Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with CASA Service Bulletin SB–235–24–14, dated June 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 06/00, dated June 27, 2000.

Effective Date

(e) This amendment becomes effective on June 11, 2001.

Issued in Renton, Washington, on April 24, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–44238]

Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 With Respect to Rule 17a–4(f)

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Commission is publishing guidance on the operation of its rule permitting electronic storage of broker-dealer records in light of the recently enacted Electronic Signatures in Global and National Commerce Act of 2000. In particular, we are publishing guidance on how the electronic storage requirements of Rule 17a–4(f) under the Securities Exchange Act of 1934 meet, and are consistent with, the requirements of the Electronic Signatures in Global and National Commerce Act.

EFFECTIVE DATE: The guidance is effective on May 7, 2001.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0131; Thomas K. McGowan, Assistant Director, 202/942–4886; Randall W. Roy, Special Counsel, 202/942–0798, or Mathew Comstock, Attorney, 202/942–0156, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is publishing guidance on how Rule 17a–4(f) (17 CFR 240.17a–4(f)) under the Securities Exchange Act of 1934 (''Exchange Act'') is consistent with the Electronic Signatures in Global and National Commerce Act of 2000.

I. Introduction

The Electronic Signatures in Global and National Commerce Act of 2000 (the ''Electronic Signatures Act'') [1] seeks to promote electronic commerce by providing greater legal certainty to transactions effected by electronic means. To this end, the Electronic Signatures Act provides that the legal validity of a signature or contract cannot be denied solely because it is in electronic form.[2] It also encourages electronic record storage by providing that any statute, regulation, or other rule of law that requires the retention of contracts or other records relating to transactions in or affecting interstate or foreign commerce may, with certain exceptions, be complied with by storing the documents electronically.[3] However, the Electronic Signatures Act requires that the electronically stored documents must accurately reflect the information in the contracts or transactional records and be accessible to all persons entitled to review them under statute, regulation, or rule of law in a form that is capable of being accurately reproduced for later reference.[4] The Electronic Signatures Act does not define how these requirements are to be met. Instead, it preserves the ability of regulatory agencies to interpret them with respect to statutes under which such agencies have rulemaking authority.[5]

On March 1, 2001, the Electronic Signatures Act became effective with respect to any existing state or federal regulatory requirement that a contract or transactional record be retained.[6] This effective date is delayed, however, if an agency has announced, proposed or initiated, but not completed, a rulemaking proceeding under the authority preserved in the Electronic Signatures Act.[7] On February 28, 2001, the Commission announced that it would act shortly to provide interpretive guidance and, where appropriate, propose or adopt rules consistent with the Electronic Signatures Act, thereby delaying the effective date with respect to Commission recordkeeping rules to June 1, 2001.[8]

Since 1939, the Commission has required broker-dealers, through rules authorized under the Exchange Act, to make and maintain certain records deemed necessary to ensure compliance with federal securities laws and regulations.[9] In 1997, after requests by industry representatives, the Commission amended its record retention rule to allow broker-dealers to store these records using any electronic storage medium, subject to certain requirements set forth in the rule.[10] These requirements are safeguards designed to ensure the accuracy, accessibility, and accurate reproduction of the electronically stored records. The rule's evolution from a strictly paper requirement to its present electronic storage provisions reflects the Commission's approach of promoting the use of available technologies to the benefit of broker-dealers and investors.

In anticipation of the June 1, 2001 effective date for the electronic storage provisions of the Electronic Signatures Act, we are publishing this release to explain how the electronic storage requirements of the broker-dealer record retention rule meet, and are consistent with, the requirements of the Electronic Signatures Act.

II. Background

A. Broker-Dealer Books and Records Rules

Section 17(a)(1) of the Exchange Act authorizes the Commission to issue rules requiring broker-dealers to make and keep for prescribed periods, and furnish copies thereof, such records as necessary or appropriate in the public

[1] Pub. L. 106–229, 114 Stat. 464 (2000).

[2] Electronic Signatures Act Section 101(a).

[3] Electronic Signatures Act Section 101(d)(1).

[4] *Id.*

[5] Electronic Signatures Act Section 104(b).

