

# Financial Advisor Focus White Paper



## Countering Compliance Confusion

How Digital Document Management Solutions Support Compliance

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# Executive Summary

**Timesaving Tip:** For a high-level overview, read this executive summary and scan the sidebar summary text throughout the paper.

## The Challenge

Financial advisors face not only multiplying compliance and regulatory demands, but also the costs of operating in an increasingly competitive industry. Inefficient, expensive paper-based compliance policies and procedures cut into profits and unnecessarily complicate workflow, while the rising cost of compliance is making business more complicated for financial advisors trying to increase profits and remain competitive.

## The Solution

This paper discusses the strategic benefits of implementing a digital document management solution:

- Increase information security.
- Streamline compliance with SEC retention guidelines.
- Expedite audits by quickly producing records on demand.
- Reduce the costs of document storage and retrieval.
- Simplify compliance with business continuity directives.
- Transform compliance from a cost center into a competitive advantage.

## The Business Benefits

Document management gives financial advisors the capability to increase business value, streamline workflow and simplify regulatory compliance. A digital document management system can't automatically make you compliant, but it can ease the burden of complying with increasingly stringent multi-regulatory rules and retention requirements. With the right technology, you can gain efficiency, improve profitability and increase productivity, all while reducing the cost of compliance.

# Introduction

## Summary

The rising cost of compliance has made headlines in many industries. Compliance issues are rapidly becoming a major challenge for financial advisors, involving increased commitments of time and money. Some firms spend so much time and money setting up compliance programs and then trying to comply with them that it compromises their ability to remain profitable. Due to a changing business environment resulting from recent mutual fund operational abuses, as well as ensuing attempts to rein in corporate wrongdoing, compliance has moved front and center on advisors' agendas.

**The cost of compliance has nearly doubled in the past three years, reaching an estimated annual cost of more than \$25 billion in 2005,** according to the Securities Industry Association's Report on the Costs of Compliance in the U.S. Securities Industry. All financial services firms face these costs of operating in an increasingly complex multi-regulatory environment.

There are currently over 10,000 U.S. federal, state and local laws and regulations addressing what, how, when and why records must be created, stored, accessed, maintained and retained over increasingly long periods of time. While laws and auditing authorities vary by industry and region, two basic principles underlie most regulations. First, **you must set the information in time.** This means that the date and time that images are digitally created on your system must be recorded and cannot be changed. This relates directly to the second requirement, which is **that the storage media your system uses must be unalterable.**

In an increasingly demanding regulatory environment, a document management solution not only improves your firm's bottom line, but also helps limit exposure to civil and criminal liability. A digital document management system can't automatically make your firm compliant, but it can reduce the costs—both monetary and staff-related—of compliance.

To help you understand the primary regulatory issues impacting your firm, the following sections of this paper provide a brief overview of SEC 17A and FINRA regulations, discuss how digital document management solutions can help you comply more cost-effectively with SEC recordkeeping requirements and provide information for your firm to develop document management policies and procedures. The paper also includes a worksheet to assess your firm's existing procedures, sample SEC and FINRA notification letters, a legal analysis of how document management solutions assist in 17A compliance and an overview of the document management implications of SEC and FINRA regulations.

The cost of compliance has nearly doubled in the past three years.

Document management can help reduce the cost of compliance.

Records regulations generally have two basic principles:

- Information must be set in time.
- Storage media must be unalterable.

# A Brief Overview of SEC and FINRA Regulations

## Summary

Securities and Exchange Commission (SEC) 17A mandates cover overall recordkeeping for the financial services industry. **Rule 17a-3 covers document retention requirements—what documents must be retained and for how long. Rule 17a-4 regulates how these documents must be retained.** In combination, Rules 17a-3 and 17a-4 require preservation of records in an easily accessible manner.

General electronic document retention requirements are that:

- There must be written and enforceable retention policies.
- Data must be stored on indelible, non-rewritable media.
- There must be a searchable index of stored data.
- Data must be readily retrievable and viewable.
- A backup of data must be stored off-site.

For a digital document management solution to meet these requirements, it must allow readily available access to both scanned images and digitally-archived electronic documents without permitting alteration to the underlying images. The system should be flexible enough to meet a firm's written compliance policies, and should have instant search and retrieval functionality to locate documents requested by regulators.

