

# The Designated Third Party Requirement: The Final Frontier of SEC Rule 17a-4(f)

## INTRODUCTION

In 1997, the SEC formally adopted Rule 17a-4(f), which gave broker-dealers the green light to utilize cutting-edge digital storage technology to meet their recordkeeping obligations. However, because the SEC was concerned that its inspection powers would be seriously compromised by its inability to decipher raw data on various media maintained by broker-dealers who either had gone out of business or refused to cooperate, it added a requirement to the rule that broker-dealers retain a third party (“Designated Third Party” or “D3P”) who had the ability to independently download electronically-stored information to another acceptable medium for the SEC’s review (the “D3P Requirement”).

While in recent years broker-dealers have been scrambling to become compliant with the more publicized provisions of Rule 17a-4(f) concerning the appropriate format in which to retain records electronically, they have paid little or no attention to the D3P Requirement. Broker-dealers simply have not viewed as a business priority compliance with a regulation which has practical application only upon the firm’s demise. Further, because the regulators themselves have not focused on compliance with this requirement (even though they would appear to be the primary beneficiary of compliance with this requirement), broker-dealers have taken comfort that their non-compliance with the D3P Requirement would stay under the regulatory radar.

Broker-dealers should not be confident that the regulators will give them a pass indefinitely on the D3P Requirement. While the regulators initially were slow in enforcing the technical provisions of Rule 17a-4(f), the pace of enforcement actions under the rule has been increasing. The regulators are moving towards a zero tolerance policy with respect to non-compliance with the rule, especially in connection with the retention of e-mails. Given the ease with which the regulators can prove a broker-dealer’s violation of the D3P Requirement, it is but a matter of time before we will see a rash of enforcement actions related to this requirement.

However, fear of an enforcement action should not be the sole motivating factor for a broker-dealer to achieve compliance with the D3P Requirement. The D3P Requirement serves the salutary purpose of forcing broker-dealers to collect, document, and analyze all systems setups and configurations concerning electronic recordkeeping, so that it can impart this knowledge to a D3P. By virtue of this exercise, broker-dealers become better organized, and in the process can discover and fill gaps in their general compliance with Rule 17a-4. Further, D3Ps become indispensable resources to broker-dealers in the case of personnel changes in IT; corporate combinations with other broker-dealers using different systems; destruction or loss of systems; and inability to access data stored through legacy systems (after firms have upgraded or purchased new and different storage technologies).

Further, certain vendors offer a complete set of third party services to broker-dealers under Rule 17a-4(f), including being the custodian of the required duplicate set of electronic media, acting as required escrow agent for systems information, and acting as the required D3P — thereby providing substantial efficiency, cost reduction, and a comprehensive compliance solution with respect to Rule 17a-4(f).

This White Paper will explore the background and purpose of the D3P Requirement, discuss the current and future regulatory environment, describe the collateral benefits of compliance with the rule, and offer suggestions to broker-dealers on how to choose the right D3P for their business needs.

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## 1. BACKGROUND

### A. The 1993 No-Action Letter

Prior to 1993, broker-dealers could maintain required records pursuant to SEC Rules 17a-3 and 17a-4 only in the following formats: paper copies, microfilm, or microfiche.<sup>i</sup> In 1992, the Securities Industry Association (“SIA”) proposed to the SEC’s Division of Market Regulation that it recommend no enforcement action be taken against broker-dealers if they utilized “optical storage technology” to maintain required books and records, in lieu of paper copy or micrographics.<sup>ii</sup>

The SIA explained to the SEC that optical storage technology allowed for digital data to be recorded in a hardware controlled, non-rewriteable format, such as write-once, read-many (“WORM”), which provided a non-alterable, permanent record storage medium. The SIA stated that this digital storage medium provided economic as well as time-saving advantages for broker-dealers, including speedier and higher quality access to preserved records than those kept on microfilm, microfiche or physical format.<sup>iii</sup>

The SIA argued that optical disk storage of required books and records was good for the SEC too:

According to the SIA, optical storage technology would enhance the process of providing information more readily to the Commission. The SIA states that these benefits also would accrue to the benefit of the Commission in any record analysis done, because the Commission’s staff would have the same ready, rapid access to the stored information, thus increasing the efficiency of the review process.<sup>iv</sup>

The Division of Market Regulation granted the SIA’s request for a no-action position in 1993, but with a caveat. The SEC staff noted:

The SIA recognizes, however, that industry standards for the development of optical storage technology are currently being set, and that there are audit and examination concerns. Because the technology is new, optical storage systems are not always compatible (*i.e.*, information stored on an optical disk of one manufacturer may not be read by the technology developed by a second manufacturer). As a result of this lack of industry standards, the Commission or a self-regulatory organization (“SRO”) inspecting a broker-dealer may encounter difficulty examining the information on an optical disk, because the technology owned by the inspecting SRO may not be compatible with the optical storage technology used by the broker-dealer to store the information. Accordingly, the Committee recommends that, upon compliance with conditions similar to those set forth below, broker-dealers be allowed to preserve records by employing optical storage technology.<sup>v</sup>

Among the conditions of compliance set forth in the No-Action Letter were:

9. The broker-dealer must maintain, keep current and surrender promptly upon request by the staffs of the Commission or the SROs of which the broker-dealer is a member all information necessary to download records and indexes stored on optical disks; or place in escrow and keep current a copy of the physical and logical file format of the optical disks, the field format of all different information types written on the optical disks and the source code, together with the appropriate documentation and all information necessary to download records and indexes.
10. For every broker-dealer using optical storage technology for record preservation purposes, at least one third party who has the ability to download information from the broker-dealer’s optical unit to another acceptable medium . . . , shall file with the Commission or its designee . . . written undertakings . . .<sup>vi</sup>

## B. Rule 17a-4(f)

Almost simultaneously with the issuance of the No-Action Letter, the SEC published for comment a rulemaking proposal to codify the No-Action Letter with respect to broker-dealers' use of optical disk storage to maintain records.<sup>vii</sup>

The SEC's proposed language for the escrow and Third Party Download requirements of the new Rule 17a-4(f) was lifted virtually unchanged from the No-Action Letter.<sup>viii</sup> In that regard, the SEC noted:

The proposed conditions also are designed to provide access to information preserved in optical disks when the broker-dealer is no longer operational, when the broker-dealer refuses to cooperate with the investigative efforts of the Commission or the SROs, or when the optical disk has not been properly indexed as to its entire contents.<sup>ix</sup>

Four years after the rulemaking proposal, the SEC finally issued new Rule 17a-4(f).<sup>x</sup> The SEC adopted the D3P Requirement (Rule 17a-4(f)(3)(vii)) "substantially as proposed,"<sup>xi</sup> as well as the accompanying escrow provision.<sup>xii</sup>

And in response to industry comments, the SEC expanded the universe of acceptable storage media beyond optical disks. Rule 17a-4 allowed broker-dealers to utilize any electronic storage media that digitally recorded data in a non-rewritable, non-erasable format such as "write once, read many" ("WORM"). According to the SEC, acceptable electronic storage media (in 1997) included optical disk, optical tape, and CD-ROM.<sup>xiii</sup>

It should be noted that the SEC did not adopt Rule 17a-4(f) with e-mail particularly in mind, and certainly not in contemplation of the deluge of e-mails that daily would pour in and out of broker-dealers, which would be required to be retained under Rule 17a-4,<sup>xiv</sup> and stored pursuant to 17a-4(f). Nonetheless, since the date the rule was adopted, both the regulators and broker-dealers primarily have focused on compliance with the rule insofar as it relates to e-mails — given the importance that e-mails have played in enforcement actions and civil litigation.

In 2001, the SEC amended Rule 17a-4(f) to specifically allow SROs and State Securities Regulators also to have access to a D3P for purposes of their inspections, to the extent they have jurisdiction over the broker-dealer serviced by the D3P.<sup>xv</sup>

## C. The 2003 Interpretive Release

In May 2003, the SEC issued an interpretive release stating that Rule 17a-4(f)'s requirement that the storage format be non-rewriteable and non-erasable did not limit broker-dealers to using optical platters, CD-ROMs, DVDs or similar physical mediums.<sup>xvi</sup> In particular, the SEC approved the use of a new storage technology system:

that prevents the records from being overwritten, erased or otherwise altered without relying solely on the system's hardware features. Specifically, these systems use integrated hardware and software codes that are intrinsic to the system to prevent the overwriting, erasure or alteration of the records. Thus, while the hardware storage medium used by these systems (*e.g.*, magnetic disk) is inherently rewriteable, the integrated codes intrinsic to the system prevent anyone from overwriting the records.<sup>xvii</sup>

The archiving system described in the release above will be referred to hereafter as the “Disk Based Solution System” or “DBSS.”<sup>xviii</sup> A DBSS essentially stores the data on a hard drive contained in a cabinet-sized tower (“DBSS Box”) which can hold several terabytes of data. Therefore, unlike WORM-compliant optical disks, optical tapes, and CD-ROMs referenced in the SEC’s 1997 rulemaking release for Rule 17a-4(f), a DBSS Box is not portable.