[6] Electronic Signatures Act Section 107(b)(1).

[7] Electronic Signatures Act Section 107(b)(1)(B).

[8] Exchange Act Release No. 44014 (Feb. 28, 2001), 66 FR 13273 (March 5, 2001), <http://www.sec.gov/news/digest.shtml>.

[9] Exchange Act Release No. 2304 (Nov. 13, 1939), 4 FR 4578 (Jan. 2, 1940).

[10] Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997) (''Adopting Release'').

interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act.[11] In 1939, the Commission adopted Rules 17a–3 (17 CFR 240.17a–3) and 17a–4 (17 CFR 240.17a–4), pursuant to this authority.[12] Rule 17a–3 requires broker-dealers to make certain records, including trade blotters, asset and liability ledgers, income ledgers, customer account ledgers, securities records, order tickets, trade confirmations, trial balances, and various employment related documents.[13] Rule 17a–4 specifies the manner and length of time that the records created in accordance with Rule 17a–3, and certain other records produced by broker-dealers, must be maintained.[14] In combination, Rules 17a–3 and 17a–4 require broker-dealers to create, and preserve in an accessible manner, a comprehensive record of each securities transaction they effect and of their securities business in general. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business. The requirements are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards.

Originally, Rule 17a–4 had a paper-only requirement for the initial retention of records; now, the rule allows broker-dealers to choose between storing records in paper form, on microfilm or microfiche (''micrographic media'') or using electronic storage media. This progression from paper to electronic media is indicative of how the Commission encourages the use of technological innovation when both broker-dealers and investors will benefit.[15]

As mentioned, Rule 17a–4, when adopted in 1939, required broker-dealers to maintain records in paper form for the first two years of the specified retention period, and on microfilm thereafter.[16] In 1970, the Commission amended the rule to allow the records to be stored immediately on microfilm.[17] This amendment recognized that broker-dealers were increasingly using automated systems in their back office operations, and that the records generated on such systems could be transferred to microfilm more quickly than to paper, and at substantially less expense. As the Commission noted at the time, ''the retention of reels of microfilm as against bulky hard copy records should enable an organization to effect substantial savings in storage space and man hours.'' [18] The rule specifies certain requirements on the use of microfilm intended to ''preserve the basic safeguards designed by [Rules 17a–3 and 17a–4] for the protection of public investors.'' [19] Broker-dealers who use micrographic media must: (1) Maintain facilities to protect the records and reproduce them in an easily readable format; (2) arrange the records and their indexes in a manner that permits the immediate location of a particular record; and (3) store a second copy of the records in a separate location.

In 1991, the Securities Industry Association (''SIA''), on behalf of its broker-dealer members, requested that the Division of Market Regulation (''Division'') amend Rule 17a–4 to permit broker-dealers to store records electronically.[20] The following year, the SIA requested that the Division not recommend enforcement action if broker-dealers stored records using an electronic storage technology known as optical disk.[21] In its no-action request, the SIA set forth a list of safeguards that it believed were appropriate. These safeguards included that the storage system: be non-rewriteable and non-erasable (or write once, read many ''WORM''); automatically verify the accuracy of stored information; serialize and time-date the records; and create indexes of the records. The SIA estimated that the savings realized by switching from microfilm to optical disk would range from $250,000 a year for a medium-sized firm to $1.6 million a year for a large firm.

In 1993, the Division issued a no-action letter in response to the SIA's 1992 request. The no-action letter permitted broker-dealers to meet the record retention requirements of Rule 17a–4 using optical disk storage technology.[22] This allowed broker-dealers to take advantage of the savings and of the increased productivity and quicker access to archived records provided by optical disk. At the same time, the Division recognized that the use of an electronic storage system raised audit and examination concerns. Consequently, the Division established certain conditions for using optical disk to help ensure that records stored in this manner would be accurate and accessible for examination purposes. These conditions were consistent with the safeguards proposed by the SIA in its 1992 no-action request. For example, the optical disk technology stores digital information by employing a laser heat source to burn a pattern on the disk, which makes the records non-rewriteable and non-erasable. The letter also required: (1) Broker-dealers to file an undertaking signed by a third-party in which the third-party represents that it will access the records at the request of the Commission; (2) the optical disk system to automatically verify the quality and accuracy of the recording process; (3) the optical disk system to serialize the original and any duplicate units of the storage medium and time-date information stored on the medium; and (4) the optical disk system to have the capacity to download indices and records.