If copies of documents are provided on CD or DVD to regulators, the CD or DVD should have a viewer and index included on the disc to enable viewing and searching on any computer, even if document management software isn't installed. A digital document management system should also enable documents and indexes to be stored on any indelible and non-rewritable WORM media, such as CD or DVD, to meet disaster and third-party storage requirements. (Please note that SEC-registered advisory firms are not subject to third-party storage rules.)

**Appendix Four provides more detailed information about both SEC 17a-3 and 17a-4 regulations and analyzes their implications for document management, specifically digital document management solutions.**

SEC 17A mandates cover overall recordkeeping for SEC-registered investment advisory firms. Broker-dealers are also covered by FINRA regulations.

For a legal analysis of SEC recordkeeping requirements, consult Appendix One.

General requirements are:

- Written and enforceable policies.
- Use of non-rewriteable storage media.
- Searchable index of stored data.
- Backup stored offsite.

You must inform your SRO before implementing document management. Sample letters are provided in Appendices Two and Three.

FINRA requires a copy of your firm's imaging procedures along with the notification letter.

### Please Note!

For a legal analysis of SEC regulations and electronic recordkeeping requirements, please consult Appendix One.

**Part f of Rule 17a-4 states that electronic storage media may be used, but requires you to inform your self-regulatory organization (SRO) prior to implementing any electronic recordkeeping solution**, at least 90 days prior to use. (For RIA firms, your SRO is the SEC; for registered representatives, your SRO is FINRA, formerly the NASD.) If you plan on using electronic storage media, you must be able to represent on your own, either with assistance from your vendor or from a consultant of suitable expertise, that the media meets electronic document retention requirements.

With the advent of computer technology, including word processing software, spreadsheet and financial software and e-mail programs, as well as hardware devices and other media to store electronic information, the SEC updated these rules to include provisions for storage on electronic media. In 2001, the SEC released “Electronic Recordkeeping by Investment Companies and Investment Advisers,” Release Nos. IC-24991 and IA-1945, which amended electronic recordkeeping rules 31 a-1 and 204-2, **expanding the ability of financial advisors to use electronic storage media to maintain and preserve records**. Under the revised rules, advisors are permitted to maintain records electronically if they establish and maintain procedures to safeguard the records from loss, alteration or destruction; limit access to the records to authorized personnel; and ensure that scanned paper records are complete, true and legible.

For advisors or firms that are dually registered with FINRA (formerly the NASD), document management requirements are identical to SEC requirements. FINRA, however, requires registered representatives to submit a copy of your firm's imaging procedures, along with the notification letter. A sample FINRA notification letter is provided in Appendix Three.

**For a more detailed analysis of SEC recordkeeping requirements and legal concerns about digital document management systems, please consult Appendix One, “Legal Overview: Advisor Electronic Recordkeeping.”**

**Please Note!**

The included worksheet will help your firm develop your document imaging procedures, which can then be submitted to FINRA.

# How Digital Document Management Helps You Meet Compliance Obligations

## Summary

With extensive recordkeeping and retention requirements, you must find a way to work at maximum efficiency while meeting compliance directives, all without compromising customer service or reducing your firm's profitability.

A quality digital document management solution can help you meet these challenges cost-effectively, easing the burden of compliance, increasing the security of information and reducing the costs associated with paper storage and retrieval.

Digital document management can help reduce the cost of compliance.

You are also able to reduce paper-related overhead and increase staff productivity, as well as provide more responsive customer service.

Document management:

- Eases the burden of compliance.
- Increases the security of information.
- Turns compliance from a cost center into a competitive advantage.

## General Compliance Guidelines for Document Management Systems

- You must be able to retrieve records on demand.
- Your images and database must be stored on acceptable media.
- You must maintain your records in an unalterable format.
- You must store your documents on unalterable media (CD or DVD), or you must use audit trail tracking that clearly identifies the original dates that images were captured into your system.
- For FINRA-registered advisors, a copy of your records must be maintained by a third party, independent from your operation—not your broker-dealer. These copies must be readily available to auditors
- Your system must have reasonable controls to ensure integrity, accuracy and reliability.
- Your system must have reasonable controls to prevent and detect unauthorized creation of, additions to, alterations of or deletion of records.
- Your system must have reasonable controls to prevent and detect records deterioration.
- Your system must have an indexing system facilitating document retrieval.
- You must be able to print copies of records when required.
- Your system must be able to cross-reference with other recordkeeping systems and software. You should be able to produce all applications within a specific date range, or all correspondence from a particular date.
- Your system must have documentation on how the software works and how it is set up.

