

Mirapoint RazorSafe Email Archiving & Retrieval Appliance And the SEC 240.17a-4 Requirements

(document updated 1/05)

Part 1: Regulatory Overview

SEC RULE 240.17a-4 – ELECTRONIC RECORDS AND RECORDKEEPING

Financial services organizations must retain electronic communications with customers and those that are germane to their business for at least three years. These communications must be easily accessible, indexed, and stored on non-erasable, non-rewriteable media. While this is a long-standing requirement, only recently has it been enforced with any regularity by federal regulators.

SEC 240.17a-4 and NASD 3010/3110

The Securities Exchange Act was instituted in 1934 to protect investors from fraudulent or misleading claims. The Act requires that records be kept for the purposes of review and auditing of securities transactions. In 1997, the SEC amended the primary rule 17a-4 to let broker-dealers store records (including email and instant messages) electronically. NASD 3010/3110 enforces SEC 17a-4.

WHO IS AFFECTED BY SEC 240.17a-4 and NASD 3010/3110?

These regulations primarily apply to broker-dealers and others who trade securities or act as brokers for traders, including banks, securities firms, stock brokerage firms, and any other entity under the jurisdiction of the National Association of Securities Dealers (NASD).

WHAT ARE THE REQUIREMENTS OF SEC 240.17a-4 and NASD 3010/3110?

For brokerage firms and others subject to these regulations, SEC 240.17a-3 (the requirement to make records) and SEC 240.17a-4 (the requirement to keep records) are the most relevant. Other rules that apply to retention, nonrewriteable storage, and ease of retrieval and viewing are found in 240.17a-4 and NASD 3010 and 3110.

WHEN WERE SEC 240.17a-4 and NASD 3010/3110 EFFECTIVE?

All updated aspects of SEC 240.17a-4 and NASD 3010/3110 were effective as of May 12, 2003.

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE TO SEC 240.17a-4 and NASD 3010/3110?

The criteria for compliance are strict and the penalties for violation severe. The SEC already has fined five of the largest investment banks in the world more than \$8,000,000 for inadequate policies and procedures. Goldman, Sachs & Co., Citigroup Inc.'s Salomon Smith Barney, Morgan Stanley & Co., Deutsche Bank Securities Inc., and U.S. Bancorp Piper Jaffray Inc. all agreed to pay and to review and report on procedures for email retention. Other firms now are on notice that the SEC is serious about these regulations.

In March 2004, Banc of America Securities agreed to pay a \$10 million civil penalty to settle alleged violations of recordkeeping and access requirements under federal securities laws. (The SEC also censured the firm.) The SEC said that BofA Securities repeatedly failed to furnish documents requested by its staff, provided misinformation concerning the availability of records, and engaged in tactics that delayed the investigation. The SEC said the delays were in obtaining e-mail, compliance reviews, and compliance and supervision records.

HOW DO FIRMS COMPLY WITH SEC 240.17a-4 and NASD 3010/3110?

Here is a simplified list of requirements, which include policies firms must enact or technologies they must implement:

- Have written and enforceable retention policies
- Store data on non-erasable, non-rewriteable media
- Maintain a searchable index of all stored data
- Have readily retrievable and viewable data
- Maintain storage of data offsite

Part 2: How the RazorSafe™ Fully Addresses the Requirements of SEC 240.17a-4 (17CFR 240.17a-4)

SEC 240.17a-4 requirements are set forth below. Following each requirement in bold is a statement of how the Mirapoint RazorSafe™ appliance satisfies the requirement. Numbers or letters correspond to sections of the SEC 240.17a-4 rule.

2. If electronic storage media is used by a member, broker, or dealer, it shall comply with the following requirements:

i. The member, broker, or dealer must notify its examining authority designated pursuant to Section 17(d) of the Act prior to employing electronic storage media. If employing any electronic storage media other than optical disk technology (including CD-ROM), the member, broker, or dealer must notify its designated examining authority at least 90 days prior to employing such storage media. In either case, the member, broker, or dealer must provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets the conditions set forth in this paragraph (f)(2).

This requirement addresses steps to be taken by the broker-dealer (BD). Mirapoint attests for its customers that the RazorSafe™ meets these conditions.

ii. The electronic storage media must:

A. Preserve the records exclusively in a non-rewriteable, non-erasable format;

The RazorSafe™, which integrates with AIT WORM (Write Once Read Many) tape, meets this requirement. WORM is a method of storage to meet SEC regulations. Cohasset Associates Inc., in its review of AIT WORM for compliance with Rule 240.17a-4, stated, "The AIT 2/3 WORM Tape Cartridges comply with both the letter and spirit of SEC Regulation 17a-4".1

B. Verify automatically the quality and accuracy of the storage media recording process;

The RazorSafe™ meets this requirement through automatic write verification to ensure data integrity.

C. Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and,

The RazorSafe™ meets this requirement through closed-loop verification for successful data write/commit before deletion or migration of source data, including all data and related index data (email header information; "To", "From", et cetera). When data is written to archive, or migrated among archives (i.e., near-line to off-line), RazorSafe™ technology creates time-date indices and ensures that records do not span multiple media (one record cannot be spread across two different WORM tapes). The RazorSafe™ supports writing to multiple target locations, meeting duplication requirements.

D. Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph (f) as required by the Commission or the self-regulatory organizations of which the member, broker, or dealer is a member.

RazorSafe™ meets this requirement as all email index data, and associated email is available for download or print based on full-text search.

3. If a member, broker, or dealer uses micrographic media or electronic storage media, it shall:

i. At all times have available, for examination by the staffs of the Commission and self-regulatory organizations of which it is a member, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images and for producing easily readable images.

The RazorSafe™ meets this requirement by storing all archived email in its native format; it is easily searchable and available for download or print. Mirapoint uses standard protocols for its products. If the RazorSafe™ disk drive is not available, its AIT-2 tapes can be easily read utilizing currently available software utilities.

ii. Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission or its representatives may request.

All data stored within the RazorSafe™ is immediately available. The wording regarding “facsimile enlargement” is generally regarded as functionality related to the presentation of data stored in microfilm or microfiche, though RazorSafe™ does allow for print, which can in turn be faxed.

iii. Store separately from the original, a duplicate copy of the record stored on any medium acceptable under Rule 240.17a-4 for the time required.

RazorSafe™ products meet this requirement through closed-loop verification for successful data write/commit before deletion or migration of source data, including all data and related index data (email header information; "To", "From", and so on). RazorSafe™ products target two locations, meeting duplication requirements.

iv. Organize and index accurately all information maintained on both original and any duplicate storage media.

The RazorSafe™ supports writing of email and email index data (email header information; "To", "From", et cetera) to multiple target locations, meeting duplication requirements. Furthermore, the RazorSafe™ ensures that records do not span multiple media (one record cannot be spread across two different WORM tapes). These records are then viewed by most relevant occurrence.

A. At all times, a member, broker, or dealer must be able to have such indexes available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

The RazorSafe™ meets this requirement, as all email index data and associated email is available for download or print based on a full text search.

B. Each index must be duplicated and the duplicate copies must be stored separately from the original copy of the index.

RazorSafe™ products support write of email to multiple target locations, meeting duplication requirements.

C. Original and duplicate indexes must be preserved for the time required for the indexed records.

Once duplicates are created and stored by the RazorSafe™ appliance, there is no time limit restriction on the preservation of these media beyond the SEC three-year requirement.

v. The member, broker, or dealer, must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to Rules 17a-3 and 240.17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.

All email stored in the archive is taken automatically and directly from each email server, with no user intervention. The RazorSafe™ provides sophisticated security rules governing access and activities allowed against archived records. User permissions and actions are logged to the individual email record level, including date and time stamping for mail list or individual mail access, printing, and fax. The RazorSafe™ provides logging, audit trails, and discrete email-level security, restricting the type of information that can be accessed according to various parameters – e.g., date ranges, mail accounts, and other key indices.

A. At all times, a member, broker, or dealer must be able to have the results of such audit system available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

The RazorSafe™ meets this requirement through creation of full audit logs, which are stored, secured, and available for review at any time.

B. The audit results must be preserved for the time required for the audited records.

Once audit records are created and stored with the next version of the RazorSafe™, there will be no time limit restriction on the preservation of these beyond the SEC three-year requirement.

vi. The member, broker, or dealer must maintain, keep current, and provide promptly upon request by the staffs of the Commission or the self-regulatory organization of which the member, broker, or broker-dealer is a member all information necessary to access records and indexes stored on the electronic storage media; or place in escrow and keep current a copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes.

All information stored within the RazorSafe™ is available for any user given appropriate access. In addition, RazorSafe™ provides off-site storage and escrow arrangements (source code as well as archive).

RazorSafe™ also meets additional SEC requirements found in 240.17a-4 relating to the furnishing of records, some of which are specific to the practices of the broker-dealer, but also include references to requirements of the broker-dealer to make records available via a third-party.

Part 3: Most Recent Amendment to 240.17a-4 (effective 18 months after amendment date)

5. Section 240.17a-4 is amended by:

- a. Revising paragraph (a);
- b. Revising the introductory text of paragraph (b);
- c. Revising paragraphs (b)(1), (b)(4), (c) and (d);
- d. Revising the introductory text of paragraph (e);
- e. Adding paragraphs (e)(5), (e)(6), (e)(7), (e)(8);
- f. Revising paragraph (j); and
- g. Adding paragraphs (k) and (l).

