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Invested in America

Transfer of Customer Assets

Guidance and Best Practices for Continued Modernization

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SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate for legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

Transfer of Customer Assets

The efficient transfer of customer assets (securities and cash) between financial institutions is a vital component of modern financial markets. SIFMA supports the continued modernization of these customer account transfers with the objectives of maximizing investor protection and minimizing risk through leveraging technology.

Background on customer account transfers using ACATS

Most customer account transfers between brokerage firms are facilitated in an electronic manner through the Automated Customer Account Transfer Service (ACATS)[1].

FINRA and the New York Stock Exchange require the firms they oversee and member firms to utilize ACATS[2]. Additionally, eligible and qualified National Securities Clearing Corporation (NSCC) full-service members, Depository Trust Company (DTC) bank participants, and mutual fund companies can also use ACATS[3]. According to the Depository Trust & Clearing Corporation's (DTCC) "ACATS User Guide," the following instruments are transferable through the ACATS system:

- equities,
- corporate and municipal bonds,
- cash
- unit investment funds,
- mutual funds,
- insurance assets,
- options,
- and other investment products[4].

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[1] FINRA: Customer Account Transfers; https://www.finra.org/rules-guidance/key-topics/customer-account-transfers#overview
[2] SEC: Transferring Your Investment Account; https://www.sec.gov/oiea/investor-alerts-bulletins/ib_transferaccount.html
[3] DTCC: The Automated Customer Account Transfer Service (ACATS), Who Can Use the Service; https://www.dtcc.com/clearing-services/equities-clearing-services/acats; "All eligible and qualified NSCC full-service Members and DTC bank participants are eligible to use ACATS. Mutual Fund Service Members of NSCC are eligible to use the service on a limited basis, only as the contra-party to a transfer initiated by a broker dealer or a bank for the purpose of re-registering a mutual fund position to or from them directly."
[4] DTCC: Automated Customer Account Transfer Service (ACATS) in "ACATS User Guide", August 2, 2022; https://dtcclearning.com/products-and-services/equities-clearing/acats/acats-users.html

According to DTCC industry statistics, there were approximately one million ACATS transfers (full standard and partial non-standard) with assets valuing $90 billion per month on average in 2021. From a timing perspective, 82% of full transfers settled in four days or less in 2021. As of August 2022, there are 94 broker dealers and 39 banks using the ACATS system[5].

There are many benefits to institutions using ACATS, the most important being an optimal customer experience offering the following benefits: decreased risk due to the standardization of transfer procedures, reduction of operating costs, and increased speed of transaction settlements[6]. FINRA Rule 11870, "Customer Account Transfer Contracts," mandates expediting a customer's transfer request[7], therefore the ACATS system enables members to meet their regulatory obligations and prioritize efficiency. According to the DTCC, a full account transfer generally completes in five business days or, if accelerated, four business days[8].

Modernization recommendations for institutions not using ACATS

Financial institutions not required to use the ACATS system typically operate using less than optimal methods to facilitate account transfers. In the SEC publication, "Understanding the Brokerage Account Transfer Process," the potential risks of non-ACATS transfers are acknowledged, specifically the lack of an established transfer timeframe as well as associated market volatility[9].

While SIFMA acknowledges institutions not using the ACATS system may operate under varying regulatory frameworks and associated requirements, we strongly recommend eliminating manual transfer processes. In situations where an automated process is not a viable option, these institutions should look to the most efficient way to work with their counterparties.

In addition, market participants not using ACATS should update their internal policies and procedures to leverage technology to maximize the customer experience, prioritize investor protection, increase efficiency, and minimize risk.

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[5] Information provided by DTCC Product Management on August 31, 2022.
[6] DTCC: Automated Customer Account Transfer Service; https://www.dtcc.com/clearing-services/equities-clearing-services/acats
[7] FINRA Rule 11870, Customer Account Transfer Contracts; https://www.finra.org/rules-guidance/rulebooks/finra-rules/11870
[8] DTCC Concept Paper: A Vision for the Future of ACATS, June 2018; https://www.dtcc.com/~/media/Files/Downloads/Whitepapers/2018-ACATS-Concept-Paper.pdf
[9] SEC: Transferring your Brokerage Account: Tips on Avoiding Delays, April 16, 2009; https://www.sec.gov/reportspubs/investor-publications/investorpubsacctxferhtm.html

Drawn from the experiences of member firms which interact with these non-ACATS financial institutions, SIFMA makes the following recommendations:

1. Eliminate wet signatures and use electronic means where applicable.
2. Eliminate the physical mailing of transfer paperwork.
3. Eliminate paper checks and use electronic transfer/wire transfers.
4. When transferring customer assets from one broker to another broker, complete the acceptance of transfers without the Medallion Signature Guarantee.