## Simplify compliance with regulations

### Summary

The core of your compliance program isn't technology, it's the policies, procedures and people you work with daily. **A document management solution can't automatically make you compliant, but it can ease the burden of complying with storage and retention requirements.**

With a digital document management system, you can securely store your records and publish them to unalterable media, a key element of SEC recordkeeping rules. Using a document management system with integrated records management functionality, you can automate records retention and destruction, eliminating the time and expense of duplicating and transferring inactive files to offsite storage. If an inactive client calls, a digital document management system places the information you need at your fingertips. A paper filing system requires you to locate the box the file is in, request it from offsite storage and wait for delivery—delaying your response to the client and consuming both time and monetary resources.

Digital document management systems also expedite audits by helping you to easily and quickly produce records on demand. All financial advisors know that the goal of any audit is to minimize the time auditors spend in your office. With a digital document management system, you can immediately locate requested records and burn them to CD for auditors' future use.

Any financial advisor who has had their office threatened by fire, flood or theft can testify to the vulnerabilities of paper as an archival medium. When paper archives are damaged or destroyed, your information is often lost forever. **Secure archival images of both paper and electronic files ease compliance with business continuity directives by simplifying disaster preparation and recovery, as well as by ensuring the long-term accessibility of critical information.** An enterprise-quality solution will store your information in an unalterable, non-proprietary format such as TIFF, guaranteeing future accessibility.

A digital document management solution will also assist you in providing a response plan to scenarios of varying severity—from firm-only to nationwide—as you enhance your ability to continue operating during an emergency or disaster. Digitized records are much easier to maintain outside of the office, because quality document management systems make it simple to store entire document repositories on durable CDs, which can be easily stored in secure, off-site locations. Built-in search and viewing capabilities on each disc provide document access even if your network is down or destroyed, speeding your firm's response time to any disaster.

Digital document management enables you to securely store records and publish them to unalterable media.

A records management component will automate records retention and destruction in compliance with SEC 17A mandates.

Information is at your fingertips, instead of at an offsite storage facility.

You can expedite audits by easily producing records on demand. A quality solution will let you burn requested records to CD or DVD and will include a built-in viewer and search functionality for use on any computer.

Simplify compliance with business continuity directives by securing your paper and electronic files.

## Increase the security of your information

### Summary

Security threats come in many guises: a rogue employee who makes copies of client information for illegal purposes; a temporary employee who copies digital or paper records; a visitor or janitor who steals paper documents off a desk; or even an employee who accidentally e-mails a document with private client information to the wrong person.

It is critically important for your firm to strictly control who has access to certain types of customer information. Your client files should be viewed as a firm asset, subject to strict security measures for access and audit trails to provide proof of compliance. You must protect client information from unauthorized viewing or duplication by other staff, advisors or malicious outsiders.

With digital document management, you can control who has access to your files, what content they view and what functions they perform, from folders to documents down to individual words. You can protect folders and documents from retrieval or alteration with function and access rights, and redact portions of a document to prevent unauthorized viewing of confidential information.

Audit trail functionality enables you to track who accesses what document when; what they do with it, from printing to faxing to e-mailing; why they did it; and, finally, watermark any printed documents for authentication. You may also consider a system with versioning capabilities, which enables you to store multiple versions of a document to record how it has changed over time.

The comprehensive security controls of a digital repository actually give your organization more control over your archives when compared with paper documents that anyone can copy, remove, alter or forward. You can prevent a departing advisor from leaving with firm-owned client files by immediately shutting off access to documents. User- and role-based security features also prevent employees from accessing records without authorization, stealing records or even making copies for private use—something that is impossible with paper files.

It is much easier to secure electronic records than paper records.

Redaction allows you to block sensitive client information.

Audit trail functionality enables you to:

- Strictly monitor system security.
- Track who accesses what documents when.
- Record what staff members do with documents they retrieve.
- Require reasons for printing or e-mailing information.
- Watermark printed documents for authentication.

