

Regulation Overview

Investment Adviser's Act : Rule 204-2



INVESTMENT ADVISER'S ACT : RULE 204-2

The Investment Adviser's Act of 1940 requires the registration of investment advisers with the SEC. Rule 204-2 of the Act, "Books and Records to be Maintained by Investment Advisers," specifically details email creation and retention requirements for all client records.

WHO IS AFFECTED BY RULE 204-2?

In 1996, Congress amended the Act to require registration only of advisers who have at least \$25 million of assets under management or advise a registered investment company. An investment adviser is generally someone who advises others about the advisability of investing in, purchasing, or selling securities for compensation. However, antifraud provisions are imposed on all persons who meet the statute's definition of investment adviser even if the Adviser's Act does not require them to register with the SEC.

WHAT ARE THE REQUIREMENTS OF RULE 204-2?

204-2 details the types books and records an Adviser must make and keep true, current and accurate for their business. Email is specifically identified as a business record in the rule. Section (g) of 204-2 sets specific rules for retention, non-rewriteable storage, and ease of retrieval and viewing, including preservation "in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser." Section (h) allows any record compliant with SEC 17a-4 to also be deemed compliant with Rule 204-2. SEC 17a-4 demands the creation of policies for, and retention of, reviewable customer records and transaction data. Rule 204-2 requires investment advisers to arrange and index the records in a way that permits easy location, access, and retrieval of any particular record. The rule further requires advisors to promptly furnish to the SEC any records requested, electronic or otherwise.

For more information on the rules and requirements of SEC 17a-4 please refer to [ZL - SEC 17a-4 Overview](#).

WHEN IS RULE 204-2 OF THE INVESTMENT ADVISER'S ACT EFFECTIVE?

In accordance with Rule 204-2, every investment adviser that registers with the SEC under the Act after July 8, 1997 is required to preserve all records the adviser previously was required to maintain by the state in which they do business. In short, once an adviser registers with the SEC, all records kept by an adviser, regardless of the record age, must meet the requirements of Rule 204-2. Further, Rule 206(4)-7 of the Investment Adviser's Act, which requires implementation and documentation of all internal compliance policies (including Rule 204-2), had a compliance deadline of October 5, 2004. In addition, Rule 206(4)-7 requires an annual review and certification of the policies and procedures by the firm's CEO and CCO.

WHAT ARE THE PENALTIES FOR RULE 204-2 OF THE INVESTMENT ADVISER'S ACT?

The SEC may invoke penalties ranging from censure to a one year suspension to the revocation of registration should an investment adviser be found to have violated any section of the Act, omitted any material information, or to have violated any provision of the Securities Exchange Act of 1934 - which includes SEC 17a-4. Civil penalties can be invoked for both the adviser and his supervisory organization. CEO's and CCO's are now also considered liable for not minding the store. Monetary fines for civil penalties use a three tiered system based on the gravity of the offense. Fines for advisers range from \$5,000-\$100,000 per offense, and for the supervisory organization from \$50,000-\$500,000 per offense.

HOW DO FIRMS COMPLY WITH RULE 204-2?

The following are simplified requirements for Rule 204-2. Firms must enact policies or implement technologies to enable:

- Archival of an original copy of all records, including those created in email;
- Written and enforceable retention policies;
- Storage of data on indelible, non-rewriteable media;
- Searchable index of all stored data;
- Readily retrievable and viewable data; and
- Rules and permission levels for access to records.

WHAT DOES ZL TECHNOLOGIES PROVIDE?

ZL's compliance platform provides a comprehensive set of tools to comply with Rule 204-2 of the Investment Adviser's Act, including:

- Email archiving and WORM storage
- Email retention policy management
- Email search and discovery
- Email storage management
- Permissions-based access to email

ZL Technologies provides an all-in-one solution which stores data on virtually any storage device, rewriteable or WORM. A comprehensive and hierarchically searchable index is automatically generated for headers, message body, and attachments. By providing a full auditor application, ZL Technologies enables internal or external auditors to capture specific mails and generate an annotated thread for tracking the entire review lifecycle. ZL Technologies can capture all email records, store them in a tamper-proof way, maintain privilege-based access control to data, and allow quick search, discovery, and retrieval for administrators and auditors. With compliance capabilities tightly matched to the requirements of Rule 204-2, as well as SEC regulations, ZL Technologies helps meet the regulatory compliance needs of investment advisors and their firms.

ABOUT ZL TECHNOLOGIES

Established in 1999, ZL Technologies, Inc. (ZL) provides cutting-edge enterprise software solutions for email archiving, regulatory compliance, litigation support, corporate governance, content management, file archiving, and secure email. ZL's flagship product, the Unified Archive, offers comprehensive email and file archiving and management for companies using Lotus Notes/Domino, Microsoft Exchange, Bloomberg, and others. The suite provides a highly flexible framework that is fully scalable, enabling organizations of all sizes to meet legal discovery, compliance, and storage management requirements. With a proven track record and an impressive list of clients, including Walgreens, Bank of New York Mellon, Pacific Life, and Morgan Keegan, among other top global institutions, ZL has emerged as the premier provider of email archiving and compliance solutions. For more information, please visit www.ZLTI.com

To learn more about how ZL Technologies can help you take control of your data, call us at 408.240.8989 or visit us online at www.ZLTI.com