Refer to the “Guidance and Best Practices” section on page 6 for details on each of these four recommendations.

Guidance and Best Practices

Eliminate wet signatures and use electronic means where applicable

While some delivering firms have relaxed policies requiring wet signatures on transfer forms, there are some institutions that maintain this requirement despite widespread technology and laws permitting electronic signatures. Pursuant to FINRA Rule 11870(a)(3), "Customer Account Transfer Contracts"[10], customers may authorize transfers through an electronic signature in a format recognized as valid under federal law to conduct interstate commerce. SIFMA encourages banks, insurance companies, trust companies, and others – that are not regulated by FINRA or the SEC – to adopt electronic signature protocols and for delivering firms to acknowledge and send transfers based on eSigned instructions.

The use of electronic signatures in interstate commerce has been addressed at the national and state levels. In 1999, the Uniform Law Commission[11] approved the Uniform Electronic Transactions Act (UETA), model legislation for states to adopt, which ensures that electronic signatures, records, and contracts created in electronic formats would not be rejected because of their electronic nature[12]. In essence, the UETA established the legal equivalence of electronic records and signatures with paper writings and manual signatures. Initially, forty-seven states, the District of Columbia, Puerto Rico, and the Virgin Islands[13], adopted the UETA, while Illinois, New York, and Washington adopted their own laws. However,

[10] FINRA: Customer Account Transfer Contracts; https://www.finra.org/rules-guidance/rulebooks/finra-rules/11870; 11870(a)(3): "For purposes of this Rule, customer authorization pursuant to a transfer instruction could be the customer's actual signature, or an electronic signature in a format recognized as valid under federal law to conduct interstate commerce."
[11] The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law; https://www.uniformlaws.org/aboutulc/overview
[12] Uniform Law Commission, "A Few Facts about The Uniform Electronic Transactions Act," October 23, 2019.
[13] DLA Piper, "A short primer on US signature laws," May 2, 2018; https://www.dlapiper.com/en/us/insights/publications/2018/07/esignature-and-epay-news-and-trends-july-2018/a-short-primer-on-applicable-us-esignature-laws/

in 2020 and 2021, and Washington State[14] and Illinois[15], respectively, signed onto the UETA[16]. New York's "Electronic Signatures and Records Act", passed in 2000, remains as the only non-UETA state legislation[17].

Subsequent to the UETA, the Electronic Signatures in Global and National Commerce (ESIGN) Act – a federal law passed in 2000 – added consumer protections to the UETA's basic tenets, stating that for any transaction in or affecting interstate or foreign commerce "a signature, contract or other record relating to such transaction may not be denied legal effect, validity, or enforcement solely because it is in electronic form…."[18]

Given the UETA and ENSIGN Act state that electronic records and signatures have the same legal effect as traditional paper documents and wet ink signatures, the elimination of wet signatures and implementation of electronic signatures through leveraging available technology are ideal practices for all financial institutions in meeting the goals of investor protection while decreasing risk.

Eliminate the physical mailing of transfer paperwork

To support non-ACAT transfers between counterparties, it is critical that industry participants utilize a secure infrastructure that allows straight-through processing (STP) without the mailing of physical paperwork. SIFMA supports the continued pursuit of automation for a long-term solution to create a secure centralized hub to move documents electronically between financial institutions for efficiency and security purposes.