## Reduce the costs of compliance

### Summary

Adopting policies for the management of compliant records can be an expensive process, with the major cost factors being the manual procedures required to ensure compliance policies are enforced. Digital document management systems are designed to help automate compliance processes and reduce the cost of compliance, as well as the costs of long-term data preservation.

Digital document management has many compliance benefits, including enhanced security, improved disaster recovery/business continuity planning and efficient audit preparation. Software features including access rights, passwords and central storage enhance security, particularly for larger firms with multiple offices. An enterprise-quality digital document management system should accommodate user-based security, protecting entire folders (such as Human Resources or tax information), subfolders (such as client tax information) or individual documents. Digital redactions can protect extremely sensitive information from unauthorized users. **All these security features are simply impossible with paper-based systems and are a key benefit of digital document management systems.**

Laserfiche® recently sponsored an in-depth study of the return on investment possible for registered investment advisory firms who implement digital document management technology, and the results were impressive. **With document management, a firm can reduce compliance costs by up to 55%, or \$158,000 annually.** To download a copy of the complete research, please visit [www.laserfiche.com/roi](http://www.laserfiche.com/roi).

Manually managing records is quite expensive.

Digital document management can reduce the cost of compliance by:

- Automating document retention and destruction.
- Reducing the costs of long-term data preservation.
- Managing compliance processes without interfering with your line of business.
- Lowering the costs of supervising advisors in field or branch offices.
- Eliminating the costs of offsite storage and lowering the costs of in-house storage.

SEC and FINRA require the designation of a Chief Compliance Officer (CCO) and the implementation and testing of compliance policies and procedures. Digital document management can lower the cost of complying with these requirements, especially for smaller firms.

### Primary factors in delivering a positive return on investment are:

- **Automation:** Any policy that requires documents to be categorized and tagged with meaningful metadata requires the process to be automated to some degree. Metadata is the descriptive information about a document, whether physical or electronic, that allows users to locate and evaluate it. For financial advisory firms, this information can include client name, account number, Social Security Number, birth date or account type, among others. A quality document management system will enable you to customize metadata to fit your existing filing system, and with automated metadata capture, you can reduce the cost of manually cataloging, organizing and tagging documents. Without this capability, many compliance policies are simply unworkable from an economic perspective.
- **Records retention:** A document management system enables you to lower the cost of retaining records in accordance with SEC and FINRA guidelines with records management tools that automatically tag records for retention, transfer, archiving or destruction. You can also easily apply consistent policies to records in a variety of media, from Web content and archived e-mail messages to scanned images and spreadsheets.

- **Administration:** Managing a large digital archive over a multi-year period can cost much more than the capital expense of the media. Self-management facilities such as self-protection, self-configuration and self-optimization can drastically reduce the long-term cost of managing a large digital archive.
- **Transparency:** One of the greatest strengths of a document management system lies in the way it enables you to manage retention schedules without interfering with any department's line of business. A well-designed system will handle records management transparently, meaning that once it is set up, it will not interfere with your line-of-business.
- **Remote Supervision:** A document management system can help you lower the costs associated with supervising remote offices or advisors working from home offices by eliminating the expenses of postage, overnighting and faxing. You can constantly monitor activity without having to leave your office, facilitating supervisory compliance with “know your customer,” money laundering and suitability guidelines. With template field changes, you can also track the status of key documents.
- **Paper overhead:** Cut the costs of in-house and offsite storage, as well as reclaiming space currently used to store customer files. Reduce the amount of revenues you currently spend on paper, printing and mailing.
- **Equipment and maintenance expenses:** A consistent and reliable data retention and disposition policy frees up valuable space on first tier storage. By using a special-purpose storage architecture made up of redundant arrays of commodity servers, disk and network components, document repositories can achieve a low cost per terabyte—roughly equivalent to tape—while still delivering high reliability and immediate access.

Both SEC and FINRA compliance rules place a large burden on firms by requiring the designation of a CCO, the design and implementation of written policies and procedures and the performance of annual reviews of both these procedures and associated compliance infrastructure. Using technology to create an operationally efficient and effective compliance program can help firms—especially smaller firms—lower the costs of compliance with these regulations.

