



## C O M P L I A N C E   G U I D E

### ELECTRONIC RECORD AND SIGNATURE COMPLIANCE

NASD Rules 3010(d) and 3110(c)(1)(C)  
SEC Rule 17a-4  
15 USC 7001 et. seq. (E-SIGN)

### ALPHATRUST PRONTO™ SERVER

### ELECTRONIC RECORDS AND SIGNATURE SYSTEM

This compliance guide is written for senior executives, line of business managers, legal staff, risk management staff, technical managers and security managers involved in deploying document solutions in the brokerage industry intended to comply with the applicable law (the US Federal E-SIGN law as codified in 15 USC 7001 et. seq.) as well as regulations and rules prescribed by the SEC and NASD.

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## Executive Summary

Electronic records and signatures have the legal and commercial equivalence of paper records and handwritten signatures and promise to decrease the cost of business, increase the speed at which business is done, and add needed security to electronic business transactions. Due to the unique business requirements placed on legal records and signatures, business managers find that technology addresses only about 30% of the business issues. In order for organizations to experience a complete solution allowing for the replacement of today's signed paper based documents and records, the organization is left to deal with 70% of the complexities the technology alone does not provide for.

An effective electronic record and signature solution must address these business questions:

1. Does the technology deliver the needed technical security requirements (authentication, data integrity, and technical non-repudiation)?
2. Does the solution address the business requirements for:
  - a. Compliance with laws and regulations?
  - b. Enforceability of transactions (legal recourse)?
  - c. Acceptance by users of the solution?
3. Does the solution provide a mechanism for managing business risk?
4. Does the solution provide for growth / easy scalability as my organization identifies future potential for electronic documents?

These requirements have been the cornerstone of most successful electronic transactions systems such as ATM and credit card systems.

In the case of brokerage applications seeking compliance with NASD, SEC and E-SIGN, many of these requirements can't be met by technology provided out of the box. IT vendors can provide you with the technology tools to build your own solution, but leave you to develop the application, identify, and understand the legal implications, and manage the on-going system requirements.

This white paper will discuss key parts of NASD, SEC and E-SIGN requirements, and will discuss how AlphaTrust's PRONTO™ ERSS software offers the superior solution, by addressing the technical, business process, and risk management needs of an NASD, SEC and E-SIGN compliant application.

In addition to these requirements, it is also important to look at the bigger picture. While you want a solution that meets the requirements of NASD and SEC regulation as well as the E-SIGN law, the introduction of electronic records and signatures provides a major shift in business processes that affect many business applications. By mid-decade, business knowledge workers will consistently create legal electronic records and use their own electronic signatures on a daily basis. Your electronic solution should not merely address the needs of one application, but be capable of easily extending to

other applications and areas to meet the growing needs of your enterprise, supply chain, industry, and governmental requirements. AlphaTrust's PRONTO™ ERSS software meets these requirements today and is designed with the flexibility to meet even larger global requirements in the near future.

## **REGULATORY REQUIREMENTS**

Brokerage applications seeking to create permanent business records (i.e. new account applications, options and futures applications, customer service requests, etc.) must not only meet the requirements of the Federal E-SIGN law in order to have electronic equivalents of paper documents with ink signatures, but they must also meet the electronic signature requirements of NASD regulations as well as the electronic record requirements of the NASD and SEC.

NASD Rule 3010(d) requires that each member establish procedures for the review and endorsement by a registered principal in writing, on an internal record, of all transactions and all correspondence of its registered representatives pertaining to the solicitation or execution of any securities transaction. NASD Rule 3110(c)(1)(C) requires members to maintain, for each customer account opened after January 1, 1991, a signature of the registered representative introducing the account and signature of the member or partner, officer, or manager who accepts the account.

Although NASD Rules do not expressly provide for electronic review and signature, the NASD has issued guidance that permits the use of electronic record and signature systems to satisfy the principal approval requirements under NASD Rules 3010(d) and 3110(c)(1)(C) is permissible as long as certain conditions are met. Any system must meet these requirements outlined by the NASD:

The system must allow NASD examining staff immediate access to required records and documents;

The system must allow NASD examining staff to download and print hard copies of required records and documents;

The system must allow NASD examining staff to review copies of all relevant imaged documents and will provide an audit trail of principals who reviewed the customer accounts and orders;

The system must store all required records and documents on a secured server, which will operate in a redundant, multi-server environment to ensure the integrity of the data;

The system and operational/organizational policies and procedures must allow the system to be used only by those individuals who have been approved and only at the level of access for which those individuals have been approved;

If Web-based, the system can only be viewed through a password protected and encrypted web browser and the system must instruct users to change their passwords frequently;

The regulated organization must maintain current written policies and procedures at each branch office that utilizes the system that accurately describe the system, its safeguards and its operating procedures; and

The regulated organization must review periodically the policies, procedures, and operations to ensure conformance with changes and enhancements in policies and procedures.