In 1997, the Commission, in many respects, codified the Division's no-action letter by amending paragraph (f) of Rule 17a–4 to allow broker-dealers to store records electronically.[23] However, one significant difference was that the final rule did not limit broker-dealers to using optical disk. Instead, it allowed them to employ any electronic storage medium, subject to certain requirements. For the most part, these requirements are the same safeguards proposed by the SIA in its 1992 no-action request and later required by the Division in its 1993 no-action letter. It is these requirements of Rule 17a–4 that we now find meet, and are consistent with, the Electronic Signatures Act.[24]

[11] 15 U.S.C. 78q(a)(1).

[12] Exchange Act Release No. 2304 (Nov. 13, 1939), 4 FR 4578 (Jan. 2, 1940).

[13] 17 CFR 240.17a–3.

[14] 17 CFR 240.17a–4.

[15] The Commission continues to be interested in exploring ways in which technology can be used to create efficiencies without sacrificing the Commission's regulatory objectives.

[16] Exchange Act Release No. 2304 (Nov. 13, 1939), 4 FR 4578 (Jan. 2, 1940).

[17] Exchange Act Release No. 8875 (Apr. 30, 1970), 35 FR 7644 (May 16, 1970).

[18] *Id.*

[19] *Id.*

[20] Letter from Edward I. O'Brien, President, SIA, to William Heyman, Deputy Director, Division, (May 1, 1991).

[21] Letter from Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, SIA, to Michael Macchiaroli, Assistant Director, Division, (May 19, 1992).

[22] Letter from Michael A. Macchiaroli, Associate Director, Division, to Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, SIA (June 18, 1993).

[23] Adopting Release 34–38245, 62 FR 6469 (Feb. 12, 1997).

[24] The requirements for using electronic storage media for broker-dealer records are set forth in subsections (2)(i), (2)(ii)(A)–(D), and (3)(i)–(vii) of paragraph (f) of Rule 17a–4. These subsections are the requirements that are generally referred to throughout this release as, among other terms, ''the electronic storage requirements of Rule 17a–4(f).''

B. The Electronic Storage Requirements of the Electronic Signatures Act

Section 101(d)(1) of the Electronic Signatures Act permits persons who are legally required to retain contracts or records relating to transactions in or affecting interstate or foreign commerce to do so using electronic means. However, Section 101(d)(1) also requires persons who opt to store such records in electronic form to proceed in a manner that ensures the records are accurate, accessible, and capable of accurate reproduction for later reference. As Section 101(d)(1) reads in full,

> If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that—
>
> (A) accurately reflects the information set forth in the contract or other record; and
>
> (B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.[25]

The Electronic Signatures Act does not specify the conditions under which an electronic record would be deemed to have met these requirements. However, it does preserve the ability of regulatory agencies to interpret them with respect to statutes under which they have rulemaking authority.[26] The exercise of this interpretive authority is subject to certain guidelines. First, the interpretation must be ''consistent'' with Section 101 of the Act.[27] Second, the interpretation may not ''add to the requirements'' of Section 101.[28] Third, the agency, in issuing the interpretation, must find that: (1) There is substantial justification for the interpretation; (2) the methods selected to carry out that purpose are substantially equivalent to the requirements imposed on records that are not electronic; (3) the methods selected to carry out that purpose will not impose unreasonable costs on the acceptance and use of electronic records; and (4) the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification.[29] We believe the electronic storage requirements of Rule 17a–4(f) meet these guidelines.