Eliminate paper checks and use electronic transfer/wire transfers

Some institutions that do not leverage the ACATS system may choose to send customer account funds via paper checks, which lengthens the time the investor does not have access to their funds. This does not provide the optimal customer experience. SIFMA recommends that sending institutions eliminate physical checks and for both sending and receiving

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[14] Washington State, Office of the Chief Information Office, Electronic Signature Guidelines Adopted April 1, 2016; July 2020 Update; https://ocio.wa.gov/policy/electronic-signature-guidelines

[15] Thomson Reuters Practical Law, "Illinois 49th State to Adopt the UETA," July 14, 2021; https://content.next.westlaw.com/practical-law/document/I93f60167e40e11ebbea4f0dc9fb69570/Illinois-49th-State-to-Adopt-the-UETA

[16] Thomson Reuters Practical Law, "Illinois 49th State to Adopt the UETA," July 14, 2021;

[17] ITS' Electronic Signatures and Records Act (ESRA) Guidelines Executive Summary – Updated May 02, 2017; https://its.ny.gov/sites/default/files/documents/esra-guidelines-executive-summary.pdf

[18] Electronic Records and Signatures in Commerce (15 USC 7001), "Electronic Signatures in Global and National Commerce Act"; https://www.govinfo.gov/content/pkg/PLAW-106publ229/pdf/PLAW-106publ229.pdf

institutions to embrace the electronic transfer of cash proceeds in addition to other assets, while adhering to other applicable laws and rules.

Complete Acceptance of Transfers without Medallion Signature Guarantee (when broker to broker)

Some industry participants have required medallion signature guarantees for customer account transfers. However, this practice does not align with the intention of the medallion stamp, which originated within the transfer agent industry.

The Securities Transfer Association (STA)[19] published guidelines in January 2020[20] stating the intention of the medallion signature guarantee program is for the customer account transfer of ownership, rather than the transfer of assets between broker accounts. According to the STA Guidelines, Section 1.03, "Uses of a Signature Medallion Guarantee" sub-section (c)," Summary of Appropriate Uses":

> In combining the intended uses under the UCC and Indemnity Agreement, the Medallion Signature Guarantee is appropriate for the following securities transactions: - Transfer (i.e., change of ownership), assignment, redemption, and sale – certifications and guarantees incident to the payment, transfer, exchange, purchase, or delivery of securities. Please note that any change in the registration, such as a name change, addition of a middle initial, etc. would be considered a change of registered ownership and therefore, a transfer[21].

While this guidance is associated with transfers to and from "transfer agents," there is no reference to utilizing the medallion signature guarantee stamps for the transfer of customer assets from one broker to another broker. The guidance does not require banks, insurance companies, trust companies, and others to use the medallion signature guarantee stamp.

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[19] The Securities Transfer Association (STA) is a trade association serving the unique needs of transfer agents. STA represents independent commercial stock transfer agents, corporate transfer agents, bank transfer agents, bond transfer agents, and mutual fund transfer agents in the United States and Canada; https://stai.org/

[20] Securities Transfer Association Guidelines, January 2020; https://cdn.ymaws.com/stai.org/resource/resmgr/guidelines/sta_guidelines_1.30.20.pdf

[21] Section 1.03(c), Securities Transfer Association Guidelines, January 2020; https://cdn.ymaws.com/stai.org/resource/resmgr/guidelines/sta_guidelines_1.30.20.pdf

Furthermore, Section 1.03(d) “Unintended Use” states:

> Unintended uses would include any request for a Medallion Signature Guarantee and affixation of a Medallion Signature Guarantee on a document for commercial transactions not contemplated in either the UCC or Indemnity Agreement. For example, to ask for a Medallion Signature Guarantees on items such as account maintenance (i.e., address changes)…. Requesting or obtaining a Medallion Signature guarantee on documents for which it was not intended under the UCC or Indemnity Agreement is not recommended, as this places the transfer agent at risk that a claim made under such Medallion Signature Guarantees may not be honored[22].

It is reasonable to consider that the transfer of customer assets from one broker to another – or from banks, insurance companies, and trust companies by an investor – does not apply as these guidelines are intended for transfer agents. Additionally, the STA advises that that the medallion signature guarantee applied to documents for which it was not intended may result in a claim not being honored.

Industry participants should check with counsel about the applicability, necessity, and protections of the medallion signature guarantee regarding customer account transfer between financial institutions.

[22] Section 1.03(d) in the Securities Transfer Association Guidelines, January 2020; https://cdn.ymaws.com/stai.org/resource/resmgr/guidelines/sta_guidelines_1.30.20.pdf

SIFMA Contacts

This is a reference document that institutions can use to help facilitate the transfer of customer assets for the benefit of investors. If you have further questions, please contact Tom Price and Betsy Gilligan at 212.313.1000:

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