In addition, based on the SEC's recently issued interpretive guidance on the Electronic Signatures in Global and National Commerce Act, SEC Rule 17a-4(f) applies to records created using electronic signature systems. Specifically, Rule 17-a-4(f) provides:

*USC 240.17a-4(f) The records required to be maintained and preserved pursuant to Secs. 240.17a-3 and 240.17a-4 may be immediately produced or reproduced on "micrographic media" (as defined in this section) or by means of "electronic storage media" (as defined in this section) that meet the conditions set forth in this paragraph and be maintained and preserved for the required time in that form.*

*(1) For purposes of this section:*

*(i) The term micrographic media means microfilm or microfiche, or any similar medium; and*

*(ii) The term electronic storage media means any digital storage medium or system and, in the case of both paragraphs (f)(1)(i) and (f)(1)(ii) of this section, that meets the applicable conditions set forth in this paragraph (f).*

*(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 (15 U.S.C. 78q(d)) 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).*

*(ii) The electronic storage media must:*

*(A) Preserve the records exclusively in a non-rewriteable, non-erasable format;*

*(B) Verify automatically the quality and accuracy of the storage media recording process;*

*(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*

*(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.*

*(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.*

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

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

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

*(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.*

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

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

*(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 Secs. 240.17a-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.*

*(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.*

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

*(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 organizations 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.*

*(vii) For every member, broker, or dealer exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party ("the undersigned"), who has access to and the ability to download information from the member's, broker's, or dealer's electronic storage media to any acceptable medium*

*under this section, shall file with the designated examining authority for the member, broker, or dealer the following undertakings with respect to such records:*

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

*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.*

## **ALPHATRUST PRONTO™ SERVER ERSS COMPLIANCE WITH NASD AND SEC RULES**

Much of the compliance requirements imposed by these rules are procedural and administrative in nature. AlphaTrust's PRONTO™ Server ERSS software has been designed to easily integrate with other systems to permit the maximum flexibility in your work flow designs that are intended to meet rule requirements.

The system maintains a document repository of all completed transactions and documents. These transactions are date and time-stamped and are organized in serial order. Each document is securely sealed with a digital signature to provide full data integrity. The system supports multiple methods of access control to permit flexibility in meeting regulatory requirements. Access control methods can include: user name and password, digital certificate, and other Web-based methods such as RSA SecureID® and access control systems (single sign on) such as Netegrity SiteMinder™.

The use of text and HTML document formats meets requirements under E-SIGN for user accessibility as well as meets accessibility requirements imposed by regulation. The use of open, text-based document formats is viewed by many as the only acceptable solution for long term permanent electronic records. Fine control over document layout and rendering is no longer an issue with HTML / XHTML and XML formats preferred by governmental performance standards. These formats have the added advantage of imposing no special requirements on Web customers. Alternately, Adobe® PDF formatted documents are supported as well.

PRONTO™ Server can easily feed completed documents and transaction records into downstream special purpose archive systems such as WORM systems sometimes used to meet SEC document requirements. PRONTO™ Server supports both a COM and XML API that permits flexibility in use of the system.

In addition, having worked in the field of electronic signatures and records for over six years, AlphaTrust has the knowledge and experience to ensure the successful deployment of a compliant solution. We can serve as consultants, architects, project managers, as well as integrators depending on your needs.

The section that follows details compliance with the US Federal E-SIGN law. This compliance is of critical importance in order to achieve legal protections for your organization. NASD and SEC rules are focused on internal organizational processes. E-SIGN is focused on achieving legal equivalence with paper contracts and documents as well as consumer protection.

Most e-signature projects have three goals in mind: cost savings, revenue improvement, and an improved customer experience. PRONTO™ Server delivers on all these goals while helping you meet your compliance requirements under NASD and SEC rules as well as Federal E-SIGN law.

## Detailed Compliance Specifications – 15 USC 7001 (E-SIGN)

The following table details important requirements spelled out in E-SIGN, section by section, and details AlphaTrust's PRONTO™ Server ERSS compliance with these requirements. At the end of the table, UETA comments are also provided.