III. Analysis

The Electronic Signatures Act becomes effective on June 1, 2001 with respect to Rule 17a–4.[30] To the extent Rule 17a–4 requires the retention of the types of contracts and transactional records identified in the Electronic Signatures Act, broker-dealers will be able to retain them electronically under Section 101(d)(1), provided the electronic records are accurate, accessible, and capable of being accurately reproduced for later reference. Under paragraph (f) of Rule 17a–4, broker-dealers are already permitted to retain all required records—not just these contracts and transactional records—using electronic means, subject to the requirements set forth in that paragraph. Pursuant to the Commission's interpretive authority preserved by the Electronic Signatures Act, we find that the electronic storage requirements of Rule 17a–4(f) meet, and are consistent with, the accuracy, accessibility, and accurate reproduction requirements of Section 101(d)(1) of the Electronic Signatures Act. Therefore, broker-dealers must continue to comply with the electronic storage requirements of Rule 17a–4(f) after June 1, 2001.[31]

A. The Electronic Storage Requirements of Rule 17a–4(f) Are Consistent With Section 101(d) of the Electronic Signatures Act

The electronic storage requirements of Rule 17a–4(f) are consistent with Section 101(d) of the Electronic Signatures Act. First, the Electronic Signatures Act provides that statutes or regulations requiring the retention of certain contractual or transactional records may be complied with by storing them electronically. Rule 17a–4(f) allows for the retention of documents in electronic form. In fact, the rule is broader than the Electronic Signatures Act because it does not limit its applicability to contracts or other records that relate to transactions in or affecting interstate or foreign commerce. Rather, it permits broker-dealers to electronically store all records they are required to retain under Rule 17a–4. Moreover, Rule 17a–4(f) makes specific provision for the use of new technologies as they become available, which is consistent with the technology-neutral requirements in the Electronic Signatures Act.

Second, the Electronic Signatures Act and the electronic storage requirements of Rule 17a–4(f) were each designed to allow affected parties to take advantage of the increased productivity and cost savings arising from the use of electronic storage systems. To quote Representative Sessions, ''the underlying legislation will allow all Americans to benefit from the efficiencies resulting from advances in technology.'' [32] Similarly, the Commission, when adopting its electronic storage rule, stated that the amendments were ''a recognition of technological developments that will provide economic as well as time-saving advantages for broker-dealers by expanding the scope of recordkeeping options.* * *'' [33]

Third, there is explicit support in the legislative history for our finding that Rule 17a–4(f) is consistent with the Electronic Signatures Act. As noted by Representative Dingell, ''[t]he standards set forth in the SEC's existing electronic recordkeeping rule, Rule 17a–4(f), such as the requirement that an electronic recordkeeping system preserve records in a non-rewriteable and non-erasable manner, are essential to the SEC's investor protection mission and are consistent with the provisions of the conference report [on the Electronic Signatures Act].'' [34]

B. The Electronic Storage Requirements of Rule 17a–4(f) Do Not Add Requirements to Section 101(d) of the Electronic Signatures Act

The electronic storage requirements of Rule 17a–4(f) do not add to the requirements of Section 101(d) of the Electronic Signatures Act. The Electronic Signatures Act requires electronic records to be stored in a manner that ensures they are accurate, accessible, and capable of being accurately reproduced for later reference. Rule 17a–4(f) permits broker-dealers to store electronic records in a manner consistent with the Electronic Signatures Act. For example, the WORM requirement is designed to ensure that electronic records are capable of being accurately reproduced for later reference by maintaining the records in an unalterable form. The automatic

[25] Electronic Signatures Act § 101(d)(1).

[26] Electronic Signatures Act § 104(b).

[27] Electronic Signatures Act § 104(b)(2)(A).

[28] Electronic Signatures Act § 104(b)(2)(B).

[29] Electronic Signatures Act § 104(b)(2)(C).

[30] See 66 FR 13273 (March 5, 2001).

[31] We also note that, during the debate on the Electronic Signatures Act, a concern was raised as to whether the validity of a contract could be challenged because it was not retained in an accurate or accessible manner. 146 Cong. Rec. H4349 (daily ed. June 14, 2000) (statement of Rep. Dreier). The electronic storage requirements of Rule 17a–4(f) are designed to ensure that electronic records are kept in an accurate and accessible manner.

[32] 146 Cong. Rec. H4347 (daily ed. June 14, 2000) (statement of Rep. Sessions).