Because the SEC did not focus on the non-portability of DBSS Boxes in the 2003 Interpretive Release, it did not address what role a D3P should play in assisting the regulators in accessing information stored on a DBSS of a broker-dealer that has gone out of business or refused to cooperate with the regulators.

#### **D. Regulatory Interpretations of the D3P Requirement**

Since the D3P Requirement was formally adopted as Rule 17a-4(f)(3)(vii) in 1997, except for the May 2003 release, the regulators have been virtually silent on the provision, although the NASD staff has published two interpretations of the requirement.

First, if a broker-dealer uses optical storage technology exclusively for only one category of records required to be preserved under SEC Rule 17a-4, it becomes subject to the third party download provider requirement of the rule with respect to that category of records.<sup>xvii</sup> Second, according to the NASD staff, the SEC’s Division of Market Regulation informed the NASD staff that a “third-party vendor required under Rule 17a-4(f)(3)(vii) must be a party independent of the broker/dealer. An affiliate or parent of the broker/dealer is not independent.”<sup>xx</sup>

#### **E. Enforcement Actions Under Rule 17a-4(f)**

To date, no enforcement actions have been brought against a broker-dealer for failure to comply with the D3P Requirement of Rule 17a-4(f)(3)(vii). However, the regulators have been increasingly active in enforcing other aspects of Rule 17a-4(f). The SROs have focused on firms’ failures to store e-mail on non-erasable and non-rewritable media as required by Rule 17a-4(f),<sup>xxi</sup> while the SEC has focused on firms’ failure to store other required books and records in a Rule 17a-4(f) compliant manner.<sup>xxii</sup>

#### **F. The Current State of Affairs and Future Prospects**

Enforcement actions, or the fear of enforcement actions, have forced most broker-dealers to institute Rule 17a-4(f) compliant archiving procedures. Most particularly, broker-dealers are moving away from utilizing disaster recovery backup tapes as the sole storage mechanism for e-mails, and instead are starting to store all e-mails on Rule 17a-4(f) compliant media such as optical disks or DBSS.

Despite the enormous attention recently given by the securities industry to Rule 17a-4(f) compliance, compliance with the D3P Requirement has been of the lowest priority of broker-dealers in connection with Rule 17a-4(f). The lack of interest in complying with the provision is not surprising. The D3P Requirement literally is the final subsection of Rule 17a-4(f), and is intended as a backup to a backup — a failsafe mechanism to allow regulators to review the electronically stored records of broker-dealers who go out of business or refuse to cooperate, where such broker-dealers did not escrow its systems configurations and passwords.

No broker-dealer actively contemplates its own demise; indeed, most firms feel secure in their belief that the firm's operations will continue profitably for generations to come, and that they will maintain reasonably good relationships with the regulators. As such, broker-dealers believe they cannot be faulted for failing to comply with the D3P Requirement, because the requirement provides for a worst case scenario that never will become applicable to them. Broker-dealers therefore have viewed the D3P Requirement as an unnecessary and burdensome rule that accrued only to the benefit of the regulators, and otherwise was of no intrinsic compliance value to the firm.

The regulators have done little to discourage this type of thinking. For instance, even though the SEC insisted on the D3P Requirement in the No-Action Letter and in Rule 17a-4(f) to protect itself and other regulators, the SEC and the SROs to date have not meaningfully scrutinized broker-dealers' compliance with the D3P requirement. At most, the SEC and SRO staffs sporadically have asked broker-dealers during routine examinations for copies of their D3Ps' undertakings filed with the "designated examining authority" (*i.e.*, the SRO with primary supervisory jurisdiction over the broker-dealers).<sup>xxiii</sup> The regulators apparently have been relying on the integrity of these D3P undertakings, and have not been testing the D3Ps' actual abilities to fulfill their undertakings and perform their regulatory tasks.