**When comparing technology costs to employee labor costs or the cost of arbitration settlements or fines, investing in a digital document management solution often results in a better use of human resources and more efficient compliance and information management.**

# Developing Document Management Compliance Policies and Procedures

## Summary

Many attorneys who specialize in regulatory compliance say that the documentation of compliance policies and procedures is almost as important as compliance itself. In some cases, auditors won't go beyond examining your written policy—hence, the importance of a compliance manual.

A written compliance manual is also required by SEC Rule 206(4)-7 and 17 CFR Parts 270 and 275. The SEC has stated that it expects your compliance policies and procedures, at a minimum, to address the following issues to the extent that they are relevant to your business:

- Portfolio management processes.
- The accuracy of disclosures made to investors, clients and regulators, including account statements and advertisements.
- Proprietary trading.
- Safeguarding of client assets.
- **The accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction.**
- **Safeguards for the privacy protection of client records and information.**
- Trading practices.
- Marketing.
- Processes to value client holdings and assess fees based on those valuations.
- **Business continuity plans.**

Document management policies and procedures are a crucial part of the records maintenance and privacy protection sections of your compliance manual, as well as your business continuity plans. Your vendor should help you document any necessary information; if you are registered with FINRA, you should also consult your broker-dealer's compliance department for assistance.

When you implement a document management solution, it is crucial to have firm-wide policies and procedures for document scanning, storage and destruction. The included worksheet, “Developing Your Compliance Policies and Procedures,” will help you develop firm policies and procedures that can then be included in your firm's compliance manual, as well as submitted to FINRA with your notification letter.

Documenting your compliance procedures is almost as important as compliance itself.

You must develop firm-wide policies and procedures for document scanning, storage and destruction.

If you are registered with FINRA, these policies must be submitted along with your notification letter.

The included worksheet will help you develop document management procedures.

### Please Note!

The included worksheet will help your firm develop document imaging procedures, which can then be added to your firm's compliance manual.

## Conclusion

With digital document management, you not only reduce costs and increase profits, but you also streamline your compliance processes. Comprehensive security measures protect your documents from unauthorized access in a way file cabinets cannot, enabling you to monitor user activity, protect documents from alteration or loss and prevent accidental release of confidential information. With digital document management, you prepare for audits more easily and ensure compliance with multiple SEC and FINRA regulations, without drastically changing the way you work.

In an increasingly demanding regulatory environment, a document management solution both improves your firm's profitability and helps limit exposure to civil and criminal liability. With a quality digital document management solution, a compliance program no longer has to complicate your business processes and consume large amounts of time and money. Instead, your firm can use your compliance program to streamline workflow and ultimately improve client service and profitability.

### Summary

Digital document management helps provide greater security for confidential client information.

You can ensure compliance with multiple SEC and FINRA regulations without drastically changing your existing procedures.

You will spend less time on compliance and more time with clients.

# Worksheet

## Developing Your Compliance Policies and Procedures

This worksheet will help you develop your firm's digital document management policies and procedures, which can then be included in your compliance manual.

Complete this worksheet with your management team. You should include your firm's chief compliance officer, registered principal (if your firm is dually registered with FINRA) and any employees who are familiar with your paper processing, such as your operations manager. Your vendor should also be available to assist you with developing scanning, indexing and filing procedures that fit your organization's needs.

### Input and Scanning

What different types of documents do you deal with?

Who receives your documents?

Are they date stamped upon receipt?

What kinds of physical actions currently take place on paper documents? *(For example, are they written on? Are they stamped with the date/time? Do they require a wet signature?)*

  

Who is expected to act on these documents?

Is there an approval process for these documents?

What is the rejection process for these documents?

What is the current timeframe for getting documents approved?

Are documents processed one-by-one or are they processed in a batch? How are batches identified?

Will you scan documents in a central location, such as the mailroom or receptionist's desk, and deliver electronic copies, or will it be each person's responsibility to scan their own documents?

  

### **Indexing and Filing**

Will you assign index templates to your documents to aid in retrieval?

Who will enter the receipt information into the index template?

Who will enter the account information into the index template?

Will you need capabilities to batch scan documents and automatically file them?