[33] Adopting Release, 62 FR at 6469.

[34] 146 Cong. Rec. H4358 (daily ed. June 14, 2000) (statement of Rep. Dingell) (emphasis added).

verification requirement is designed to ensure the records are accurate by providing verification that a record has been accurately stored in the electronic system. Indexing is designed to ensure that the records are accessible by providing a means to search for specific records among the many that have been stored. The third-party download requirement is designed to ensure that records remain accessible by providing that a person with the appropriate knowledge and expertise will access the system at the Commission's request. The serialization provision is intended to ensure both the accuracy and accessibility of the records by indicating the order in which records are stored, thereby making specific records easier to locate and authenticating the storage process.

C. The Commission Makes the Findings Required by Section 104(b)(2)(C) of the Electronic Signatures Act

In exercising its authority to interpret its statutes, as preserved in the Electronic Signatures Act, the Commission must make four findings: (1) That there is substantial justification for the interpretation; (2) that the methods selected to carry out that purpose are substantially equivalent to the requirements imposed on records that are not electronic; (3) that the methods selected to carry out that purpose will not impose unreasonable costs on the acceptance and use of electronic records; and (4) that the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification.[35]

1. There Is Substantial Justification for the Commission's Interpretation of Rule 17a–4(f)

The electronic storage requirements of Rule 17a–4(f) are substantially justified by the need to protect investors and ensure the soundness of the securities markets. Over the last several years, there has been significant growth in the number of investors entering these markets. For example, we estimate that the number of securities accounts at U.S. broker-dealers has grown from approximately 35 million in 1990 to 82 million in 1999. In part, this growth has been driven by advances in information and trade processing technology, which make it easier for investors to purchase and hold securities. The increase in the number of investors has emphasized the need for a safe and sound market place.

The Commission is responsible for interpreting and enforcing federal securities laws and regulations—such as anti-fraud, sales practice and financial responsibility requirements—aimed at ensuring safe and sound securities markets. Because broker-dealers play a critical role in these markets, the Commission has established rules requiring them to act in a manner that foremost is protective of the interests of their customers and other market participants. These rules, along with rules promulgated by the self-regulatory organizations (''SROs''), seek to ensure that broker-dealers operate in a financially sound manner, maintain adequate custody of customer assets, and refrain from deceptive and manipulative practices. To monitor compliance with these rules, the Commission requires broker-dealers to make and maintain records that document their transactions with customers and overall securities operations. Commission and SRO examiners review these records to determine whether broker-dealers are acting within the requirements of the securities laws, regulations and SRO rules. Accordingly, if investors are to be adequately protected, regulators must be able to rely on these records as providing a true account of a broker-dealer's operations.

Commission enforcement actions against unscrupulous broker-dealers that improperly altered or destroyed records demonstrate the need for measures aimed at maintaining the integrity of broker-dealer records. These cases have included situations in which broker-dealer employees have changed or destroyed order tickets and other transactional records in an effort to shift firm losses to their customers or to conceal fraudulent activities.[36]

Moreover, the complexity of the securities business makes accurate and comprehensive recordkeeping vital to the financial well being of broker-dealers and, as a result, investors and the securities markets. Many securities firms process large volumes of transactions on a daily basis across diverse markets, business groups and geographic areas. Each trade generates several separate records that must be retained. In addition, broker-dealers hold cash and a wide range of domestic and foreign securities on behalf of their customers. The amount of securities under a firm's control constantly changes as it effects transactions. Moreover, the securities for which a broker-dealer has custodial responsibility are frequently maintained in different locations throughout the world. This complexity of operations makes the accurate and comprehensive keeping of broker-dealer books and records crucial to the securities industry. A failure to maintain accurate, accessible, and true records may lead to situations where a firm cannot account for customer property or its own assets. For these reasons, the Commission's broker-dealer recordkeeping requirements are an important part of managing systemic risk in the industry.

