

January 3, 2022

Submitted electronically

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

Re: RIN 3235-AM76, Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants

Dear Ms. Countryman:

LPL Financial LLC (“LPL” or “the Firm”) appreciates the opportunity to submit comments in response to the U.S. Securities and Exchange Commission’s (“the Commission”) solicitation of public comments regarding the proposed rulemakings and interpretation regarding Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants (“Proposal” and collectively, the “Proposals”)¹. LPL thanks the Commission for understanding the need to modernize recordkeeping requirements to reflect new technology available to firms.

I. Overview of LPL

LPL is a leading retail investment advisory firm, independent broker-dealer and registered investment advisor custodian. We serve more than 19,000 independent financial professionals and over 800 financial institutions by providing them with the technology, research, clearing and compliance services, and practice management programs they need to create and grow thriving practices. LPL enables them to provide guidance to millions of American families seeking wealth management, retirement planning, financial planning and asset management solutions. LPL also supports a network of over 400 independent registered investment advisers (“RIAs”) through the country by providing them with access to a range of products, platforms, and services. LPL is not a security-based swap dealer.

II. Comments in Response to RIN 3235-AM76

The Proposal asks for comments on proposed rulemaking that would update electronic recordkeeping requirements last modified in 1997 to reflect advances in technology. As a registered broker-dealer, the Proposals uniquely impact LPL and its recordkeeping obligations. As discussed further below, we believe that this Proposal is reasonable, yet has room for clarification and improvement. LPL generally supports the Proposal and commends the Commission’s efforts to propose amendments to reconcile dated recordkeeping rules with modern technological practices. Subject to the recommendations and enhancements noted below, we urge the Commission to adopt the Proposal as expeditiously as possible.

¹ See RIN 3235-AM76 available at: <https://www.sec.gov/rules/proposed/2021/34-93614.pdf>

The Commission's rules on recordkeeping aim to preserve the authenticity and accuracy of a firm's books and records in order to better assist regulators during examinations. For broker-dealers, accurate and reliable recordkeeping promotes consistent and efficient business practices while ensuring investor protection.

Current Uses of Electronic Recordkeeping Systems

To better understand recordkeeping and the electronic systems that perform it, one must have a solid understanding of how modern computer systems operate in the financial services space with respect to the enormous amount of data generated. Multiple systems generate and manage data, recording a myriad of events, including but not limited to financial transactions (such as trades, deposits, and transfers); collection of customer information (such as contact information and investment profiles); communications sent and received; and other activities conducted in the ordinary course of business. Individuals can then access such data for analysis or compilation into useful reports.

This relationship between the generation and management of data on the one hand, and the analysis and presentation thereof into reports on the other, forms the foundation of modern electronic recordkeeping systems. In contrast, historical recordkeeping assumed that record-keeping events, such as a financial transactions or collection of customer information, become reflected in a fixed document, such as a paper-copy, microfilm, microfiche, or a magnetic disk, for storage and future retrieval.

While the Proposal for an audit-trail alternative to "write once read many" ("WORM")-compliant requirements for electronic recordkeeping moves regulations in the right direction, LPL thinks that the Proposal can be improved by recognizing the nature of data generation, collection, analysis, and presentation, and incorporating into the rule.

Cost Savings for Broker-Dealers

For many broker-dealers, adoption of the proposal will result in significant cost savings and efficiencies. The current WORM system is expensive to build and maintain annually, and is only used to comply with Rule 17a-4. It is estimated that an audit-trail system would be substantially lower to build and implement, and have a significantly lower annual cost of maintenance.

Definition of Electronic Recordkeeping System

As stated in the proposal, the Commission prioritizes making rules more "technology neutral" and "improving readability." We believe that utilizing a definition of "electronic recordkeeping system" that recognizes and incorporates the foundational relationship between data and reports would achieve such goals. Doing so not only reflects best practices in electronic recordkeeping today but also enhances the Commission's stated goals of promoting the management of reliable, secure, and verifiable records.