The revisions and additions read as follows:

§ 240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

(a) Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to paragraphs § 240.17a- 3(a)(1), (a)(2), (a)(3), (a)(5), (a)(21), (a)(22), and analogous records created pursuant to paragraph § 240.17a-3(f).

(b) Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than three years, the first two years in an easily accessible place:

(1) All records required to be made pursuant to § 240.17a-3(a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(16), (a)(18), (a)(19), (a)(20), and analogous records created pursuant to § 240.17a-3(f).

* * * * *

(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, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this paragraph, the term communications includes sales scripts.

* * * * *

(c) Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account.

* * * * *

(d) Every member, broker and dealer subject to § 240.17a-3 shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD (§ 249.501 of this chapter), all Forms BDW (§ 249.501a of this chapter), all amendments to these forms, all licenses or other documentation showing the registration of the member, broker or dealer with any securities regulatory authority.

(e) Every member, broker and dealer subject to § 240.17a-3 shall maintain and preserve in an easily accessible place:

* * * * *

(5) All account record information required pursuant to § 240.17a-3(a)(17) until at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated.

(6) Each report which a securities regulatory authority has requested or required the member, broker or dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report until three years after the date of the report.

(7) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.

(8) All reports produced to review for unusual activity in customer accounts until eighteen months after the date the report was generated. In lieu of maintaining the reports, a member, broker or dealer may produce promptly the reports upon request by a representative of a securities regulatory authority. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports. If a report is generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced in any format using historical data, the member, broker or dealer shall promptly produce upon request a record of the parameters that were used to generate the report at the time specified by a representative of a securities regulatory authority, including a record of the frequency with which the reports were generated.

* * * * *

(j) Every member, broker and dealer subject to this section shall furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the member, broker or dealer that are required to be preserved under this section, or any other records of the member, broker or dealer subject to examination under section 17(b) of the Act (15 U.S.C. 78q(b)) that are requested by the representative of the Commission.

(k) Records for the most recent two year period required to be made pursuant to § 240.17a-3(f) and paragraphs (b)(4) and (e)(7) of this section which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one associated person (or multiple associated persons who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the member, broker or dealer handled there, the member, broker or dealer need not maintain records at that office, but the records must be maintained at another location within the same State as the member, broker or dealer may select. Rather than maintain the records at each office, the member, broker or dealer may choose to produce the records promptly at the request of a representative of a securities regulatory authority at the office to which they relate or at another location agreed to by the representative.

(l) When used in this section:

- (1) The term office shall have the meaning set forth in § 240.17a-3(g)(1).
- (2) The term principal shall have the meaning set forth in § 240.17a-3(g)(2).
- (3) The term securities regulatory authority shall have the meaning set forth in § 240.17a-3(g)(3).
- (4) The term associated person shall have the meaning set forth in § 240.17a-3(g)(4).

§ 240.17a-4 [Amended]

6. Section 240.17a-4 is amended by:

- a. Removing from paragraph (b)(7) the word "his" and in its place adding "its"; and
- b. Removing from paragraph (e)(1) the phrase "the "associated person" has terminated his employment and any other connection with the member, broker or dealer." and in its place adding "the associated person's employment and any other connection with the member, broker or dealer has terminated.".
- c. Removing from paragraph (f)(3)(ii) the phrase "the Commission or its representatives" and in its place adding "the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer".
- d. Removing from paragraph (f)(3)(vii):

- i. The phrase "the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives," and in its place adding "the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer,";
- ii. The phrase "the Commission's or designee's staff" and in its place adding "the staffs of the Commission, any self regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer"; and
- iii. From each place it appears, the phrase "the Commission's staff or its designee" and in its place adding "the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer".

PART 242 — REGULATIONS M and ATS

7. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78i(a), 78j, 78k-1(c), 78l, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 80a-23, 80a-29, and 80a-37.

8. In § 242.303, paragraph (d) is amended by removing the phrase "representatives or designees of the Securities and Exchange Commission, and to promptly furnish to the Commission or its designee" and in its place adding "the staff of the Securities and Exchange Commission, any self-regulatory organization of which the alternative trading system is a member, or any State securities regulator having jurisdiction over the alternative trading system, and to promptly furnish to the Commission, self-regulatory organization of which the alternative trading system is a member, or any State securities regulator having jurisdiction over the alternative trading system".

By the Commission.

Jonathan G. Katz

Secretary

Dated: October 26, 2001

Note: Kaizen Ventures, Inc. advises you that, when designing or implementing data retention or data storage solutions for compliance purposes, always seek the advice of an attorney and/or consultant with specialized expertise in electronic records retention and archiving, and the associated laws and regulations that apply for your industry or geographical jurisdiction(s). This document is provided only for informational purposes.

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