

# **Document Retention Standards Building Your Model**

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## **I. INTRODUCTION**

Document retention standards are much on the minds of firms, compliance and legal professionals, information technology executives and regulators. During our panel discussion we will discuss the following four topics:

1. Key components of a retention program and model
2. Laws and rules: how to build a retention schedule
3. IT requirements: how to keep and protect your data
4. Document preservation: when and how to do legal holds

## **II. EXHIBITS**

**A.** Attached to this outline are the following materials:

1. Record keeping and document retention requirements checklist. (This outline was adapted from one prepared by previous SIA C&L Annual Seminar panels on document retention. The 2006 panel gratefully acknowledges the work of the prior panels.)
2. SEC Interpretation: Electronic Storage of Broker-Dealer Records
3. Sample Legal Holds Memo (This template was prepared by Morgan, Lewis & Bockius LLP)

## **RECORDKEEPING AND DOCUMENT RETENTION** **REQUIREMENTS CHECKLIST**

This outline sets forth a summary of the principal record retention requirements that may be applicable to registered broker-dealers under the laws and regulations cited. It is not intended to be an exhaustive list of all laws and regulations that contain records requirements potentially applicable to SIA members.

### **U.S. FEDERAL LAW**

- I. Federal Securities Law
  - A. Securities Exchange Act of 1934
    - Securities and Exchange Commission and Other Securities Industry Guidance / Comment Letters
  - B. Investment Company Act of 1940
  - C. Investment Advisers Act of 1940
  - D. Government Securities Act of 1986, as amended
- II. Federal Commodities Law
  - A. Commodity Exchange Act
- III. Federal Money and Finance Law and Regulation
  - A. U.S.A. Patriot Act of 2001
  - B. U.S. Department of Treasury Regulations
- IV. Federal Banking and Credit Laws and Regulations
  - A. Office of the Comptroller of the Currency
  - B. Office of Thrift Supervision
  - C. Merchant Banking Investments
  - D. Federal Reserve System
  - E. Federal Deposit Insurance Corporation
- V. Federal Commerce and Foreign Trade Law
  - A. Export Administration Act of 1979

- B. International Investment and Trade in Services Survey Act
- C. Foreign Relations and Intercourse (Title 22)
- VI. Federal Tax Law
  - A. Internal Revenue Code of 1986
- VII. Federal Labor Law
  - A. Department of Labor Regulations: General (Title 29)
  - B. Equal Employment Opportunity Commission
  - C. Occupational Safety and Health Administration
  - D. Labor Management Reporting and Disclosure Act of 1959, as amended
- VIII. Employees' Benefits
  - A. Administration and Procedure
  - B. Social Security
- IX. Housing and Urban Development (Title 24)
  - A. Requirements for Program Lenders
- X. Federal Criminal Statutes
  - A. Obstruction of Justice

#### SELF-REGULATORY ORGANIZATIONS

- XI. National Association of Securities Dealers, Inc.
- XII. New York Stock Exchange

#### STATE LAWS AND REGULATIONS

- XIII. State Securities Laws and Regulatory Materials
- XIV. State Abandoned Property Statutes
- XV. Other New York State Laws
  - A. New York Statute of Limitations
  - B. Uniform Commercial Code

- C. New York Banking Law
- D. New York Tax Law
- E. New York General Business Law
- F. New York Labor Law
- G. New York Workers' Compensation Law
- H. New York Election Law

## Examples of Requirements Applicable to the Securities Industry

### U.S. FEDERAL LAW

#### I. Federal Securities Law

##### A. Securities Exchange Act of 1934 (the “Exchange Act”)

STATUTE OR REGULATION	BOOKS AND RECORDS REQUIREMENTS	RETENTION PERIOD	APPLICATION
Section 3(a)(37)	Definition of “records.” The term “records” means “accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.”	N/A	N/A
Section 13(b)(2)	Detailed books, records, and accounts reflecting the transactions in, and dispositions of the assets of, the issuer. Devise and maintain a system of internal accounting controls to assure transactions are recorded as necessary to permit preparation of financial statements and maintain accountability for assets.	N/A	Every issuer that has a class of securities registered under Section 12 and every issuer required to file reports with the SEC pursuant to Section 15(d)
Rule 15c2-11	Information relating to published quotations.	Must possess at time quotation is submitted for publication and retain for 3 years (first 2 years in an easily accessible place)	Broker-dealers

STATUTE OR REGULATION	BOOKS AND RECORDS REQUIREMENTS	RETENTION PERIOD	APPLICATION
Rule 17a-3(a)(1)-(20)	Blotters; daily receipts and deliveries of securities; daily cash receipts and disbursements; ledgers; stock records; order tickets; purchase and sale memoranda; confirmations for options, security sales, purchases and repos; employee questionnaires and fingerprint cards; certain SEC filings; customer account records; customer complaints; certain records regarding compensation of associated persons; certain other records.	3 or 6 years (as applicable) (first 2 years in an easily accessible place)	Broker-dealers
Rule 17a-3(a)(21)	Record for each office listing, by name or title, each person at that office who can explain the types of records the firm maintains and the information contained therein.	6 years (first 2 years in an easily accessible place)	Broker-dealers
Rule 17a-3(a)(22)	Record listing each principal of a member, broker or dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization of which the member, broker or dealer is a member that require acceptance or approval of a record by a principal.	6 years (first 2 years in an easily accessible place)	Broker-dealers
Rule 17a-4(b)(2)-(3)	Certain financial records.	3 years (first 2 years in an easily accessible place)	Broker-dealers

