(vii) on FINRA, and other DEAs, FINRA requests that the Commission clarify that the DEA for the member, broker or dealer is a designee of the Commission for purposes of Exchange Act Rule 17a-4(i). Alternatively, the Commission could amend Rule 17a-4(i) by adding the following underlined language:

\* \* \* \* \*

With respect to any books and records maintained or preserved on behalf of [BD], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission or by the designated examining authority for the member, broker or dealer, and to promptly furnish to said Commission or its designee, or said designated examining authority, true, correct, complete and current hard copy of any or all or any part of such books and records.

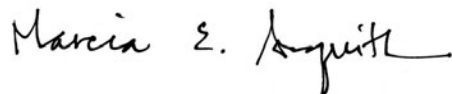
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The requested clarification, or amendment, would enable FINRA, and other DEAs, to obtain required records directly from the recordkeeping service that is maintaining the records on behalf of the member, broker or dealer in those circumstances where the member, broker or dealer or the designated senior officer of the member, broker or dealer (as proposed) refuses to produce the records in the normal course.

## Conclusion

FINRA appreciates the opportunity to comment on the Proposal. FINRA believes that the requested clarification, or amendment, would preserve the objectives of the Proposal while continuing to protect investors. Should you have any questions or wish further to discuss FINRA's views, please contact Robert Colby, Executive Vice President & Chief Legal Officer, FINRA.

Sincerely,



Marcia E. Asquith  
Executive Vice President,  
Board & External Relations