

MEMORANDUM

TO: File Number S7-19-21

FROM: Timothy C. Fox, Branch Chief
Office of Financial Responsibility, Division of Trading and Markets
U.S. Securities and Exchange Commission

DATE: June 9, 2022

RE: Webex Meeting with Microsoft Representatives

On June 9, 2022, Commission staff participated in a meeting conducted by Webex with representatives of Microsoft Corporation to discuss the proposed amendments to the Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants (Release No. 34-93614). Following the call, the representatives from Microsoft sent copies of the documents attached to this memorandum.

Commission staff in the meeting included Michael Macchiaroli, Thomas McGowan, Randall Roy, Raymond Lombardo, Joseph Levinson, Diana Knyazeva, and Timothy Fox.

Microsoft representatives in the meeting included Curtis Turnell and Dave Dadoun.



Supporting Broker-Dealer Compliance with SEC Rule 17a-4

Microsoft Online Services

June 2022



Contractual Commitments, Terms, & Attestations

Agenda

- Microsoft Product Terms
- Data Protection Amendment
- FSI Contract Amendment
- Microsoft's Letter of Attestation: 17a-4(f)(2)(ii)

Microsoft Product Terms

- Product Terms for Online Services

- The unified Product Terms are incorporated by reference into agreements governing Customer's use of Microsoft Products and Professional Services.
- Referred to elsewhere, such as in our Letter of Attestation for Electronic Storage Media as the "Agreement"
- Available at any time and regularly updated at: [Commercial Licensing Terms \(microsoft.com\)](https://www.microsoft.com/licensing/terms/welcome/welcomepage)
<https://www.microsoft.com/licensing/terms/welcome/welcomepage>

Data Protection Amendment

- The parties agree that this Microsoft Products and Services Data Protection Addendum (“DPA”) sets forth their **obligations with respect to the processing and security of Customer Data, Professional Services Data, and Personal Data in connection with the Products and Services**. The DPA is incorporated by reference into the Product Terms and other Microsoft agreements
- Available at any time and regularly updated at: <https://aka.ms/DPA>
- Relevant sections:
 - Nature of Data Processing; Ownership
 - Disclosure of Processed Data
 - Data Retention & Deletion

DPA: Nature of Data Processing; Ownership

Microsoft will use and otherwise process Customer Data, Professional Services Data, and Personal Data only as described and subject to the limitations provided below (a) to provide Customer the Products and Services in accordance with Customer's documented instructions, and (b) for business operations incident to providing the Products and Services to Customer. As between the parties, **Customer retains all right, title and interest in and to Customer Data and Professional Services Data.** Microsoft acquires no rights in Customer Data or Professional Services Data, other than the rights Customer grants to Microsoft in this section. This paragraph does not affect Microsoft's rights in software or services Microsoft licenses to Customer.

DPA: Disclosure of Processed Data

Microsoft will not disclose or provide access to any Processed Data except: (1) as Customer directs; (2) as described in this DPA; or (3) as required by law. For purposes of this section, “Processed Data” means: (a) Customer Data; (b) Professional Services Data; (c) Personal Data; and (d) any other data processed by Microsoft in connection with the Products and Services that is Customer’s confidential information under the volume license agreement. All processing of Processed Data is subject to Microsoft’s obligation of confidentiality under the volume license agreement.

DPA: Data Retention and Deletion

At all times during the term of Customer's subscription or the applicable Professional Services engagement, Customer will have the ability to access, extract and delete Customer Data stored in each Online Service and Professional Services Data.

Except for free trials and LinkedIn services, **Microsoft will retain Customer Data that remains stored in Online Services in a limited function account for 90 days after expiration or termination of Customer's subscription so that Customer may extract the data.** After the 90-day retention period ends, Microsoft will disable Customer's account and delete the Customer Data and Personal Data stored in Online Services within an additional 90 days, unless authorized under this DPA to retain such data.