STATUTE OR REGULATION	BOOKS AND RECORDS REQUIREMENTS	RETENTION PERIOD	APPLICATION
Rule 17a-4(b)(4)	Originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such. (Communications includes “sales scripts” for this purpose.)	3 years (first 2 years in an easily accessible place)	Broker-dealers
Rule 17a-4(b)(5)-(11)	Trial balances; certain financial calculations; financial statements; certain other records.	3 years (first 2 years in an easily accessible place)	Broker-dealers
Rule 17a-4(d)	All partnership agreements or all articles of incorporation, minute books and stock certificate books, all Forms BD, all Forms BDW, all amendments to these forms, all licenses or other documentation showing the registration of the member, broker or dealer with any securities regulatory authority.	Life of the enterprise and of any successor enterprise	Broker-dealers
Rule 17a-4(f)	Records required pursuant to Rule 17a-3 and Rule 17a-4 may be immediately produced or reproduced on “micrographic media” or by means of “electronic storage media” that meet the conditions set forth in Rule 17a-4(f) and may be maintained and preserved for the required time in that form.	N/A	Broker-dealers

## II. Federal Commodities Laws

### A. Commodity Exchange Act

STATUTE OR REGULATION	BOOKS AND RECORDS REQUIREMENTS	RETENTION PERIOD	APPLICATION
17 CFR §1.31	Reg. 1.31 deals with the retention period and form in which records required by the Commission are to be kept. Records required by the Commission may be kept as immediate reproductions on either micrographic media (defined as microfilm, microfiche or any similar medium) or on electronic media (defined as any digital storage medium that: preserves the records exclusively in a non-rewritable, non-erasable format; verifies automatically the quality and accuracy of the storage media recording process; serializes the original and, if applicable, duplicate units of storage media; permits downloading of indexes and records preserved on the electronic storage media onto paper, microfilm, microfiche or other medium).	5 years (first 2 years in an easily accessible place)	All persons required to maintain records under the Act or regulations thereunder
17 CFR §1.35(a)	Full, complete and systematic records including all orders (filled, unfilled or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda, which have been prepared in the course of its transactions and business dealings in commodity futures, commodity options and cash commodities.	5 years (first 2 years in an easily accessible place)	FCMs, introducing brokers and members of contract markets

### III. Federal Money and Finance Law and Regulation

#### A. U.S.A Patriot Act of 2001

STATUTE OR REGULATION	BOOKS AND RECORDS REQUIREMENTS	RETENTION PERIOD	APPLICATION
§311	Secretary of Treasury may require maintenance of records, filing of reports, or both, concerning each transaction if any jurisdiction, institution, or class of transaction is of primary money laundering concern. Records will include the identity and address of participants, legal capacity of participants, identity of beneficial owner of funds and description of transaction.	Retention period to be determined by Secretary of Treasury	Domestic financial institutions  Agencies operating outside of the U.S. or involved in transactions outside of the U.S.
§319(b)	Records of the ownership of foreign banks and their agents in the U.S. designated for service of legal process for records regarding the correspondent account.	Maintain	Financial institutions and their customers
§326	Treasury regulations must require financial institution to maintain records of the information used to verify a person's identity, including name, address, and other identifying information.  See 31 CFR §103	5 years	Financial institutions

### IV. State Abandoned Property Statutes

#### A. New York Abandoned Property Law

STATUTE OR REGULATION	BOOKS AND RECORDS REQUIREMENTS	RETENTION PERIOD	APPLICATION
NY Art. V-A, §513-a	Retain general ledgers, customer ledgers, daily and weekly stock position records, dividend sheets, cash blotters, purchase and sale blotters, daily journals, bank	(i) 10 years (ii) 9 years (iii) 10 years	Brokers and dealers

STATUTE OR REGULATION	BOOKS AND RECORDS REQUIREMENTS	RETENTION PERIOD	APPLICATION
	reconciliations, cancelled checks, claim letters, independent auditor's reports, trial balances, private ledgers, financial statements and supporting data, chart of accounts, and copies of abandoned property reports from the years: (i) 1967, 1968, 1969, 1970; (ii) 1971; and (iii) any subsequent year thereafter.		
NY Art. XI V, §1412-a	<p>All books, records, and documents necessary to establish accuracy and completeness of a report of abandoned property that is required to be filed, including but not limited to, general and subsidiary ledgers, journal entry records, cash receipts and disbursement journals, cancelled checks, bank reconciliations, trial balances, financial statements and supporting data, claim and confirmation letters, charts of accounts, independent auditor reports, copies of abandoned property reports.</p> <p>Property which is payable or deliverable to a payee or owner and which has remained unpaid or undelivered shall be recorded by year of receipt on a separate account identifying nature &amp; origin of such property, maintained in books and records of payor or holder. Any transfer of such property from such separate account to precede abandonment shall be supported by adequate information in the books,</p>	5 years following December 31 of the year for which such report has been filed	Every person, co-partnership, unincorporated association or corporation required to file report of abandoned property, except as referred in §513-a above

<b>STATUTE OR REGULATION</b>	<b>BOOKS AND RECORDS REQUIREMENTS</b>	<b>RETENTION PERIOD</b>	<b>APPLICATION</b>
	records and documents. Property remaining in such separate accounts at the expiration of any such period of inactivity shall be included in filed abandoned property reports.		

**V. Other New York State Laws**

**A. New York Statute of Limitations**

<b>STATUTE OR REGULATION</b>	<b>BOOKS AND RECORDS REQUIREMENTS</b>	<b>RETENTION PERIOD</b>	<b>APPLICATION</b>
CPLR §213	Pertains to actions to be commenced within six years e.g. action upon contractual obligation/liability, action upon sealed instrument, action upon a bond or note, etc.	N/A	
CPLR §214	Pertains to actions to be commenced within three years e.g. action for non-payment of money collected on execution, action for penalty created by statute, to recover chattel, etc.	N/A	