

commenters ranged from 90 days to two years after the publication of a final rule.

The final rule modifies various aspects of the proposed rule and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, we recognize that some broker-dealers will need time to develop and implement the customer identification program (CIP) required under the rule, as doing so may include various measures, such as training staff, reprinting forms, and programming automated systems. Accordingly, although this rule will be effective 30 days after publication, broker-dealers will have a transition period to implement the rule. Broker-dealers must fully implement their CIPs under the final rule by October 1, 2003.¹⁰

II. The Joint Final Rule

A. Section-by-Section Analysis

Section 103.122(a) Definitions

Section 103.122(a)(1) Account. We proposed to define “account” as any formal business relationship with a broker-dealer established to effect financial transactions in securities, including, but not limited to, the purchase or sale of securities, securities loan and borrowed activity or the holding of securities or other assets for safekeeping or as collateral.¹¹

Four commenters suggested that the definition of “account” incorporate the concept of ongoing relationships to make it consistent with the rules proposed by the banking agencies. The bank rules limited the definition of “account” to “ongoing transactions” to specifically address situations where a person obtains certain services or products from a bank such as cashing or buying a check or purchasing a wire transfer or money order. In the final rules being issued by Treasury and the banking agencies, the definition of account no longer contains the term “ongoing.” Instead, the definition of “account” now specifically excludes these types of products or services or any others where a “formal banking relationship” is not established with the person.¹² They are being excluded because, standing alone, they do not establish a formal banking relationship. Moreover, they generally are covered by

other provisions of the BSA.¹³ Except in conjunction with an established securities account, broker-dealers do not offer products or services similar to those excluded in the bank rules. Thus, we did not include the term “ongoing” in the definition of account or adopt the specific exclusion included in the bank rule.¹⁴

Two commenters requested clarification as to whether the sale of mutual fund shares or variable life annuities on a subscription way basis constituted an account relationship, given that the broker-dealer’s role in the transactions could be considered limited. We believe these transactions can give rise to an account relationship and, therefore, have not excluded them specifically from the definition of account. However, changes we made to the reliance and recordkeeping sections of the rule address many of the concerns raised by these commenters.¹⁵

We also have removed the word “business” from the definition of account. This change is made to clarify further that the rule applies to relationships established for the purpose of effecting securities transactions as opposed to general business dealings, such as those established in connection with a broker-dealer’s own operations or premises.

The definition of “account” in the proposed rule contained a second sentence setting forth examples of the types of accounts that would constitute an “account” for the purposes of the rule.¹⁶ The examples—cash accounts, margin accounts, prime brokerage accounts and accounts established to engage in securities repurchase transactions—were not intended to be an exhaustive list. These types of accounts remain “accounts” for the purposes of the final rule. However, the final rule text no longer specifically cites them as examples in order to make clear that the list was not exhaustive.¹⁷

The final rule now contains two exclusions from the definition of “account.” The first is for certain transferred accounts.¹⁸ The Notice of Proposed Rulemaking stated that transfers of accounts from one broker-

dealer to another were outside the definition of “account” for purposes of the proposed rule.¹⁹ The final rule codifies and expands this exception, by excluding from the definition of “account” any account that a broker-dealer acquires through an acquisition, merger, purchase of assets, or assumption of liabilities. Customers do not initiate these transfers and, therefore, the accounts do not fall within the scope of section 326.²⁰ Transfers may, however, fall within the broader scope of the anti-money laundering program rules required under section 352 of the USA PATRIOT Act.²¹ Accordingly, in developing and implementing programs under section 352, broker-dealers should consider situations where it would be appropriate to verify the identity of customers associated with transferred accounts.²²

The rule also now excludes from the definition of “account” accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974.²³ Seven commenters recommended that the rule not cover these types of accounts. These accounts are less susceptible to be used for the financing of terrorism and money laundering because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with federal regulations. These regulations impose, among other requirements, low contribution limits and strict distribution requirements.

Section 103.122(a)(2) Broker-dealer. We proposed to define “broker-dealer” as any person registered or required to

¹⁹ See NPRM, Section II.A, 67 FR at 48307.

²⁰ Transfers of accounts that result from an introducing broker-dealer changing its clearing firm would fall within this exclusion. However, the introducing firm and the new clearing firm would need to meet the requirements in paragraph (b)(6) (such as entering into a contract and providing certifications) to the extent they intend to rely on each other to undertake CIP requirements with respect to customers that open accounts after the transfer.

²¹ Section 352 requires brokers and dealers to establish anti-money laundering programs that, at a minimum, include (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. On April 22, 2002, the Commission approved rule changes submitted by the NASD and the NYSE. Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002). These rules (NASD Rule 3011 and NYSE Rule 445) set forth minimum requirements for these programs.

²² For example, it may be appropriate to verify transferred accountholders if the accounts are coming from a broker-dealer that was found to have failed to establish or maintain an adequate CIP.

²³ Final rule, paragraph (a)(1)(ii)(B).

¹⁰ The CIP rules issued by the other Federal functional regulators also have an implementation date of October 1, 2003.

¹¹ The proposed rule text is set forth in the NPRM, 67 FR at 48317.

¹² See 31 CFR 103.121(a)(1).

¹³ For example, 31 CFR 103.29 requires banks to obtain and verify identifying information of any person who purchases a bank check or draft, cashier’s check, money order or traveler’s check of \$3,000 or more.

¹⁴ See final rule, paragraph (a)(1)(i).

¹⁵ The changes—discussed later in the Release—permit broker-dealers to rely on mutual funds to perform the CIP requirements and eliminate the requirement to retain a copy of documents used to verify the identity of a customer.

¹⁶ See NPRM, 67 FR at 48317.

¹⁷ See final rule, paragraph (a)(1)(i).

¹⁸ See final rule, paragraph (a)(1)(ii)(A).