However, as the SEC's and the SROs' examination and enforcement staffs become more familiar and comfortable with Rule 17a-4, it is likely they will start to focus their attention on substantive compliance with the D3P Requirement. Further, the regulators, upon ascertaining that a broker-dealer is non-compliant with this important, but previously neglected, provision of Rule 17a-4(f), may be led to believe the firm also may be non-compliant with other important SEC rules, and may feel compelled to conduct a deeper dive into the broker-dealer's operations in search of non-compliance in other areas. Given the relative ease with which broker-dealers can become fully compliant with the D3P Requirement, it makes little to no sense for broker-dealers to place themselves at risk of being the subject of wide-ranging investigations, or expensive and embarrassing enforcement actions, by continuing to ignore the requirement.

## 2. THE BENEFITS OF D3P COMPLIANCE

Compliance with the D3P Requirement has benefits beyond merely providing comfort to the firm that it is not violating a regulatory rule. In general, it is a beneficial and useful exercise, in and of itself, for a broker-dealer to undertake to collect and distill its tribal IT knowledge and impart it to a trusted third party not only for safekeeping, but also for outside validation of the firm's electronic record archiving and retrieval procedures. As a result of the exercise, the firm and the D3P will compile a comprehensive reference book detailing the firm's system configurations, hardware, software, illustrative rights, passwords, and encryption keys. In so doing, this analysis necessarily will uncover audit and preservation requirement gaps in a firm's storage and archival systems, which can be filled and corrected by the firm. As such, implementation of the D3P Requirement gives the firm's compliance department a great snapshot where the organization stands with respect to its overall compliance with Rule 17a-4.

Other benefits to compliancy with the D3P Requirement are less immediate, but are nonetheless important. In all organizations, key IT personnel retire or leave, taking with them when they go their unique or peculiar knowledge of the firm's systems. When they leave, they do not always ensure that the information they possess is passed down to remaining personnel. In their absence, the only person associated with the organization who may be aware of certain material systems information

may be the D3P. Thus, if the D3P becomes part of the compliance audit process of the organization, then the “knowledge” is contained within the organization.

This problem may be particularly acute in situations where the broker-dealer merges with, has been acquired by, or acquires, another company that utilizes different or conflicting systems, and the original IT personnel of the firm are laid off or reassigned. Also, if the firm switches to the systems utilized by the company with which it is combining, the original systems are scrapped and become “legacy” systems, and institutional knowledge concerning how to access information stored on media generated from the legacy systems slowly dissipates and becomes forever lost. Here again, the D3P will retain the information necessary to unlock the secrets of the old technology.

A more mundane example of a benefit from D3P compliance may be found where the broker-dealer upgrades storage software or media, but does not retain a copy of the old software or media reader. This situation is exacerbated if the electronic records are not migrated forward to the new system. As the years progress, the SEC or a broker-dealer itself may wish to review information stored in an old media format, and the broker-dealer is unable on-site to read and access the information on its new systems or through its upgraded software applications. The D3P can save the day, because it is required by the regulation to be able to download information stored by broker-dealers on whatever media formats were utilized during the applicable retention period for the records involved.

### 3. CHOOSING THE RIGHT D3P

In finding an appropriate D3P, broker-dealers should keep several things in mind.

First, Rule 17a-4(f)(3)(vii) envisions a D3P who will be able to independently download and convert information stored on portable media without having access to the broker-dealer’s computer systems. As such, the rule envisions that the D3P will have its own systems on site to download and convert information on media supplied to it by the regulators.<sup>xxiv</sup> As such, a D3P must maintain at its site the hardware and software to read multiple and unique types of media utilized by the broker-dealer client, and have the capability to conduct content based searches of the stored information upon the regulators’ request, and print out the results for the regulators. Further, a D3P must be vigilant in ensuring that it updates its systems and technology in tandem with updates in systems and technology at the broker-dealer. Therefore, broker-dealers should look for a D3P with significant resources to handle these complex tasks.

Second, and just as important, a D3P must have a sophisticated IT department that can ask the right questions and drill down into your system infrastructure to ensure that it has a full picture of the firm’s operating systems, and understands which information is being electronically stored under Rule 17a-4(f), in which media formats the information is being stored, how to retrieve the information from the media, including knowledge of system configurations, passwords, and encryption keys, and understands who are the key personnel at the firm responsible for administration of the firm’s systems. Therefore, broker-dealers should look for a D3P with significant experience as a D3P and who has dealt with and possesses knowledge and understanding of a wide range of systems.

