

be registered with the Commission, except persons who register solely to effect transactions in securities futures products.²⁴ There were no comments on this definition and we are adopting it as proposed.²⁵

Section 103.122(a)(3) Commission. We proposed to define “Commission” as the United States Securities and Exchange Commission.²⁶ There were no comments on this definition and we are adopting it as proposed.²⁷

Section 103.122(a)(4) Customer. We proposed “customer” to mean any person who opens a new account with a broker-dealer, and any person granted authority to effect transactions in an account.²⁸ Fifteen commenters expressed concern about the proposed definition. Nine commenters suggested that the definition not include persons with authority over accounts. Some suggested that these persons be excluded from the definition entirely while others proposed using a risk-based approach. Seven commenters suggested that the sponsors of employee benefit plans be considered customers, rather than the beneficiaries. Three commenters suggested that the definition of “customer” exclude beneficiaries of trust and escrow accounts. Three commenters suggested that the definition exclude beneficiaries of omnibus accounts. Two commenters suggested that the definition exclude persons who are allocated portions of delivery-versus-payment securities transactions at the direction of an investment advisor. One commenter suggested that the definition may not capture registered owners of an account if someone else undertook the necessary steps to open the account for the owners. One commenter suggested that the definition exclude banks, government agencies and public companies. We have addressed most of these comments and other issues through revisions to the definition of customer and through changes made to other sections of the rule.

For consistency with the Act, the final rule defines “customer” as “a person that opens a new account.”²⁹ This means the person identified as the accountholder, except in the case of minors and non-legal entities. It does not refer to persons who fill out the account opening paperwork or provide information necessary to set up an account, if such persons are not the

acountholder as well. Thus, under this rule, a broker-dealer is not required to look through a trust, or similar account to its beneficiaries, and is required only to verify the identity of the named accountholder.³⁰ Similarly, with respect to an omnibus account established by an intermediary, a broker-dealer is not required to look through the intermediary to the underlying beneficial owners, if the intermediary is identified as the accountholder.³¹

As mentioned, we received the greatest number of comments for defining persons with authority over an account as “customers.” This component of the companion CIP rules proposed for banks, mutual funds and commodities firms also garnered a great deal of comment. Commenters asserted that the proposal in this respect was overbroad and unduly burdensome, and would not further the goals of the statute.³² Some commenters did acknowledge that a risk-based approach would be appropriate.

After revisiting this component of the “customer” definition, we have determined that requiring limited resources to be expended on verifying the identities of persons with authority over accounts could interfere with a broker-dealer’s ability to focus on identifying customers and accounts that present a higher risk of not being properly identified. Accordingly, the final rule does not include persons with authority over accounts in the definition of “customer.”³³ Instead, paragraph (b)(2)(ii)(C) of the final rule requires a broker-dealer’s CIP to address situations where the broker-dealer will take additional steps to verify the identity of a customer that is not an individual by

³⁰ However, as discussed below, under paragraph (b)(2)(ii)(C) of the final rule, a broker-dealer, based on its risk-assessment of a new account, may need to take additional steps to verify the identity of a customer that is not an individual, such as obtaining information about persons with control over the account. In addition, the due diligence procedures required under other provisions of the BSA or the securities laws may require broker-dealers to look through to owners of certain types of accounts.

³¹ The final rule does not affect any requirements under 17 CFR 240.17a-3(a)(9) to make records with respect to the beneficial owners of certain accounts.

³² For example, commenters pointed out that corporations and other entities may have a substantial number of individuals authorized to act on their behalf, and that administrative personnel and other individuals acting on the entity’s behalf may pose a minimal risk of money laundering, especially when the entity is a publicly traded company. Several commenters emphasized that requiring an individual employee to disclose personal information to all of the employer’s financial institutions may be an unwarranted intrusion into the privacy of those individuals, increasing their risk of becoming victims of identity theft.

³³ See final rule, paragraph (a)(4).

seeking information about individuals with authority or control over the account in order to verify the customer’s identity.

The definition of “customer” has been revised to clarify the treatment of minors and informal groups (non-legal entities) with a common interest (e.g., civic clubs).³⁴ In the case of a minor or informal group, the “customer” for purposes of the rule is the individual who undertakes to open the account in the name of the minor or the group. Generally, this will be the person who fills out the account opening paperwork and provides the information necessary to set up the account in the name of the minor or group.

In order to make the rule less burdensome, the final rule excludes from the definition of “customer” certain readily identifiable entities, including: (1) Financial institutions regulated by a federal functional regulator; (2) banks regulated by a state bank regulator; and (3) persons described in section 103.22(d)(2)(ii)–(iv) of the BSA regulations. These excluded persons include entities such as governmental agencies and instrumentalities and companies that are publicly traded.³⁵ The definition of “customer” also excludes a person who has an existing account with the broker-dealer, provided that the broker-dealer has a reasonable belief that it knows the true identity of the person.

Section 103.122(a)(5) Federal functional regulator. We have added a definition of “Federal functional regulator” to the final rule.³⁶ The term is used in connection with the new provision in the rule allowing broker-dealers to rely on certain other financial institutions.³⁷ One of the requirements for such reliance is that the other financial institution be regulated by a Federal functional regulator. The final rule uses the definition of “Federal functional regulator” in section 103.120(a)(2) of the BSA regulations, meaning each of the banking agencies, the SEC and the CFTC.

Section 103.122(a)(6) Financial institution. We have added a definition of “financial institution” to the final rule.³⁸ The term is used in connection with the new provision in the rule allowing broker-dealers to rely on

³⁴ See final rule, paragraph (a)(4)(i)(B).

³⁵ See final rule, paragraph (a)(4)(ii). Section 103.22(d)(2)(iv) exempts publicly traded companies only to the extent of their domestic operations. Accordingly, a broker-dealer’s CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

³⁶ Final rule, paragraph (a)(5).

³⁷ See final rule, paragraph (b)(6).

³⁸ Final rule, paragraph (a)(6).

²⁴ See NPRM, 67 FR at 48317.

²⁵ See final rule, paragraph (a)(2).

²⁶ See NPRM, 67 FR at 48317.

²⁷ See final rule, paragraph (a)(3).

²⁸ See NPRM, 67 FR at 48317.

²⁹ Final rule, paragraph (a)(4)(i)(A).