### **Integration and Automation**

Will you integrate your document management system with any other applications (e.g. portfolio management or CRM applications)?

Will you need the document management system to automatically pull in data from forms?

Will you need the capability to automatically move scanned or electronic documents into appropriate working folders via template field input?

Are there processes that split documents into multiple workflow routes? Is there a requirement to marry these documents back up with each other at a later step?

  

Is it necessary to handle attachments/addendums to existing documents already involved in a workflow process?

What applications are currently involved in the process? Define the purpose of these applications and how they interact with the process.

Is the workflow internal (department-to-department) or external (department-to-external-group)?

How many users will be actively involved in the workflow process?

To what extent does your organization want your workflow processes to be automated?

## Approval and Filing

Who will deliver hard copies to appropriate supervisors for approval and signature?

Who will be responsible for re-scanning documents that have been signed, stamped or changed?

Who will sort and place document images in the correct folders?

Will you sort client files by advisor name or by client name?

How will you set up your folder structure? *(For example, will you have a “To Be Approved” or a “Pending” file for supervisors, an “Approved” file for order processors, and a “To Be Filed” folder? Will you need a “Information Missing” folder for forms missing information that will need to be gathered from the submitting advisor?)*

  
  

## Hard Copy Destruction

How will you handle hard copies that have been scanned?

How long will you keep hard copies before destroying them?

How will you ensure proper backup before you destroy them?

## Search and Retrieval

How will you search for information?

How will you retrieve information?

## Security and Monitoring

Who will be responsible for security and compliance of the digital document management system?

Will you require a monitoring system for user access and activity in the system?

Who will monitor system activity and how often (daily, weekly, monthly, etc.)?

## Additional Information

List anything else pertaining to your compliance and oversight procedures that was not included above.

# Appendix One

## Legal Overview: Advisor Electronic Recordkeeping

By Oren M. Chaplin, Esq.

Advisor compliance with recordkeeping responsibilities has grown less onerous through the advent of technology which affords administrative flexibility. However, ease of administration is not the standard against which a regulatory examiner will review an advisor's procedures. Rather, recordkeeping procedures will be analyzed to determine their compliance with Rule 204-2 of the Investment Advisers Act of 1940 (the "Advisers Act"). Although superficially this recordkeeping rule applies only to SEC-registered investment advisors, the vast majority of state bureaus of securities have either adopted or created rules that closely resemble the federal rule. These rules directly address the question of whether firms can maintain records in an electronic format, but leave many areas open to interpretation.

As an initial matter, an advisory firm must establish internal controls for maintaining, preserving and accessing its electronic records so as to ensure that these records are accurate, true and complete, as well as safe from loss, destruction or tampering. These internal controls necessarily include written procedures that all firm personnel must follow. The ultimate goal of these procedures should be to create a recordkeeping infrastructure wherein the veracity and security of the firm's records cannot legitimately be questioned.

Admittedly, the SEC has not endorsed any particular recordkeeping method or medium. However, guidance can be gleaned from the rule's requirement that records be maintained on micrographic media or other electronic storage medium. Examples include microfilm, microfiche, tape backup, write-once compact disc (CD) or digital versatile disc (DVD). The compliant versions of these media all share one element—they do not allow the data contained in that media to be altered or edited in any capacity. This reading is consistent with both the spirit of the rule and the nature of the deficiencies that many advisors have received during regulatory audits.

Once contained on the particular medium, the information must be organized in a manner that permits easy location, access and retrieval. An advisor must be capable of producing legible copies of any particular record in response to a regulatory request in a short period of time. Similarly, an advisor may also be requested to produce the means by which records are accessed in their digital or film format. For example, firms that prepare microfilm versions of their records must have the facilities to access the microfilm and be capable of producing legible reproductions of firm records. As such, it may be beneficial for the advisory firm to retain the recordkeeping infrastructure on site.

Any record retained electronically must also be retained in duplicate form and stored in a separate location from the original. By transferring firm records to CD or DVD, advisors can leverage this requirement to assist them in satisfying their obligation to develop and maintain a business continuity plan. The duplicate record created to meet the electronic recordkeeping rule can serve as a backup from which information can later be retrieved. Essentially, an advisory firm should develop its recordkeeping procedures with an eye toward business continuity. In fact, regulatory examiners will request an advisor's written business continuity plan in order to assess its adequacy, and the plan should include references to its record retention solutions for both electronic and hard-copy records.