Third, the D3P also should offer the capacity to regularly audit the broker-dealer to ensure that the D3P is up-to-date with all changes in the technology utilized by the firm. A D3P also should regularly test its ability to download and convert data stored on current representative samples of all storage media utilized by the broker-dealer, and issue reports of its results to the broker-dealer client and

request follow-up and feedback. Therefore, broker-dealers should look for D3Ps that have in place established procedures to ensure ongoing compliance with the D3P Requirement.

Fourth, where broker-dealers utilize DBSS to store required records, the D3P should have the capacity to routinely perform on-site testing, or remote access testing via VPN or secure website, of its current capabilities to retrieve information from the DBSS Box, in case the regulators ever call upon the D3P to access data from the Box without assistance from the broker-dealer or the SEC. Therefore, broker-dealers should look for D3Ps with significant hands-on experience with DBSS.

Finally, broker-dealers should look to vendors who can provide a suite of third party services to broker-dealers under Rule 17a-4(f), including acting as storage facility for the broker-dealer's duplicate copy of the media under 17a-4(f)(3)(iii), acting as escrow agent for current copies of the physical and logical file format of electronic storage media and other systems information under 17a-4(f)(3)(vi), as well as acting as the D3P under 17a-4(f)(3)(vii).<sup>xxv</sup> Obviously, a vendor that can offer all these services can provide substantial cost efficiencies to broker-dealers, and reduce their compliance headaches.<sup>xxvi</sup>

## CONCLUSION

Compliance with the D3P Requirement makes sense, both from a regulatory and an internal organizational control level. Broker-dealers should look to experienced and qualified D3P vendors to help facilitate compliance with the requirement.

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For information on D3P solutions, please visit <http://www.ironmountaindigital.com>.

<sup>i</sup> See, e.g., Letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, to Robert F. Price, Alex. Brown & Sons, 1979 SEC No-Act. LEXIS 3689 (Nov. 3, 1979).

<sup>ii</sup> See Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Securities and Exchange Commission, to Michael D. Udoff, Chairman, *Ad Hoc* Record Retention Committee, Securities Industry Association, Inc., 1993 SEC No-Act. Lexis 833 (June 18, 1993) (“No-Action Letter”).

<sup>iii</sup> See *Id.* at \*3–5.

<sup>iv</sup> *Id.* at \*6.

<sup>v</sup> *Id.* at \*6–7.

<sup>vi</sup> *Id.* at \*10-12. Specifically, in the event the broker-dealer failed to download records from its optical storage system to a medium acceptable to the SEC staff, the D3P agreed to undertake to download the information from optical disk into a readable format for the SEC staff.

<sup>vii</sup> See Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934, SEC Release No. 34-32609 (July 9, 1993).

<sup>viii</sup> See *Id.*

<sup>ix</sup> See *Id.*

<sup>x</sup> See *Reporting Requirements For Brokers or Dealers Under the Securities Exchange Act of 1934*, Release No. 34-38245 (Jan. 31, 1997). It should be noted that NASD Conduct Rule 3110 and NYSE Rule 440 incorporate by reference all the record retention requirements of SEC Rule 17a-4. Therefore, a violation of SEC Rule 17a-4(f) also constitutes a violation of these SRO rules.

<sup>xi</sup> *Id.* Essentially, the SEC changed all references to “optical storage technology” in the proposed rule to “electronic storage media” in the final rule:

(vii) For every member, broker, or dealer exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party (“the undersigned”), who has access to and the ability to download information from the member’s, broker’s, or dealer’s electronic storage media to any acceptable medium under this section, shall file with the designated examining authority for the member, broker, or dealer the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission (“Commission”), its designees or representatives, upon reasonable request, such information as is deemed necessary by the Commission’s or designee’s staff to download information kept on the broker’s or dealer’s electronic storage media to any medium acceptable under Rule 17a-4.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the broker's or dealer's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the broker or dealer pursuant to Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 in a format acceptable to the Commission's staff or its designee. Such arrangements will provide specifically that in the event of a failure on the part of a broker or dealer to download the record into a readable format and after reasonable notice to the broker or dealer, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the Commission's staff or its designee may request.