Requirement	AlphaTrust PRONTO™ Server ERSS
<p>101(a) In General. --Notwithstanding any statute, regulation, or other rule of law (other than this title and title II), with respect to any transaction in or affecting interstate or foreign commerce--</p> <p>(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and</p> <p>(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.</p>	<p>The law states that an electronic signature means "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record". PRONTO™ Server captures this human intent which is so critical to E-SIGN, and our custom of signatures, by presenting the user with the exact form of the document to be signed, displaying a signature line on the document, asking the user to "click to sign" after having given consent to conduct the transaction electronically, and by inserting a graphic signature block that evidences the user's intent. Audit trail and other detailed information are also captured for evidentiary support.</p>
<p>101(c) Consumer Disclosures. -- (1) Consent to electronic records. --Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if--</p> <p>(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;</p> <p>(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement--</p> <p>(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in non-electronic form, and (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal; (ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the obligation to provide the record, or (II) to identified categories of records that may be</p>	<p>The consumer consent provisions can be confusing at first reading. Basically, they only apply if a law or regulation REQUIRES you to provide consumer information or records in writing. These are generally consumer disclosure laws. If your document or information is subject to such laws (consult your attorney) then the consumer notice provisions apply.</p> <p>Importantly, note that the validity of an electronically signed document cannot be denied because of consent failures, but it may run you afoul of consumer protection laws.</p> <p>PRONTO™ Server transactions can be flagged with the option of requiring E-SIGN consumer disclosures or not. AlphaTrust works with your organization during the application setup and integration process to provide the correct disclosure information prior to a transaction.</p> <p>PRONTO™ Server really shines with the hardware and software disclosure and demonstration requirements. Since only a Web browser is required, the very act of consenting to the disclosure demonstrates consumer ability. The fact that the document is in HTML (the universal open Web page language) guarantees compatibility into the future and covers the re-disclosure requirements. If PDF is used, the consumer must have a PDF reader.</p>

provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and  
(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer--

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record--

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and  
(ii) again complies with subparagraph (C).

(2) Other rights. --

(A) Preservation of consumer protections.-- Nothing in this title affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

(B) Verification or acknowledgement.--If a law that was enacted prior to this Act expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides

<p>verification or acknowledgment of receipt (whichever is required).</p> <p>(3) Effect of failure to obtain electronic consent or confirmation of consent.--The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).</p> <p>(4) Prospective effect.--Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.</p> <p>(5) Prior consent.--This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this title to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.</p> <p>(6) Oral communications.--An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.</p>	
<p>(d) Retention of Contracts and Records.--</p> <p>(1) Accuracy and accessibility.--If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that--</p> <p>(A) accurately reflects the information set forth in the contract or other record; and</p> <p>(B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.</p> <p>(2) Exception.--A requirement to retain a contract or other record in accordance with</p>	<p>PRONTO™ Server meets accuracy and accessibility requirements by placing a seal (digital signature) over an electronic signature of each signer as well as sealing the entire document, once all parties have signed. This seal protects the document and detects any tampering or changes made to the document, even years later.</p> <p>Accessibility is provided by using the open HTML document standard, which can be readable decades into the future, as it is a plain text document standard. If a document needs to be printed, PRONTO™ documents can be printed with all information visible. Adobe® PDF is supported as well.</p> <p>PRONTO™ Server documents satisfy the "original document" requirement through the use of a digital seal, providing document integrity (accuracy).</p>

<p>paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.</p> <p>(3) Originals.--If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).</p>	
<p>UETA comments</p>	<p>UETA is a uniform state law now enacted in over 40 states. Its requirements generally parallel those of E-SIGN. AlphaTrust's PRONTO™ Server has been designed with state and international law in mind.</p>

## Summary

AlphaTrust's PRONTO™ Server ERSS software is designed from the ground up to meet the requirements for technical security, transaction enforceability, legal and regulatory compliance and risk management. AlphaTrust provides a comprehensive solution with additional value delivered in the non-technical area, inclusive of proper user management, system, and operational procedures, legal and regulatory compliance, and risk management.

AlphaTrust PRONTO™ Server ERSS is the clear solution for meeting the challenge of regulatory compliance under NASD and SEC rules as well as the legal requirements imposed by E-SIGN. Not only do we offer superior software but also the design, integration, and deployment support that you need to meet the unique requirements of your business. We welcome the opportunity to work with you to meet your specific business requirements.