LPL welcomes the Commissions' proposal to replace "electronic storage media" with "electronic recordkeeping system" and its definition as "a system that preserves records in a digital format and that requires a computer to access the records." Nevertheless, LPL believes that further defining what constitutes a "system" and "computer" may further the Commission's goals of making rules more technology neutral and improving readability.

Consider, for example, a scenario where a firm prints records directly from the hard drive connected to a printer. Would the printer itself constitute a "computer," despite not having a keyboard and monitor? Would the interaction between the data in the hard drive and the printer constitute a "system"? If the printer prints records directly from a storage medium but cannot display such records on a screen, would that action constitute "access"? In such situations, a firm would have been found to be in compliance under previous definitions of "electronic storage media" but potentially not under the new definition.

While the term "electronic recordkeeping system" achieves the Commissions' goals of making the rules more technology neutral and readable, the proposed definition may present problems for both the Commission and broker-dealers subject to the rule. Instead, LPL proposes that the "electronic recordkeeping system" should be redefined to include the following elements:

- A set of policies and procedures governing how data generated by recordkeeping events, such as the collection of customer information or financial transactions, is stored, managed, retrieved, organized, and presented for analysis.

Further, we propose that the term be simplified to “electronic recordkeeping” in order to stay technology-neutral and eliminate the need to amend the definition in the future.

A Set of Policies and Procedures

An effective electronic recordkeeping system incorporates not only software and hardware, but also documented and memorialized policies and procedures. Indeed, software and hardware are meaningless without instructions on how they are utilized. Similarly, any definition of electronic recordkeeping system should consider non-technological elements, such as assigning roles and responsibilities to key individuals and groups. However, each broker-dealer should maintain the autonomy to decide how that system should be designed and operated provided that whatever system chosen meets the SEC’s goal of ensuring that broker-dealers consistently maintain accurate records and have the ability to produce those records within a reasonable time of demand. This definition also creates alignment with existing regulatory obligations under the FINRA Rule 3100 series because firms already have an obligation to establish supervisory systems in the form of written policies and procedures reasonably designed to comply with the Commission’s rules.

Governing Data

The books and records categories under Rules 17a-3 and 17a-4, respectively, come from data that is then translated into records for purposes of complying with the rules. However, as mentioned above, such data may exist independently of an established “record,” and may be generated at an enormous rate. Indeed, the interplay between various software and hardware systems finds its roots in how such systems identify, gather, retrieve, analyze, and present data. In other words, modern systems generate data which then may be compiled into a report, or “record.” This stands in contrast to historical systems, where records waited to become populated with data. Furthermore, modern systems analyze data generated in real time and may be designed to produce alerts to supervisory professionals immediately. These alerts may not be aggregated into an “exception report” as previously contemplated under the Rules. However, this system is exponentially better than that of one generating a compilation of exceptions or alerts on a monthly basis to then be analyzed and addressed after the report’s production because by generating the alerts in real time, matters that expose investors to potential harm can be addressed promptly, thereby preventing the potential harm from materializing. A system such as this that is predicated on the analysis of data in real time should be commended by the SEC because it promotes the self-regulation of the industry and fosters investor protection. Firms should be able to operate systems designed this way without fear of adverse regulatory action for failing to capture an outdated notion of a “record.” The data itself, along with the system of analysis of it, is the record. Therefore, any definition of an electronic recordkeeping system should acknowledge this reality. Incorporating the role of data is consistent with the Commission’s audit-trail alternative proposal, because verification of a record’s authenticity depends on identifying and analyzing the data underlying the record.

Conclusion

LPL appreciates the opportunity to comment on the Commission’s Proposal and we urge the quick adoption of these amendments. Thank you for your consideration of this letter. If you have any questions, please contact me at

Sincerely,



Ian J. Frimet
Senior Vice President, Associate General Counsel