Similar to recordkeeping, the business continuity planning process is a key component of an advisor's fiduciary obligation to his or her clients. The plan should focus on the types of events that could impact the advisor's ability to service clients. This may differ depending upon each advisor's specific circum-

stances, including services provided, geographic location, number of employees or number of branch offices, if any. Regardless of specific circumstances, all advisors must account for a wide range of contingencies ranging from the technical, such as destruction of original records, to the personal, such as disability to firm personnel. The plan should present the advisor's reasonable efforts to minimize the effects of an emergency situation, and the plan, along with its underlying procedures, should be reviewed and tested annually. To that end, electronic recordkeeping should constitute a portion of that plan and can aid the firm in its efforts to continue servicing clients as the emergency situation is resolved.

In closing, firms should evaluate their policies and procedures in this area. If they are compliant, then certain hard-copy records can be deleted. However, we regularly counsel our clients to maintain the hard-copy format of certain records including—but not limited to—original stock certificates, client contracts and corporate books and records. For this reason, a small minority of advisors elect to use electronic versions of documents and rely upon electronic signatures whenever possible, but this election itself raises numerous compliance and liability issues. Other advisors have elected to engage outside service providers for assistance in these areas, but all advisors must remain cognizant that their statutory recordkeeping and business continuity responsibility lies neither with the custodian who may provide information on compact disc nor with those outside service providers. Compliance matters of this nature are non-delegable, and insufficient or inadequate compliance may be the subject of regulatory citation. To the extent that a firm falls out of compliance due to the failure of its recordkeeping service provider, the firm will receive the deficiency, not the service provider.

As with all regulatory requirements, it is extremely important for you to consult the Advisers Act directly and/or to obtain counsel competent in this area. It goes without saying that the investment advisory atmosphere has become exceedingly litigious, and it is absolutely imperative that registered investment advisors understand and satisfy their regulatory obligations.

***Oren M. Chaplin, Esq.**, is a member of the Securities Practice Group of Stark & Stark, a 125 attorney firm with offices in Princeton, New Jersey, New York City, and Philadelphia, Pennsylvania. Mr. Chaplin counsels financial service entities, including investment advisors, broker-dealers, public and private investment companies (e.g., mutual funds, hedge funds, etc.), insurance brokers/agents, CPA firms and their employees, on regulatory, compliance, liability and litigation issues. In addition, he has experience with the purchase and sale of businesses within the regulatory environment.*

## **Appendix Two**

### **Sample Letter to the SEC**

**(Date)**

Ms. Lynn Morrill  
Compliance Specialist  
558 B Street  
Santa Rosa, CA 95405

**RE: (Firm Name), CRD# (XXXXXX)**

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives (FINRA), 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.

In addition, the undersigned asserts that the proposed Laserfiche® software solution archives data in non-proprietary file formats and allows for digital data recording in a non-rewriteable, non-erasable format such as Write Once, Read Many (WORM).

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.

Sincerely,

**(Principal Name)**

**(Title)**

## Appendix Three

### Sample Letter to FINRA (NASD-registered representatives only)

**(Date)**

Compliance Specialist  
NASD Regulation, Inc., Dist. 2  
300 South Grand Avenue, Suite 1600  
Los Angeles, CA 90071-3126

(To find your district office, visit <http://www.finra.org/ContactUs/DistrictOffices/index.htm>.)

**(Firm Name): Compliance with SEC Rules 17a-3 and 17a-4 regarding Electronic Storage of Documents**

Please accept and consider this letter as our formal notification of implementation of Laserfiche® as our electronic document storage system.

Through an internal test, **(Firm Name)** has established that the system has the following features:

1. Stores documents permanently in a non-rewriteable, non-erasable format.
2. Verifies automatically the quality and accuracy of the recording process.
3. Indexes the original form of the document.
4. Electronically time and date stamps the document.
5. Is able to reproduce hard copies of documents and the indexes by which they are organized.

A copy of Laserfiche software is available from the manufacturer if required by securities auditors to reproduce documents. We believe Laserfiche to be in compliance with SEC Rules 17a-3 and 17a-4 regarding the electronic storage of documents.