2. The Electronic Storage Requirements of Rule 17a–4(f) Are Substantially Equivalent to the Requirements for Records That Are Not Electronic

The electronic storage requirements of Rule 17a–4(f) are intended to ensure the prompt production of legible, true, and complete records, a requirement applicable to the storage of all broker-dealer records regardless of their form. Accordingly, the requirements for electronic storage are substantially equivalent to the requirements for the other methods of record storage.

The examination process, which is fundamental to the regulation of broker-dealers, depends on the ability of examiners to quickly obtain records that are relevant to a particular examination and that reflect the information as originally entered into the record. This need is complicated by the record-intensive nature of the securities industry. Rule 17a–4 seeks to address the tension between the need for quick production of specific records and the volume of records generated on a daily basis, by requiring that more current records be retained in an easily accessible place. It also requires that every broker-dealer ''shall furnish promptly * * * legible, true and complete copies of those records'' requested by representatives of the Commission.[37]

These requirements apply regardless of whether the records are stored in paper form, on micrographic media, or using electronic media. However, given the differences in the methods of storage, the rule sets forth, with respect to micrographic and electronic media, certain requirements designed to ensure the prompt production of legible, true, and complete records. These requirements do not impose greater burdens on broker-dealers for using micrographic or electronic storage methods; rather, they address the unique characteristics of each storage

[35] Electronic Signatures Act § 104(b)(2)(C).

[36] *See e.g., In the Matter of Del Mar Financial Services, Inc., et al.,* Exchange Act Release No. 42421 (Feb. 14, 2000); *In the Matter of A.S. Goldmen & Co., Inc., et al.,* Exchange Act Release No. 41601 (July 7, 1999).

[37] 17 CFR 240.17a–4(j).

method and seek to put them all on an equal footing. For example, the ability to promptly produce legible, true, and complete paper records requires keeping them in an accessible location and filed in a way that particular documents can be identified and retrieved. Conversely, it is not enough to simply keep microfilm tapes or optical disks easily accessible. There must also be facilities to locate the appropriate records, to read them, and to print them. Therefore, paragraph (f) of Rule 17a–4 specifies that broker-dealers using micrographic or electronic media must have such retrieval facilities available.[38] Requiring such facilities for electronically stored records is similar to requiring that paper records be in an accessible place. Moreover, the indexing requirement for records stored using micrographic or electronic media allows for the retrieval of specific records in a manner equivalent to the way that particular paper records can be pulled from designated files.

Furthermore, paper and micrographic media both store exact images of the information as it was originally entered into the record. Electronic media, on the other hand, store the original information in digital or computerized form. The WORM provision is designed to ensure that the original information is preserved in an unalterable manner so that it can be accurately reproduced for later reference.

Paper records are accessible if examiners can obtain and use them. In contrast, accessing electronic storage media systems requires varying degrees of technical expertise (depending on the medium used) and, very likely, knowledge of the proprietary characteristics (*e.g.,* passwords and source codes) of a given system. Therefore, Rule 17a–4(f) requires an undertaking that a third party can provide access to these records. In the absence of such an undertaking, examiners could find it difficult, if not impossible, to obtain electronic records from a broker-dealer that had gone out of business or was refusing to cooperate. Consequently, attempting to retrieve records from an electronic storage medium without the requisite technological knowledge would be no different than attempting to obtain records from a broker-dealer that stored paper records in an inaccessible place.

3. The Electronic Storage Requirements of Rule 17a–4(f) Do Not Impose Unreasonable Costs on the Acceptance and Use of Electronic Records

The costs associated with the electronic storage requirements of Rule 17a–4(f) are reasonable, given their investor protection objective and goal of reducing storage expenses. Broker-dealers have had the option since 1993 of storing records electronically on optical disk, and since 1997 on any type of electronic media. The requirements for using electronic storage media (*e.g.,* WORM, automatic verification, indexing, third-party undertaking) have been in place since the Division's 1993 no-action letter. Our interpretation today does not add to these requirements, and therefore, will not increase the costs of electronic storage, which have likely decreased since 1993 and should continue to drop as technological advances occur. Moreover, the costs of storing large volumes of records electronically are likely to be substantially lower than storing them on paper or on micrographic media.

