



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

April 12, 2018

DIVISION OF
TRADING AND MARKETS

Ms. Kris Dailey
Vice President, Risk Oversight & Operational Regulation
Financial Industry Regulatory Authority ("FINRA")
One World Financial Center
200 Liberty Street
New York, NY 10281

Re: Third-Party Recordkeeping Services under Rule 17a-4

Dear Ms. Dailey,

Your staff has inquired about situations in which a broker-dealer may utilize a third-party recordkeeping service provider to preserve records pursuant to section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-4 thereunder. Specifically, your staff has expressed concerns that broker-dealers are entering into contracts with third-party recordkeeping service providers that have provisions permitting the service provider to delete or discard the broker-dealer's records required to be preserved pursuant to Exchange Act Rules 17a-3 and 17a-4, typically in response to non-payment by the broker-dealer of fees due under the contract but also in other circumstances.

Paragraph (i) of Rule 17a-4 provides that, if the records a broker-dealer is required to preserve pursuant to Rules 17a-3 and 17a-4 are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to paragraph (b)(2) of Rule 17a-3, or other recordkeeping service (each a "service provider"), the service provider shall file with the Securities and Exchange Commission ("Commission") a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the broker-dealer required to preserve such records and will be surrendered promptly on request of the broker-dealer.¹ The service provider also must undertake that with respect to any books and records preserved on behalf of the broker-dealer, the service provider will permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current hard copy of any or all or any part of such books and records.² Moreover, paragraph (i) provides that agreement with an outside entity shall not relieve the broker-dealer from the responsibility to prepare and maintain records as specified in Rules 17a-3 and 17a-4.³

¹ 17 CFR 240.17a-4(i).

² Id.

³ Id.

The Commission adopted paragraph (i) of Rule 17a-4 “to assure the accessibility of broker-dealer records in situations where, for example, a service bureau refuses to surrender the records due to nonpayment of fees.”⁴ In adopting paragraph (i) of Rule 17a-4, the Commission emphasized that the records of a broker-dealer must be available at all times for examination in order to assure the protection of customers.⁵ Prior to the amendment, the Commission had found that, in situations where a broker-dealer or its service providers were experiencing financial difficulty, the records of the broker-dealer had not always been available to the broker-dealer or to the Commission.⁶ Accordingly, contractual provisions that would permit, among other things, a service provider to delete or discard records in the event of non-payment by the broker-dealer are inconsistent with the retention requirements of Rule 17a-4 and the undertaking requirements of paragraph (i) of Rule 17a-4.⁷ Moreover, if a service provider deletes or discards broker-dealer records in a manner that is not consistent with the retention requirements in Rule 17a-4, such action would constitute a primary violation of the rule by the broker-dealer and may subject the service provider to secondary liability for causing or aiding and abetting the violation.

If you have any questions regarding this letter, please call me at (202) 551-5525 or Tom McGowan at (202) 551-5521.

Sincerely,



Michael A. Macchiaroli
Associate Director
Division of Trading and Markets

cc: Yui Chan, FINRA

⁴ Recordkeeping by Brokers and Dealers, Exchange Act Release No. 13962 (Sept. 15, 1977), 42 FR 47551, 47552 (Sept. 21, 1977). Paragraph (i) “also restates Commission policy that an agreement with an outside entity in no way relieves a [broker-dealer] of its responsibility to maintain and preserve records as specified in [Rules 17a-3 and 17a-4].” Filing of Agreements by Outside Service Bureaus, Exchange Act Release No. 13273 (Feb. 16, 1977), 42 FR 10698, 10698 (Feb. 23, 1977). See also Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers, Exchange Act Release No. 10756 (Apr. 26, 1974), 39 FR 16440, 16441 (May 9, 1974) (“If a broker-dealer hires or engages an outside service bureau or other recordkeeping service to handle its records, the requirement to make and keep current the broker-dealer’s books and records is in no way diminished and under such circumstances the broker-dealer is responsible to the same degree for maintaining current books and records as if he were maintaining them himself. Where a broker-dealer undertakes to have his books and records prepared and maintained by a service bureau or recordkeeping service, he should assure himself that the service will be provided in conformity with the Commission recordkeeping rules.”).

⁵ Recordkeeping by Brokers and Dealers, 42 FR at 47552.

⁶ Id. at 47551.

⁷ See id. at 47552.