**(Firm Name) Imaging Procedures** (revise according to your firm's procedures)

1. Documents are received by \_\_\_\_\_ mailroom and manually date stamped.
2. Documents are separated by department and delivered accordingly.
3. Departmental index template assigned to each document by department staff as it is scanned.
4. Receipt information entered into index template by department staff.
5. Department staff inputs account information into index template fields and reviews document.
6. Document image moved automatically, via index template field input, to correct working folder based on information in index template.
7. If approved, document image is forwarded automatically, via index template field input, to next person or department in process. If incomplete, document image is forwarded automatically to Pending Folder and the representative is contacted for missing information.

8. After scanning, document hard copies are delivered to appropriate registered principal for signatures.
9. Any document pages needing re-scanning due to signatures, stamps or changes are rescanned by department staff onto end of existing document.
10. When all reviews, approvals and re-scannings are finalized, the document image is automatically forwarded via index template field input to the "To File" Folder.
11. Department staff then moves document images to correct folders sorted via Firm/Rep and/or via Client Name.
12. Document hard copies are placed into departmental "Scanned" box. After 30 days, to ensure proper backups have been completed, documents will then be shredded.
13. At any time, imaged documents may be searched for and retrieved using index template fields, name of document or OCR'ed text.
14. At no time can imaged documents be deleted or permanently altered.

Please contact me with any questions regarding this system or our procedures.

Sincerely,

**(Name)**

**(Title)**

## Appendix Four

### SEC and FINRA Document Management-Related Compliance Regulations at a Glance

Regulation	Description	Implications for Document Management
SEC 17a-3 SEC 17a-4 <ul style="list-style-type: none"> <li>• 17a-4(b)(4)</li> <li>• 17a-4(f)</li> <li>• 17a-4(f)(2)(i)</li> <li>• 17a-4(f)(2)(ii)(A)</li> <li>• 17a-4(f)(2)(ii)(C)</li> <li>• 17a-4(f)(2)(ii)(D)</li> <li>• 17a-4(f)(3)(i,ii)</li> <li>• 17a-4(f)(3)(vi)</li> </ul>	While regulatory compliance in general is important for financial institutions, regulations governing securities trading are the most stringent and have set the bar for the rest of the industry. A series of SEC rules referred to in section 17a-4 deals with correspondence between the securities company and its customers. 17a-4 specifies a firm's recordkeeping requirements with regard to purchase and sales documents, customer records, associated persons' records, customer complaint records and written supervisory procedures. 17a-3 specifies what types of documents have to be retained and for what period of time.	Specifies requirements for archive media: <ul style="list-style-type: none"> <li>• Document retention enforcement.</li> <li>• Preservation of compliant records in a non-rewriteable, non-erasable format.</li> <li>• Verification of the quality and accuracy of the storage media recording process.</li> <li>• Serialization of the original and duplicate copies of compliant documents.</li> <li>• Time and date stamping of records.</li> <li>• Capacity to readily download indexes and records.</li> </ul>
SEC 31a-1 and 204-2	Permits mutual fund companies and investment advisors to keep all of their records in an electronic format. Provides guidelines for archiving data.	Specifies requirements that records promptly provide: <ul style="list-style-type: none"> <li>• A legible, true and complete copy of the record in the medium and format in which it is stored.</li> <li>• Means to access, view and print the records.</li> </ul>
NASD (NOW FINRA) Rules 3010 and 3110	Each firm must “supervise” their representatives' activity, including monitoring incoming and outgoing e-mail. Each member shall retain correspondence of registered representatives relating to its investment banking or securities business.	Same archive requirements as SEC 17a-4 above

The Laserfiche Institute teaches staff, resellers, and current and prospective clients how to use Laserfiche most effectively. As part of this mission, the Institute conducts more than 500 Webinars each year, covering a variety of topics. The Institute also hosts an annual conference where members of the Laserfiche community attend presentations and network with each other to share ideas and learn best practices. Additionally, the Institute conducts a number of regional training sessions and provides resellers with content for over 100 user conferences each year.

The Institute also develops and distributes educational material through the Laserfiche Support Site. On this Website, clients can access training videos, participate in online forums and download technical papers and presentations that help them become even savvier EDMS users.

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