Financial Services Amendment (Screenshare)

- Available as an add-on to standard Product Terms for customers subject to oversight by a Financial Services Regulator
- Provides additional benefits, such as
 - Data Residency & Transfer Policies
 - Security Incident Notification
 - Rights of Examination or Audit by Regulator
 - Customer Termination Rights
 - Business Continuity of Online Services (incl. transfer of rights & access to data)

Letter of Attestation for Electronic Storage Media

... In order to be eligible for, and rely upon, this letter (including all Appendices, "Letter"), **Company must maintain an active subscription for Services, acquire and maintain all appropriate subscription licenses, and comply with the Agreement and this Letter.**

... **Upon termination or expiration of Company's subscription to the Services, Microsoft will retain the records Company designated to be archived in the Services, and that remain stored in the Services, in a limited function account accessible by Company for a defined retention period in accordance with the terms of the Agreement.** After the initial retention period ends, Microsoft will disable the limited function account and proceed to delete Company's data in accordance with the terms of the Agreement, unless prohibited to do so by applicable law.



[Date]

[Customer Name]

[Customer Address]

RE: Attestation of Electronic Storage Media, SEC Rule 17a-4(f)(2)(i)

To whom it may concern:

[Customer Entity Name] (“Company”) has entered into a volume licensing agreement, incorporating the Online Services Terms (“Agreement”), with Microsoft Corporation or an affiliate of Microsoft Corporation (“Microsoft”) for Microsoft 365 and/or Immutable Storage for Azure Blobs (“Services”). Such Services are further described in the attached Appendices (Appendix A: SEC 17a-4(f) & CFTC 1.31(c)-(d) Compliance Assessment, Microsoft 365 (SharePoint Online, OneDrive for Business, Teams, Exchange Online and Skype for Business), and Appendix B: SEC 17a-4(f) & CFTC 1.31(c)-(d) Compliance Assessment, Microsoft Azure Storage). In order to be eligible for, and rely upon, this letter (including all Appendices, “Letter”), Company must maintain an active subscription for Services, acquire and maintain all appropriate subscription licenses, and comply with the Agreement and this Letter.

Microsoft’s Services offer cloud-based archiving solutions that allow companies to implement one or more policies for the retention of regulated communications content. The Appendices describe the specific Services that Company may configure to meet SEC Rule 17a-4(f)(2)(i) requirements and also how to configure those Services to satisfy these requirements. Company determines the categories of communications and files it retains through the Services, in accordance with the system configurations it has selected and implemented. As described in the Appendices, these categories may be affected by changes to the Agreement, changes to the configuration settings Company selects, and the extent of implementation by Company. Microsoft does not undertake to provide updates with respect to changes to the Agreement (including expiration or termination of the Agreement), the Company’s configuration settings, or the Company’s system implementation to FINRA, the U.S. Securities and Exchange Commission, the Commodity Futures Trading Commission, or other regulators or designated examining authorities.

As required by Rule 17a-4(f)(2)(i) under the Securities Exchange Act of 1934, Microsoft hereby represents that the Services, when used in accordance with the Agreement and this Letter, and when compliance features are properly configured, carefully applied and managed as described in the Appendices, enable Company to:

- preserve its records exclusively in a non-rewriteable, non-erasable format;
- verify automatically the quality and accuracy of the storage media recording process;

- 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; and
- have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under Rule 17a-4(f), as required by the U.S. Securities and Exchange Commission or the self-regulatory organizations of which Company is a member.

For clarity, Company is still responsible for notifying, in accordance with any required notice period, its applicable examining authority prior to implementing any electronic storage media (including the Services), and otherwise ensuring compliance with Rule 17a-4.

Upon termination or expiration of Company's subscription to the Services, Microsoft will retain the records Company designated to be archived in the Services, and that remain stored in the Services, in a limited function account accessible by Company for a defined retention period in accordance with the terms of the Agreement. After the initial retention period ends, Microsoft will disable the limited function account and proceed to delete Company's data in accordance with the terms of the Agreement, unless prohibited to do so by applicable law.

Should you have any questions regarding the foregoing, please contact Archiving in Microsoft Online Services at One Microsoft Way, Redmond, WA 98052, Attention: Archiving in Microsoft Online Services Attestation of Electronic Storage Media, or by e-mail at FSIAssist@microsoft.com.

Very truly yours,

[Microsoft Representative]
[Title]
Microsoft Corporation