



By Email rule-comments@sec.gov

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

Re: Comment Letter: Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants, File Number S7-19-21

Dear Secretary Countryman,

Amazon Web Services (“AWS”) welcomes the opportunity to comment on the Securities and Exchange Commission’s (“SEC” or “Commission”) proposed amendments to the Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers (“SBSDs”), and Major Security-Based Swap Participants (“MSBSPs” and collectively, “Regulated Entities”).¹ In recognition of the advances in technology since their adoption, the SEC has proposed amendments to two rules under the Securities Exchange Act of 1934 (“Exchange Act”): 1) Rule 17a-4 (“Rule 17a-4”), which provides record preservation requirements applicable to broker-dealers, including broker-dealers registered as SBSDs or MSBSPs; and 2) Rule 18a-6 (“Rule 18a-6”), which provides record preservation requirements for SBSDs and MSBSPs that are not also registered as broker-dealers.

In 2006, AWS began offering information technology (“IT”) infrastructure services to businesses in the form of web services – now commonly known as Infrastructure-as-a-Service (IaaS) cloud computing. Today, AWS provides highly reliable, secure, scalable, and low-cost cloud infrastructure that powers a wide range of businesses and public sector entities around the world. In particular, AWS financial services customers vary in size from fintech startups to global systemically important banks. They operate in every industry segment including asset management, banking, capital markets, insurance, and payments. The AWS cloud infrastructure enables these customers to innovate faster and more cost effectively while improving their security posture and operational resilience. Our infrastructure technologies encompass compute, storage, databases, and networking. We also offer technology services such as machine learning and analytics.

Rule 17a-4(f)(3)(vii) currently requires a broker-dealer that maintains electronic records to engage a third party who has access to information the broker-dealer has retained in their electronic storage media and the ability to download it from the Regulated Entities’ electronic storage media to any acceptable medium. The third party must execute undertakings that it will provide access to the broker-dealer’s electronic records and provide them to the Commission and other securities regulators upon request.

One of the issues that Regulated Entities consider when deciding whether to use cloud infrastructure providers is the implications this might have for their compliance with Rule 17a-4 and Rule 18a-6, including whether the Rule 17a-4(i) and Rule 18a-6(f) requirements for an undertaking apply to cloud infrastructure

¹ Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants, 86 FR 68300 (proposed Dec. 1, 2021) (to be codified at 17 C.F.R. pt. 240) (“Proposing Release”).



providers. AWS explains on its public website how customers can utilize our services to satisfy the technical requirements of 17a-4(f), and the requirement for broker-dealers to appoint a designated third party who can access such books and records. However, we believe there is still some ambiguity in the application of Rule 17a-4(i) to cloud infrastructure providers that should also be clarified as part of the proposed amendments.

We recommend that the Commission clarify the types of service providers expected to provide an undertaking under Rule 17a-4(i) and Rule 18a-6(f) in a way that excludes cloud infrastructure providers unless they affirmatively undertake the obligations to prepare and maintain the records required by Rules 17a-3, 17a-4, 18a-5, or 18a-6. This could be achieved by incorporating a definition of service providers (in lieu of “outside service bureau, depository or bank”, or “third party”) that excludes cloud infrastructure providers. Alternatively, the Commission might also consider eliminating subsection (1) of Rule 17a-4(i) and Rule 18a-6(f) or revise them to clarify that the third party is responsible for making records available only to the extent that the records are accessible and retrievable by the third party.

Importantly, unlike Regulated Entities using the types of service providers specified in Rule 17a-4(i) (*i.e.*, outside service bureau, depository, or bank), customers using cloud services maintain ownership and control of their content, including control over:

- (1) what content they choose to store or process,
- (2) which services they use with their content,
- (3) the region(s) where their content is stored,
- (4) the format, structure, and security of their content, including whether it is masked, anonymized, or encrypted, and
- (5) who has access to their accounts and content, and how those access rights are granted, managed, and revoked.

In addition, AWS provides services on a content agnostic basis, and we generally do not have knowledge of the content of the data that our customers store on AWS. AWS customers, on the other hand, retain control of the records they store on AWS and are in a position to readily facilitate access to such records for regulatory purposes.

We also support the Commission’s goal of making both Rule 17a-4 and Rule 18a-6 technology neutral.² However, we believe that as proposed, the rules would continue to include certain terms that are not now and could prove not to be technology neutral over time. As such, we agree with and support Section VII of the comment letter filed by the Securities Industry and Financial Markets Association (“SIFMA”), which addresses the use of technology neutral terms to allow the proposed rules to be and remain relevant to current technologies and continued innovation.³

We believe that these suggestions are consistent with the Commission’s objectives to update and streamline the electronic record-keeping rules in recognition of the realities of evolving technologies.

² See, e.g., Proposing Release at 68301 (“Finally, the amendments to both rules would remove or replace text to make them more technology neutral and to improve readability.”).

³ See Comment letter from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated December 22, 2021.



Thank you for your consideration and please let us know if there is any other information we can provide. We would be happy to meet with you if you believe it would be helpful to your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Blair Anderson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Blair Anderson
Director
AWS Public Policy