xii With respect to the escrow provision, the SEC noted in the rulemaking release that: "The SIA commented that they believed this requirement duplicated the required third party undertaking in the proposed amendments. The third party undertaking was intended to act as a back-up to the escrow requirement, and therefore the Commission does not agree that it would be unnecessary and duplicative to require broker-dealers to keep or escrow the information necessary to download records from optical disk. Accordingly, the final rule adopted today includes such proposed requirement." *Id.*

xiii *See id.*

xiv Rule 17a-4(b)(4) of the Securities Exchange Act of 1934 requires broker-dealers to preserve for a period of not less than three years, the first two years in an "accessible" place, "all communications . . . relating to its business as such . . ." In 1997, in the same release adopting new Rule 17a-4(f), the SEC issued an "interpretation" of 17a-4(b)(4) that "for record retention purposes under Rule 17a-4, the content of the electronic communication is determinative, and therefore broker-dealers must retain only those e-mail . . . communications (including inter-office communications) which relate to the broker-dealer's 'business as such.'" SEC Release No. 38245 (Jan. 31, 1997) (parenthetical in original).

xv *See* SEC Release No. 34-44992 (Nov. 2, 2001).

xvi *See* SEC Release No. 34-47806 (May 12, 2003) ("2003 Interpretive Release") ("It is the view of the Commission that Rule 17a-4 does not require that a particular type of technology or method be used to achieve the non-rewriteable and non-erasable requirement in paragraph (f)(2)(ii)(A)").

xvii *Id.*

xviii Several vendors offer a DBSS for Rule 17a-4(f) compliant storage, e.g., EMC's Centera, Network Appliance's NearStore R200, HP's Reference Information Storage System, IBM's TotalStorage DR550, and Permabit's Permeon.

xix *See Satisfying third party download provider requirements of the SEC's rules for electronically stored records*, Letter from Sarah J. Williams, Assistant General Counsel, NASD Regulation, to Fiona Kaufman, Esq., Legal and Regulatory Officer, SVB Securities, Inc. (July 24, 2000) (available at [www.nasd.com](http://www.nasd.com)).

xx NASD Notice to Members, 2003 NASD Lexis 27 at \*1 (April 15, 2003).

xxi *See, e.g., Advest, Inc.*, Exchange Hearing Panel Decision 04-179 (Nov. 23, 2004) ("while the Firm failed to store its Internet e-mail in a write once, read many ["WORM"] format, the Firm failed to do the same for its internal e-mail, in violation of SEA Regulations 17a-3 and 17a-4 and NYSE Rule 440. Instead, internal e-mail was stored on a Digital Linear Tape that allowed it to be erased"); *The Seidler Companies, Inc.*, Exchange Hearing Panel Decision 04-136 (Aug. 11, 2004) ("Prior to September 2002, the Firm preserved external e-mail on erasable and re-writable tapes . . ."); *Peregrine Financials & Securities, Inc.*, NASD Disciplinary Actions (May 2004) at D2 (broker-dealer failed to have a "preservation system to store electronic mail communications records in a non-rewritable, non-erasable manner for the required time period as required by SEC Rule 17a-4(f)").

xxii *See, e.g., Harrison Securities, Inc.*, SEC Initial Decision Release No. 256 (Sept. 21, 2004) (broker-dealer failed to store a duplicate copy of its general ledger separately from the electronically stored original, as required by Exchange Act Rule 17a-4(f)(3)); *Daniel L. Springgate*, SEC Release No. 34-47640 (April 7, 2003) (respondent failed to ensure that his firm's general ledger was maintained in a non-rewriteable, non-erasable format in accordance with Rule 17a-4(f)(2), and failed to ensure that the firm stored separately from the electronically stored original, a duplicate copy of its general ledger, in accordance with Rule 17a-4(f)(3)).

xxiii The text of a D3P's undertakings filing is strictly prescribed by regulation. *See* Rule 17a-4(f)(3)(vii). Therefore the content of the filing does not vary from D3P to D3P, or from broker-dealer to broker-dealer.

xxiv As discussed earlier, the D3P Requirement was written before the SEC's Division of Market Regulation endorsed DBSSs as a Rule 17a-4(f) compliant storage medium. As discussed above, a DBSS stores records on a hard drive of a bulky DBSS Box. If a broker-dealer fails or refuses to cooperate with the regulators, and the regulators are able to secure possession of the Box, the regulators either can deliver the Box to the D3P, or request that it visit the site where the Box is maintained, to download and retrieve information for the regulators.

xxv Nothing in the rule prohibits a vendor from fulfilling all three roles.

xxvi For instance, D3Ps who also act as the storage facility for the duplicate copy of a firm's media can set up a system to routinely (e.g., annually) test its ability to download data from the media by using current examples of the media stored with the facility, without requesting periodically that the broker-dealer provide sample media for testing.

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