We believe the electronic storage requirements in Rule 17a–4(f) are necessary to ensure the accuracy, accessibility, and accurate reproduction of broker-dealer records stored electronically. Accordingly, we believe they are reasonable, particularly when measured against the problems that could arise if the ability of securities regulators to enforce compliance with securities laws and regulations was compromised due to inadequate and unreliable electronic recordkeeping. Moreover, as discussed in the next section, the requirements are technology-neutral and, therefore, allow for the use of new technologies as they become available. This flexibility is incorporated in the rule to keep record retention costs as low as possible.

4. The Electronic Storage Requirements of Rule 17a–4(f) Do Not Require, or Accord Greater Legal Status or Effect to, the Implementation or Application of a Specific Technology or Technical Specification

The Commission first proposed amending Rule 17a–4 to allow electronic storage in 1993.[39] The proposed amendments would have limited broker-dealers to using optical disk. However, the Commission ultimately adopted a rule that allows the use of any electronic storage medium that meets the general requirements of the rule.[40] Moreover, in discussing the WORM provision of the rule, the Commission made clear that this did not mean only one type of storage methodology. As the Commission stated in the release,

> In the Proposing Release, the Commission did not intend the definition of optical storage technology to include only ablative methodology of storage. The Commission recognizes that other methods of electronic storage technology exist, including optical tape and CD–ROM, which is available in a WORM, non-rewriteable version. The Commission is adopting a rule today, which, instead of specifying the type of storage technology that may be used, sets forth standards that the electronic storage media must satisfy to be considered an acceptable method of storage under Rule 17a–4. Specifically, because optical tape, CD–ROM, and certain other methods of electronic storage are available in WORM and can provide the same safeguards against data manipulation and erasure that optical disk provides, the final rule clarifies that broker-dealers may employ any electronic storage media that meets the conditions set forth in the final rule.[41]

The Commission also acknowledged that, with respect to the WORM provision, several storage methodologies, in addition to the ablative method mentioned above, were available.[42] For these reasons, the electronic storage requirements of Rule 17a–4 do not require, or accord greater legal status to, the implementation or application of a specific technology or technical specification.

D. The Electronic Storage Requirements of Rule 17a–4(f) Would Be Permissible Performance Standards Under Section 104(b)(3) of the Electronic Signatures Act

Even if the electronic storage requirements of Rule 17a–4(f) accorded greater legal status to the implementation or application of a specific technology or technical specification, the requirements would still be permissible under the Electronic Signatures Act. The Electronic Signatures Act contains an exception to the limitation against the implementation or application of a specific technology or technical specification.[43] The exception permits an agency to specify performance standards to ensure the accuracy, accessibility, and integrity of records that are required to be retained, even if

[38] 17 CFR 240.17a-4(f)(3)(i) and (ii).

[39] Exchange Act Release No. 32609 (July 9, 1993), 58 FR 38092 (July 15, 1993).

[40] Adopting Release, 62 FR 6469.

[41] Adopting Release, 62 FR at 6470.

[42] Adopting Release, 62 FR at 6470 n.10 (The other methodologies identified in the release were alloying, bubble-forming, moth-eye (Plasmon), phase-change, dye/polymer, and magneto-optic).

[43] Electronic Signatures Act Section 104(b)(3)(A).

those standards require implementation or application of a specific technology or technical specification. Under the Electronic Signatures Act, such performance standards must: (1) Serve an important governmental objective; and (2) be substantially related to the achievement of that objective.[44] Even if the electronic storage requirements of Rule 17a–4(f) must be evaluated under Section 104(b)(3)(A) of the Electronic Signatures Act, they serve an important governmental objective and are substantially related to achieving that objective.

