

response to the proposal.⁵ Commenters included broker-dealers, financial services holding companies and trade associations. Commenters generally supported the proposal but suggested revisions.

Fifteen commenters addressed the proposed rule's definition of "customer." The inclusion in the definition of persons with authority over an account caused the greatest number of comments. The commenters provided several reasons why verifying this class of persons would be difficult. Many suggested using a risk-based approach. Commenters also suggested that the definition not include public companies, government agencies, investment advisors, investment advisor sub-account holders, beneficiaries of retirement accounts, or persons whose account relationship with the broker-dealer was limited to delivery-versus-payment transactions.

Twelve commenters addressed the proposed rule's recordkeeping requirements. The primary concern noted was the requirement to retain copies of documents used to verify the identities of customers. This was stated to be a substantial recordkeeping burden. Commenters suggested, as an alternative, requiring a record of the type of document used. Some commenters also were concerned about the requirement that these records be maintained until five years after the account is closed. They suggested shorter retention periods.

Twelve commenters addressed the effective date of the proposed rule. They suggested varying implementation periods ranging from 90 days to two years.

Nine commenters addressed the verification requirement in the proposed rule. Several commenters suggested that existing customers or long-time acquaintances need not be verified. Others suggested additional verification methods such as using legal opinions and annual reports. Two commenters requested clarification that broker-dealers would not be responsible for verifying the validity of verification documents. One commenter requested clarification that customers could be

verified using both documentary and non-documentary methods.

Seven commenters addressed the proposed rule's definition of "account." Some requested that the definition only apply to accounts established to provide ongoing services. Others suggested that the definition should not include the sale of mutual funds or variable life products on a subscription way basis or dealer-to-dealer delivery-versus-payment transactions.

Seven commenters addressed the proposed rule's customer notice requirement. Three commenters suggested that the rule set forth model notice language. Two commenters suggested that the rule permit notice to be given within a reasonable time after the account is opened.

Six commenters addressed the provision in the proposed rule permitting reliance between clearing and introducing broker-dealers. Generally, most of the commenters suggested the provision be expanded to allow for reliance between an executing dealer and prime broker and between a broker-dealer and its affiliates and other types of financial institutions such as banks, investment advisers and commodities firms.

Three commenters addressed the requirement to collect minimum types of identifying information. One suggested that the rule not require a residential address since some persons may not have such an address. One suggested that the rule allow accounts to be opened even if all the required identifying information is not obtained, provided the broker-dealer has a reasonable belief that it knows the true identity of the customer. One suggested that the requirement be risk-based.

Three commenters addressed the requirement to check customers against terrorist lists. One suggested that FinCEN act as a clearinghouse for such lists. One suggested that the rule identify the lists that must be checked and specify which agencies can provide them. One suggested permitting the lists to be checked within a reasonable time after an account is opened and that the lists be provided in a single electronic format.

One commenter addressed the proposed rule's definitions of "U.S. person" and "Non-U.S. person." The commenter suggested that the rule use the definitions on certain Internal Revenue Service forms.

One commenter expressed concern as to whether the Fair Credit Reporting Act (FCRA) would apply to verification database searches. It requested an exemption from the FCRA for such searches.

We have modified the proposed rule in light of many of these comments and comments made with respect to the customer identification and verification rules being adopted for other financial institutions. The section-by-section analysis that follows discusses the comments and the modifications that we have made to the rule.

C. Codification of the Joint Final Rule

The final rule is being issued jointly by Treasury, through FinCEN, and the SEC. It applies to any person that is registered or required to be registered with the Commission as a broker or dealer under the Securities Exchange Act of 1934 (Exchange Act),⁶ except persons who register solely for the purpose of effecting transactions in securities futures products.⁷ The substantive requirements of this joint final rule will be codified as part of Treasury's BSA regulations located in 31 CFR Part 103.⁸ SEC Rule 17a-8⁹ requires broker-dealers to comply with all reporting, recordkeeping and record retention requirements under the BSA. The final rule being adopted today falls directly within the scope of Rule 17a-8, and will be examined for, and enforced, by the Commission and appropriate self-regulatory organizations.

Final rules governing the applicability of section 326 to certain other financial institutions, including banks, thrifts, credit unions, mutual funds and futures commission merchants, are being issued separately. Treasury, the SEC, the CFTC and the banking agencies consulted extensively in the development of all joint rules implementing section 326 of the Act. These participating agencies intend the effect of the final rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 for certain non-bank financial institutions that are not regulated by one of the Federal Functional regulators.

D. Compliance Date

Many commenters requested that broker-dealers be given adequate time to develop and implement the requirements of any final rule implementing section 326. The transition periods suggested by

Futures Commission Merchants and Introducing Brokers, 67 FR 48328 (July 23, 2002). Treasury, the Commission, the CFTC, and the banking agencies received approximately 500 comments in response to these proposed rules. Many of those commenters raised issues similar to those we received in connection with the proposal respecting broker-dealer customer identification programs.

⁵ The comment letters are available for public inspection and copying in the SEC's Public Reference Room, 450 5th Street, NW., Washington, DC (File No. S7-25-02).

⁶ 15 U.S.C. 77a *et seq.*

⁷ Brokers or dealers that limit their securities business to effecting transactions in securities futures products may register with the Commission pursuant to 15 U.S.C 780(b)(11). These persons will be subject to the customer identification rule being issued by the CFTC.

⁸ The regulation will be codified at 31 CFR 103.122.

⁹ 17 CFR 240.17a-8.