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SEC OKs Plan to Ease Funds' Recordkeeping Burden

by Peter Ortiz

The SEC has given its blessing to a plan that is expected to ease a recordkeeping headache for funds and fund advisors under the old books and records rule.

The Securities and Exchange Commission recently issued two no-action letters effectively allowing investment managers to outsource their trade confirmation recordkeeping obligations under federal securities laws. Omgeo, a service provider that assists firms in managing their trade allocations, confirmations and settlements, received the no-action relief.

The first no-action letter allows Omgeo to maintain and preserve confirmations for broker-dealers, while the second letter allows the same for fund advisors. Currently funds and advisors store records in a variety of ways, including reams of confirms stored on CDs or on their electronic servers.

The burden is not so much storing the information as it is maintaining and cataloging it so the confirms are easy to access and search.

The no-action letters come as the SEC continues to signal that it is not likely to update the books and records rule to deal with technological advances in compliance.

"I still think they will come out with the [revised] books and records rule eventually, but clearly [the SEC] have bigger fish on their plate right now," says Shannon Behara, senior principal consultant with ACA Compliance Group.

Lee Cutrone, managing director of industry relations for Omgeo, says the SEC's no-action letters will mean investment managers no longer have to create their own electronic storage capacity or physically store trade confirmation records.

"Most of the clients we talk to don't want to be in that business," Cutrone says. "So what this relief does is allow Omgeo to take that burden off the investment managers' shoulders, store their electronic confirmations for years, and if at any time the regulator or client should want to see the confirmation, we immediately make it available to them."

The books and records rule dates back to a time when funds relied on receiving a paper confirmation in the mail from the broker-dealer that executed the trade. With advances in technology and the Internet providing instant confirmation, snail mail became unnecessary. But the books and records rule still mandates that funds or their advisor keep a record of the trade onsite for the most recent 2.5 years after a security is transacted. After 2.5 years the fund or advisor can store its confirmations at an offsite facility.

"Essentially, this no-action letter is confirming that you can rely on that third party as long as you have a contract with them saying they will provide... confirmation of the fund's securities transactions," Behara says. "So it facilitates the recordkeeping for both the fund and their advisor."

The no-action letter does not, however, relieve the fund or its advisor of the responsibility to maintain oversight of Omgeo as a third-party service provider, Behara says. Still, not having to maintain paper or electronic records onsite and offsite can be a big benefit, she says.

The SEC has in the past provided no-action letters that permit funds to maintain records electronically, and these recent no-action letters continue that trend of updating books and records requirements in a “piecemeal” fashion, says Janaya Moscony, president and founder of SEC Compliance Consultant.

While Behara and Moscony expect Omgeo to draw interest from funds, they also expect other firms to piggyback on the same no-action relief and offer similar services.

The conditions to which Omgeo agreed in securing the no-action letters include storing at least two electronic copies of all confirmations sent to advisors for no fewer than five years and allowing clients to electronically retrieve confirmations from Omgeo at any time.

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