1. The Electronic Storage Requirements of Rule 17a–4(f) Serve an Important Governmental Interest

Section 17(a)(1) of the Exchange Act authorizes the Commission to issue rules requiring broker-dealers to make and keep for prescribed periods, and furnish copies thereof, such records as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act.[45] This grant of authority recognizes the importance of broker-dealer recordkeeping to the Commission's regulatory function and investor protection objective. Rule 17a–4, adopted by the Commission pursuant to this authority, sets forth the requirements for keeping and furnishing broker-dealer records. In so doing, the rule serves the important governmental interest of assisting adequate supervision of broker-dealers by the Commission and the SROs. During the debate on the Electronic Signatures Act, the importance of accurate recordkeeping in regulated industries was noted. To quote a statement by Senators Hollings, Wyden and Sarbanes, ''bank and other financial regulators need to require that records be retained in order that their examiners can insure the safety and soundness of the institutions and compliance with all relevant regulatory requirements.'' [46]

Investor protection depends on the examination process, which, in turn, relies on the records that broker-dealers are required to make and maintain. The electronic storage requirements of Rule 17a–4(f) are designed to ensure that broker-dealers will meet their obligation under Section 17(a)(1) and Rule 17a–4 to promptly furnish legible, true and complete copies of such records as are requested by the Commission or its representatives. This is crucial to the Commission's mandate to protect investors. Accordingly, the Commission's regulatory function is undermined to the extent that these records are inaccurate, retained in a non-accessible manner, or capable of alteration. The Commission's enforcement record against unscrupulous broker-dealers that have changed or destroyed records demonstrates how such conduct can harm investors and the public interest.[47]

2. The Electronic Storage Requirements of Rule 17a–4(f) Are Substantially Related to the Important Governmental Interest

The electronic storage requirements are designed to ensure that the Commission can promptly obtain legible, true, and complete records. Because the Commission relies on this ability to fulfill its responsibilities, the requirements are substantially related to the Commission's regulatory function. The Commission, in the release adopting the electronic storage requirements of Rule 17a–4, noted the ''importance for recordkeeping of ready access, reliability, and permanence of records.'' [48] Therefore, the release made clear that the electronic storage requirements were intended as ''safeguards against data erasure'' and to ''facilitate full access to the records during examinations.'' [49] As noted by Senator Leahy, the Electronic Signatures Act specifically authorizes agencies ''to set performance standards to assure the accuracy, integrity, and accessibility of records that are required to be retained.'' [50] Statements of Senators Hollings, Wyden and Sarbanes, and of Representative Dingell indicate that the intent behind this section of the Electronic Signatures Act was to allow agencies to have standards designed to, among other things, prevent companies from retaining materials in an easily alterable form.[51] The electronic storage requirements of Rule 17a–4(f), such as WORM, are designed for this purpose.

IV. Conclusion

For the foregoing reasons, we find that the electronic storage requirements of Rule 17a–4(f) meet, and are consistent with, the requirements of the Electronic Signatures Act.

List of Subjects in 17 CFR Part 241

Securities.

Amendments to the Code of Federal Regulations

For the reasons set forth in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

1. Part 241 is amended by adding Release No. 34–44238 and the release date of May 1, 2001 to the list of interpretive releases.

Dated: May 1, 2001.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11333 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 00F–1487]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acidified sodium chlorite solutions as a component of a post-chill carcass spray or dip when applied to poultry meat, organs, or related parts or trim. This action is in response to a petition filed by Alcide Corp.

DATES: This rule is effective May 7, 2001. Submit written objections and requests for a hearing by June 6, 2001.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, Washington, DC 20204–0001, 202–418–3074.

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[44] *Id.*

[45] 15 U.S.C. 78q(a)(1).

[46] 146 Cong. Rec. S5230 (daily ed. June 14, 2000) (statement of Sens. Hollings, Wyden, and Sarbanes).

[47] *See e.g., In the Matter of Del Mar Financial Services, Inc., et al.,* Exchange Act Release No. 42421 (Feb. 14, 2000); *In the Matter of A.S. Goldmen & Co., Inc., et al.,* Exchange Act Release No. 41601 (July 7, 1999).

[48] Adopting Release, 62 FR at 6470.

[49] *Id.*

[50] 146 Cong. Rec. S5221 (daily ed. June 15, 2000) (statement of Sen. Leahy).

[51] *See* 146 Cong. Rec. S5230 (daily ed. June 15, 2000) (statement of Sens. Hollings, Wyden and Sarbanes); 146 Cong. Rec. H4358 (daily ed. June 14, 2000) (statement of Rep. Dingell).